

THE HIGH COURT**[2014 No. 5495 P.]****BETWEEN****NOEL LONG****PLAINTIFF****AND****BORD BÍA, IRISH NATIONAL ACCREDITATION BOARD, NATIONAL STANDARDS AUTHORITY OF IRELAND, AND DEPARTMENT OF AGRICULTURE FOR FOOD AND THE MARINE****DEFENDANTS****JUDGMENT of Ms. Justice Baker delivered on the 20th day of March, 2015**

1. This is a motion brought by the defendant to strike out the claim of the plaintiff on the basis that the pleadings disclose no reasonable cause of action, are bound to fail and/or are frivolous or vexatious and an abuse of process.
 2. The plaintiff is a litigant in person and he issued a plenary summons on the 20th June, 2014 and served on the 25th September, 2014, a document running to over 300 pages described as "supplementary to all originals" which contains detailed submissions, copies of Acts of the Oireachtas, various Regulations issued by the European Communities, and other general documentation. For the purpose of this application a document that appears towards the end of that documentation and which takes the form of a letter and runs to three pages has been treated as a form of a statement of claim.
 3. The plaintiff has a background in horticulture and food science, and quality food assurance and holds a BSc degree in Quality Management, a diploma in Food Quality Assurance, in Horticulture and many related certificates. He is a qualified trainer in Management Systems and describes himself as being experienced in the implementation, training and lodging of applications for accreditation and certification in the food industry generally. He does this through a body known as QMS Solutions, which he advises me is a trading name and he asks me to treat him for the purposes of the proceedings as a sole trader. I will come back later to the status of the firm QMS Solutions.
 4. QMS Solutions submitted a response to a tender issued by Bord Bía on the 10th February, 2014 for the provision of information technology services for the development and implementation of a web based portal, "Origin Green Platform", to facilitate communications and engagement with a sustainability development programme for Irish food, drink and horticultural companies. QMS submitted a response to the tender on the 24th February, 2014 and was notified that its application was unsuccessful by letter of the 7th April, 2014. Some days later on the 14th April, 2014 the plaintiff himself attended a meeting with Bord Bía to discuss the reasons why QMS Solutions was unsuccessful in its bid.
 5. Following the meeting the plaintiff sent emails from his QMS Solutions email account on the 14th, 15th, 16th and 17th April, 2014 to various Government departments, TDs, the Office of the Attorney General, members of foreign embassies in Ireland, various media outlets and other statutory and public bodies. In these emails the plaintiff complains that the tender process was in breach of EU and national public procurement legislation, and that the entire agri-food sector is being criminally exploited.
 6. In the course of the application before me the plaintiff accepted that some of the language used by him in these emails was unnecessarily inflammatory and he asked that I characterise his complaint found in the emails and subsequently in the litigation, the subject matter of this application, as motivated by a desire for excellence in standards in the food industry. He tells me that his complaint is that the system operated by the defendants is in breach of the various statutory and EU obligations of those bodies, and that there is a flaw in the constitution of those bodies, primarily because he says the boards of the bodies consist of persons who have, or could objectively be seen to have, a conflict of interest. He points to the fact that there is a considerable overlap between the members of the boards in the various organisations, and as a result he says that the system is corrupt and not sufficient to meet the needs of producers.
 7. His specific complaint as was articulated in the course of the hearing before me was that the bodies, and the enabling legislation, incorrectly transposes EU Law or EU requirements in that the focus of the Irish accreditation and standards scheme is the market and not the needs or abilities of producers. He describes the schemes and the operation of the schemes as being "market driven", and said that they ought to be "producer driven".
- The EU framework**
8. Regulation EC 765/2008 is part of a series of EU Regulations which provide a framework of consumer and environmental protection in food production and supply in the context of the free movement of these goods. As a result of the Regulations certain bodies were established both at European and national level with the view to providing a system of recognition, accreditation and quality certification.
 9. Bord Bía, the first named defendant, was established by An Bord Bía Act, 1994 and its statutory functions include under s.8(g) of that Act the operation of quality assurance schemes, the carrying out of evaluations of quality assurance schemes operated or proposed to be operated by other persons or bodies, and the administration of schemes, grants and other financial facilities requiring the disbursement of European Union funds.
 10. The first defendant is alleged to have breached the standards and procurement processes mandated by the EU Regulations, and it is claimed that the Origin Green Platform, that entity or operation which was the subject matter of the tender process, does not "represent sustainability or sustainable systems", does not "represent value for taxpayers' money", and that in the operation of the Origin Green Platform tender Bord Bía breached public procurement legislation. The claim then is framed as a claim in general against Bord Bía, and in regard to the operation of the particular tender which the firm QMS Solutions did not win.

11. The third defendant was established by s.6 of the National Standards Authority of Ireland Act, 1996 with the statutory functions defined in s.7 as inter alia to encourage the use of standards specification, to formulate specifications, guides, recommendations and codes of practice, to arrange for the testing and analysis of commodities and to promote harmonisation of standards. The plaintiff claims that both the second and third defendants are acting in conflict with industry needs and industry standards.

12. The second defendant was established in 1985 and is a committee of the Health and Safety Authority under the Industrial Development (Dissolution of Forfás) Act, 2014.

13. The fourth defendant is a Minister of State.

The arguments of the defendants

14. The first defendant brings this motion to strike out the proceedings and does so on behalf of and with the authority of the other defendants, this method of proceeding being adopted in order to save costs. The same argument was made on behalf of each of them and it can fairly be said that the plaintiff's claim against each of them is broadly speaking similar if not identical. The defendants make the first general observation, with which I agree, that it is very difficult to discern the nature of the plaintiff's case from the documents lodged and I have already noted that the document which purports to be a statement of claim runs to over 300 pages. The general endorsement on the originating plenary summons describes the plaintiff's claim as being against the defendants for a failure to "adopt the systems solution proposed by QMS Solutions in support of producer organisations", and the claim is made that this "solution" would have put the defendants in compliance with both national and EU procurement legislation.

First argument: collateral attack?

15. The defendants first make the point that the plaintiff is seeking to mount a collateral attack on the decision of the tender process and that the claim must fail for two reasons:

- a) That a claim to review the award of a public contract must be brought under S.I. 420 of 2010 by the procedure mandated in O. 84A of the Rules of the Superior Courts, in respect of which is 30 calendar days.
- b) That the plaintiff has no standing to challenge the decision of the tender process, and such a challenge might have been made only by the firm QMS Solutions.

16. The plaintiff in reply argues that he does not seek to challenge the decision on the tender by QMS Solutions Limited, and does not seek to now impugn or to reverse the decision of Bord Bia in refusing to award the tender to that body. He says that his claim is more general and that it is claim of the failure of the system to properly protect the interests of producers. The plaintiff says on affidavit that the tender process is not the substantive component of this claim and he repeats this assertion to me in his argument. Accordingly I intend to treat the proceedings as the plaintiff's claim against the institutions that they are failing in their statutory and EU obligations to properly apply the procurement rules, and in particular, as he puts it, that they have failed to operate within a "producer-lead" structure. In those circumstances I do not need to consider whether the plaintiff is mounting a collateral attack on the refusal of the tender of SMS Solutions.

Standing

17. The next submission of the defendants is that the plaintiff does not have standing to bring these proceedings. The precise legal status of the entity QMS Solutions is not clear, but for the purposes of this application I accept the plaintiff's oral confirmation to me in the course of the hearing that the entity is not an incorporated association and that it is a trading name. I note from the documentation lodged with the tender however that four persons are identified as being part of the "team", three at least of whom, including the plaintiff, are described as being "with" QMS Solutions, which I take to mean that are either employed by, or work through, the medium of that body. All of them are stated to be highly qualified in quality management, engineering and software skills and in the business of certification generally.

18. The defendants argue that the plaintiff is not competent as a sole litigant to bring this action on behalf of the entity, and that the persons who trade under the QMS Solutions business name ought all be plaintiffs, or that at the least the plaintiff should be in a position to show that he acts on their behalf and with their authority. This is not the way in which the plaintiff presents the case and he has offered no coherent explanation to enable me to understand the structure of the firm of which he appears to be owner or part owner, or under the rubric of which he works. For the moment I am prepared to accept that the plaintiff could rectify this problem by seeking to amend the title of the proceedings to name the firm, or to identify himself as trading by that trading name or firm name and that he could, at least theoretically, obtain the consent of his co-owners or co-workers as the case may be. However, the question of standing is more complex and is not so easily resolved.

19. The plaintiff brings this claim as a citizen on the basis that the entire structure and operating basis of these defendants is deficient as a matter of national and EU law, and that it does not properly respect the rights of producers. The plaintiff is not a producer of food or foodstuffs, and even were the plaintiff to amend the title of his proceedings and deal with the pure question of standing that I have outlined above by obtaining the consent of his co-owners or co-workers, he would still find himself in some difficulty with regard to the claim that he makes. Put simply the plaintiff's claim is that the system does not respect producers and he is not a producer.

20. The plaintiff argues that he is an "authorised representative" within the meaning of the definition contained in Article 2.4 of Regulation E.C./765/2008 of 9 July, 2008 which sets out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, O.J. L 218/30 13.8.2008. That Regulation defines "economic operators" as meaning a manufacturer, authorised representative, importer and distributor. The purpose of the Regulations is to ensure a harmonisation in standards consistent with free movement of goods and public health. In that context it seems to me that what the Regulation intended was that certain economic operators would be entitled to avail of harmonized accreditation and standards under procedures to be established by national States for the purpose of meeting the requirements under this Regulation and the associated Regulations. An "authorised representative" in that case would be a representative of a body be it a manufacturer, a supplier, an importer, a distributor or some other person or body which is authorised to represent that entity for the purposes of availing of the accreditation or standards scheme. Those bodies, the importer, distributor, manufacturer or grower of food stuffs are the persons who have standing to avail of any regime established under the Regulations, and the authorised representative of those bodies may equally be said to have standing thereunder.

21. Neither the plaintiff nor his trading body QMS Solutions, is a manufacturer, importer or distributor or an authorised representative of a manufacturer, importer or distributor, and cannot be said to be an economic operator in that context. The firm in fact provides the service of the training of operators, manufacturers, importers etc., assists them in preparing an application for accreditation, and could be said to be secondary to the process, or to be a body which assists persons to avail of those processes. It seems to me in

that context that neither the plaintiff nor his firm can have standing to challenge the means by which the Regulations have been incorporated into Irish law, or the means by which the various defendants have met their obligation to have a harmonious and functioning accreditation system. If there is a claim, it is a claim that may be made by producers, importers or distributors, and in that regard I am persuaded by the plaintiff's own argument that his true claim is that the EU regime, and the statutory realisation of that scheme in Ireland, ought to be producer-led rather than market-led. If his claim is that producers are not properly considered or dealt with under the process, then it is only a producer who could be said to have standing to prosecute such an action.

22. Accordingly I am of the view that the plaintiff has not shown that he has standing to bring these proceedings. If I am wrong in this I turn to consider the more general argument made in the application to dismiss, namely that the claim is impossibly broad, and is a general challenge, not one focused on a particular wrong to the plaintiff.

A general challenge?

23. The plaintiff also seeks a declaration that there is, as he put it "no value in the system" of accreditation for the producers, and the system does not fulfil their needs. He points me to the fact that the defendants have been guided in their decisions and processes by large multinational entities which are themselves not producers but are distributors, wholesalers and retailers of food produce. He tells me, and I accept, that he is motivated by a desire for excellence in standards in food production with which he has been involved for over 20 years and that he is concerned that the bodies that operate the accreditation and standards systems within the State do not properly perform their function, do not "reflect, producer needs, producer policy, producer production plans, producer objectives, producer processes (given farming type and set-up) and available producer resources".

24. The plaintiff says that he has brought the issue of the attention of Bord Bia in various emails and letters and in conversation, and that the bias towards markets with respect to policy, strategy and system control is not a proper use of resources, is not sufficiently impartial, manipulates producer industry standards, and is a "restrictive measure... designed to support market in the delivery of Irish producer resources".

25. The plaintiff also alleges corruption and a "fraudulent use of systems and standards" by the defendants, but he accepted in submissions before me that his language was perhaps more intemperate than he intended. He does however make the argument, and has pleaded, that the various bodies comprising the four defendants in these proceedings are improperly constituted and fail in their application of standards to apply these standards either objectively or in accordance with law.

26. In the document annexed to his summary the plaintiff states the following, which I will treat as a plea:-

"Put simply An Bord Bia as a statutory body and governed by ISO 17065: 2012 as an accredited organisation with responsibility for Quality Assurance Schemes Certification are intended to be supporting A (producers) and they are actually supporting B (markets). The co-defendants are complicit in their accreditation, certification or endorsement of such schemes, given the inter-related organisational structures enabling same."

The Law

27. An application to strike out proceedings on the grounds that they are bound to fail is one in respect of which the court must take a plaintiff's case at its height, and such an order is not lightly made. The jurisprudence is well established and in considering whether to strike out a claim in its inherent jurisdiction on the grounds that the claim is bound to fail or that it is an abuse of process the court "must treat the plaintiff's claim at its high water mark" per Clarke J. in *McCourt v. Tiernan* [2005] IEHC 268. The jurisdiction will be "exercised sparingly and only in clear cases" per Costello J. in *Barry v. Buckley* [1981] 1 I.R. 306. In particular in *Sun Fat Chan v. Osseous Ltd.* [1992] 1 I.R. 425 McCarthy J. expressed the view that if a pleading "admits of an amendment which might, so to speak, save it and the action founded on it, then the action should not be dismissed."

28. With that case law in mind, and bearing in mind that the power to strike out must be exercised sparingly, I consider the following factors to be relevant:

- 1) The plaintiff has not persuaded me that he has standing to bring these proceedings, and he brings the action as a litigant in person and as a citizen, not on behalf of a firm or acting with the authority of the persons who own or work for or with that firm.
- 2) The plaintiff is not a producer, supplier or manufacturer of goods which might hope to obtain accreditation. At best the plaintiff acts to assist such persons in having their product achieve a certain accreditation or quality mark.
- 3) The plaintiff's claim is to the legal foundation of the bodies in questions, or more specifically to the way in which they apply the tests of accreditation. The claim thus characterised is a claim which is political in tone and intent. His claim is that the system as created does not meet the needs of producers of food products.
- 4) The plaintiff claims that the way in which the defendants operated the accreditation system is detrimental to the market, or as he puts "restricts markets available to producers".

Conclusion

29. I am aware of the constraint on my power to strike out a claim at this stage in the procedure and when oral evidence or full submissions on a claim have not been made. However, it seems to me that this claim is one that comes within the general category of a claim that is bound to fail and I say this for the following reasons.

30. First, the plaintiff has not established to my satisfaction that he has standing to bring this case. I say this not on the basis that he has not adequately shown me the true structure of the entity QMS Solutions Limited, nor has he explained the exact role that he takes in that body, but because his complaint is not made as a producer, supplier or manufacturer of foodstuffs, i.e. as a person who might avail of the accreditation system himself, but as a person who advises such persons in their applications. Were the plaintiff be permitted to continue this action no benefit would accrue to any producers, suppliers or manufacturers who might seek to avail of the accreditation structures and systems set up by and operated by the defendants. If there is a cause of action, the cause of action is vested in such producers, manufacturers or suppliers, and not in the person advising them. The plaintiff makes the point that his firm, and he himself personally, cannot operate the system because it is wrongly focused and damaging to the market. That may be so and I express no view on that proposition, but even if the plaintiff is correct it is the producers, suppliers and manufacturers in whom such a claim is vested.

31. Second, the plaintiff has not identified one decision of any of the accreditation bodies, nor any Act of the Oireachtas which he challenges. His claim is made more in general terms that the market and in particular the producers of food stuffs gain no benefit from the accreditation system as it operates. His claim is made as a citizen, and he is entitled to make a claim as a citizen, but only if he can show some interest of his that is challenged and in respect of which he has a direct interest. If it is the case that the Irish State has wrongly transposed the Regulations and other EU legislation into Irish Law then the EU Institutions may challenge the State in respect of such wrong transposition. A plaintiff who has no direct interest in such transposition may not mount such a claim.

General and summary

32. The plaintiff comes across as a man who is passionate about standards, skilled in his chosen profession, and well informed as to the various standards of which his customers might seek to avail. His firm is an auditor, designer and trainer of producers in such standards, but neither his firm nor he himself has standing to challenge the standard when their function is secondary or ancillary to the application by the producers. Even were the plaintiff to overcome the hurdle with regard to his *locus standi*, it seems to me that he is bound to fail in this action which is an action in which he challenges the basis of the accreditation system and by which he could be said fairly to be seeking to, as he puts it, "bring attention to the governing Directives, Regulations and standards in question" and "to systematically and systemically identify the defendants' fraudulent misuse and abuse by principal actors concerned". These quotes come directly from his long form document and seems to me to constitute the root of his case, a challenge which to me has all the hallmarks of a general allegation of corruption, a political statement, an attack on Government policy, and an assertion that the system operated inhibits and restricts the market, is operated to the detriment of Irish producers and the Irish agri-food sector, and complaints about the breakdown of Irish society and the application of standards which is detrimental to consumers.

33. The plaintiff has not established to my satisfaction that any of these complaints are justiciable, or that if they are, they are justiciable by him and accordingly I strike out the proceedings on the grounds that the proceedings are bound to fail and that the plaintiff has no standing to maintain the proceedings as presently constituted.