

## THE HIGH COURT

[2016 No. 7993 P]

BETWEEN

PADRAIC WALSH

PLAINTIFF

AND

THE MINISTER FOR JUSTICE AND EQUALITY, THE COMMISSIONER OF AN GARDA SÍOCHÁNA, IRELAND AND THE ATTORNEY  
GENERAL

DEFENDANT

**JUDGMENT of Mr. Justice MacGrath delivered on the 30th day of November, 2018.**

1. The plaintiff claims damages for assault, battery, breach of his constitutional rights and false imprisonment. A full defence has been delivered. By notice of motion dated 9th October, 2017, the plaintiff seeks an order directing the defendants to reply his notice for particulars dated 26th May, 2017 arising from matters pleaded in the defence.

2. The plaintiff alleges that on 12th February, 2015 while in a carpark at Galway Retail Park he was falsely imprisoned and arrested by members of An Garda Síochána, in consequence of which he alleges that he sustained injuries and damage. The case as pleaded by the plaintiff has been set out at para. 4 of the statement of claim. He alleges that he was pounced upon and physically restrained by a group consisting of five people, four men and one woman, four of whom participated in the alleged assault and all of whom were members of An Garda Síochána. It is pleaded that while the plaintiff offered no resistance, undue and unnecessary force was used and that he was accused of not opening his mouth when requested to do so. According to the pleadings none of the persons involved was dressed in uniform or looked or acted like a member of An Garda Síochána. It is alleged that a lady who was present produced what the plaintiff understood to be a garda identification badge, something which he pleads he did not understand at the time. He alleges that he was ultimately allowed to produce his identification from his pocket and that he offered to go the garda station to permit himself to be searched. He further contends that this incident was witnessed by a number of people in the carpark.

3. At para. 8 of the statement of claim it is alleged that the conduct of the defendants was without justification and in this context the plaintiff seeks aggravated, exemplary and punitive damages.

4. On 10th February, 2017, a defence was delivered by the defendants, in which all matters were placed in issue and liability denied. There are two paragraphs of the defence in respect of which the plaintiff seeks further information. It is pleaded at para. 1 that:-

*"At all material times hereto the Plaintiff was searched under lawful authority by members of An Garda Síochána, pursuant to Section 23 of the Misuse of Drugs Act, 1977 as amended. At all material times the actions of the members of An Garda Síochána were proportionate, necessary and reasonable and they acted bona fides and otherwise in accordance with law. In the circumstances no cause of action arises."*

5. Paragraph 6 of the defence contains allegations of contributory negligence on the part of the plaintiff in failing or refusing to heed or obey lawful requests of An Garda Síochána in the performance of their duty, resisting attempts by the gardaí to carry out their lawful duty, failing or refusing to cooperate with the gardaí, obstructing the gardaí in the performance of their duties and acting in a loud, argumentative and uncooperative manner such that his conduct was unreasonable and irrational.

6. A notice for particulars was raised by the plaintiff's advisers on 26th May, 2017. In an introductory section of the letter, it is stated that para. 1 of the defence implicitly asserts that at the time of the incident, members of An Garda Síochána had reasonable cause to suspect that the plaintiff was in possession of a controlled drug. It is noted that nowhere in the defence *"is the premise for such reasonable cause set out"*. A complaint is made that the plaintiff will have to proceed to trial, give his account of what happened and then be cross-examined on the basis of alleged actions on his part which gave rise to and/or justified suspicions in the minds of An Garda Síochána. The notice for particulars continues as follows:-

*"By this point the plaintiff will have been litigating this matter for a number of years and been put to considerable outlay and expense without even knowing what the case against him may be."*

Thereafter, the following particulars are sought:-

*"1. With regard to paragraph 1 of your defence, in which it is asserted that any actions of An Garda Síochána were carried out under lawful authority, pursuant to Section 23 of the Misuse of Drugs Act, 1977, as amended we require you to make available the following information:*

*a. Please set out the premise upon which it is asserted that An Garda Síochána had reasonable cause to suspect that our client was in possession of a controlled drug at the time the search was effected.*

*b. Insofar as the defendant is purporting to rely on anything said or done by our client leading up to his being manhandled on the ground as a basis for entertaining, or having a suspicion that he was so in possession, please set out, with precision, what these actions or things said were.*

*2. With regard to the assertions at paragraph 6 please specify the precise facts upon which each plea is premised."*

7. Section 23 of the Misuse of Drugs Act 1977, in so far as it is relevant, provides:-

*"(1) A member of the Garda Síochána who with reasonable cause suspects that a person is in possession in contravention of this Act of a controlled drug, may without warrant—*

*(a) search the person and, if he considers it necessary for that purpose, detain the person for such time as is*

reasonably necessary for making the search

[...]

(2) Nothing in this section shall operate to prejudice any power to search, or to seize or detain property which may be exercised by a member of the Garda Síochána apart from this section."

### Rules of the Superior Courts

8. Order 19, rule 3 of the Rules of the Superior Courts provides that:-

*"Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to [be] proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel they shall be signed by him; and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person."*

The plaintiff submits that he is not seeking the evidence upon which the defendant will rely at the hearing, rather, he is seeking the factual basis upon which the pleas in question are being maintained.

9. Counsel for the defendants submits that the plaintiff is in truth seeking the evidence which will be adduced at the hearing and that this it is impermissible to so do by way of notice for particulars. She relies on a number provisions within O. 19, including r. 22 which provides:-

*"Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred."*

10. In this regard reference is made to *Duane v. Barry* (1879) 4 L.R. Ir 742. and Ó Floinn, *Practice and Procedure in the Superior Courts*, 2nd Ed., (Tottel Publishing, 2008), where it is stated:-

*"Wherever it is material ...': Intention, where intrinsic to the claim made, must be clear on the face of the pleadings. Thus, in an action for seditious libel the omission of the words 'seditious' or 'seditiously' was not fatal if seditious content was clearly shown: Regina v. M'Hugh [1901] 2 IR 569.*

*In an action for malicious prosecution it may be sufficient to state that there was no reasonable or probable cause and that a prosecution was instituted and determined: Duane v Barry 4 LR Ir 742."*

The central issue in *Duane v. Barry* related to the trial judge's charge to the jury, and, from what I can ascertain from the judgment, not the manner in which the case was pleaded.

11. Reliance is also placed on O. 19, r. 25 which provides:-

*"Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied..."*

In this regard the defendants emphasise the contents of para. 8 of the statement of claim wherein the plaintiff pleads that the actions of the defendants were carried out without any foundation, basis or justification. It is submitted that in those circumstances the particulars now sought, particularly those in para. 1 are not necessary. It is contended that the burden of proof lies on the plaintiff to establish that the actions of the defendants were without foundation, basis or justification, and that it is not for the defendants to furnish particulars in respect of matters which the plaintiff is required to prove. It is argued that the particulars sought are not required because the plaintiff is aware of the nature and broad outline of the defence which will be maintained at hearing.

12. It is contended that the plaintiff is on a fishing expedition and is attempting to establish whether he will be able to prove the matters which he has alleged. It is argued that in any event, he is fully aware of the matters and issues between the parties. The fact that the information sought might be useful to the plaintiff, it is contended, does not mean that further details should be ordered.

13. In *Mahon v. Celbridge Spinning Company Ltd* [1967] I.R. 1, Fitzgerald J. succinctly set out the purpose of pleadings at p. 3:-

*"The whole purpose of a pleading, be it a statement of claim, defence or reply, is to define the issues between the parties, to confine the evidence at the trial to the matters relevant to those issues, and to ensure that the trial may proceed to judgment without either party being taken at a disadvantage by the introduction of matters not fairly to be ascertained from the pleadings. In other words a party should know in advance, in broad outline, the case he will have to meet at the trial."*

14. In *McGee v. O'Reilly* [1996] 2 I.R. 229, Keane J. emphasised that in our system of civil litigation, a case is ultimately decided having regard to the oral evidence adduced at trial and that:-

*"The machinery of pleadings and particulars, while of critical importance in ensuring that the parties know the case that is being advanced against them and that matters extraneous to the issues as thus defined will not be introduced at the trial, is not a substitute for the oral evidence of witnesses and their cross-examination before the trial judge." (at p. 234)*

15. In *Burke v. Associated Newspapers (Ireland) Ltd* [2010] IEHC 447, Hogan J., having reiterated that a litigant is entitled to know from the pleadings the nature of the case and not the evidence which it is intended to lead in support, stated at para. 17:-

*"The distinction between what is a matter for pleadings on the one hand and what is a matter for evidence on the other is often a fine one and it is also one which is sometimes difficult to apply consistently in practice. Nevertheless, it seems*

*clear that a plaintiff (or a defendant, as the case may be) is not entitled to further particulars once the essence of the case which he has to meet is clear from the pleadings."*

16. In *Ryanair Limited v. Goss* [2016] IECA 328, Hogan J. at para. 11 also referred to what he described as the governing principle that:-

*"...particulars will be ordered in the interests of fair procedures and to ensure that a litigant will not be surprised by the nature of the case which he has to meet."*

17. A further authority relied upon by the defendant is *Playboy Enterprises International Inc v. Entertainment Media Networks* [2015] IEHC 102. There, Baker J. considered whether sufficient particulars of alleged breach of copyright had been provided. She adopted dicta of Hogan J. in *Armstrong v. Moffatt* [2013] IEHC 148 as a statement of first principles with regard to the true purpose of pleadings and of the extent to which the court should direct the furnishing of further and better particulars of a claim. Baker J. observed that the decision in *Armstrong* concerned a claim for personal injuries in the context of significant changes made to pleading requirements in personal injuries actions introduced by the Civil Liability and Courts Act 2004. She noted that different considerations may apply to a claim based on a statutory tort. At para. 15 of her judgment she stated as follows:-

*"I accept that the plaintiff is in general entitled to plead in the alternative, but not that pleas may be so general as to leave the other side with little or no specificity in understanding the claim. A claim made in a statutory context, or arising from alleged breach of statutorily created rights, cannot be pleaded so generally or in the alternative to the extent that the pleadings obscure or confuse the claim and fail to point sufficiently to the source of the rights."*

18. Baker J. further observed that given that the purpose of particulars was to identify the basis of a claim made under statute, the defendant should not be required to engage in a hermeneutical analysis of the pleadings to ascertain whether the plea relates to one or other or all of the sections of the Act, and that if a claim is made under statute then it should be clear that it is so made. At para. 19 she stated:-

*"It cannot be the case that every claim of specific statutory tort or other class of legal wrong is required as a matter of law to be pleaded with such specificity that only the language of the legislation is used. Pleadings are a matter of style, and no one style of pleadings is mandated even in the claim of a breach of the statutory right. However, if the legislation is specific in the class of acts which are wrongful then a defendant ought to know without difficulty where in the legislative scheme the rights asserted and the breaches alleged are stated to arise. The language of the plea ought to identify with a sufficient degree of particularity and singularity either by way of a reference to a particular section and subsection of an Act, or by the use of the exact language of an Act, together with other words as chosen by the draughtsperson to further explain or elaborate on a plea."*

19. Baker J. concluded that the use of certain expressions in the pleadings such as "transmission", "reproduced" and "exploited" did not sit easily with the express language of the statute upon which reliance was placed and therefore directed particulars to be replied to on those issues.

20. I do not read the determination or the language employed by Baker J. to necessarily mean that once a particular section of a statute has been pleaded, that, in and of itself, is a sufficient plea, without the requirement to plead a fact or facts to broadly outline why the breach of a statutory obligation, or the particular statutory defence is said to arise.

21. It may be that a general plea in accordance with the wording of a particular statute which creates a right or affords a specific defence or immunity will be sufficient to inform the opposing party, in broad outline, of the case which he or she may have to meet a trial. Nevertheless, in my view, in the assessment of whether a matter has been sufficiently pleaded or particularised, each case must be analysed by reference to the cause of action or defence pleaded, and the particular statutory provision upon which reliance is placed.

22. In this case, no factual basis, in broad outline or otherwise, has been pleaded, to support the basis upon which the defendant is entitled to rely on the pleaded statutory defence. Thus, the plaintiff is left completely in the dark as to whether the source of the reasonable suspicion may be a third party informant or the activities of the plaintiff himself. Indeed, if the plaintiff or his advisers were, or become aware of the source of the reasonable suspicion, in broad outline, this may very well inform the further efficient prosecution of the claim, or the manner in which it might be done.

23. Further, I do not believe that it necessarily follows from the general plea made by the plaintiff at para. 8 of the statement of claim (i.e. that the defendant's actions were carried out without foundation, basis or justification) that the onus of proof lies upon the plaintiff to establish that each and every potential or conceivable defence, statutory or at law, cannot and does not arise. It appears to me that what has been there pleaded is no more than an allegation that in so far as the plaintiff is concerned, no lawful justification arises. In my view, that does not detract from the obligation of the defendant to plead such lawful justification or potential defence upon which it intends to rely. Indeed, if one were to follow this argument to its logical conclusion, it might conceivably mean that where a plaintiff pleads that a certain action on the part of the defendant was done without lawful justification, it is not necessary for the defence to make reference to any potential statutory or special excusatory defence upon which it intended to rely. If that is correct, then in a case such as this it would be open to a defendant to introduce, at hearing, evidence of an unlimited potential range of defences without the necessity for any particular pleading, save to join issue with the plaintiff's allegation that the defendant's actions were carried out without such lawful justification. The surprise element which, in the interests of fairness and justice, the proper pleading of a case is designed to avoid, is unlikely to be achieved in those circumstances.

24. In the circumstances, applying the above principles to the particulars raised in this case, I conclude that the defendant should provide particulars as sought at para. 1(a) of the plaintiff's notice for particulars dated the 26th May 2017. It seems to me that in the interests of justice and fairness and to avoid unnecessary and unfair surprise at the hearing, that the defendant be required to reply to the question raised and to provide in broad outline the facts to be relied upon and upon which the pleaded statutory defence is based.

25. The particulars sought at para. 1(b) and para. 2 fall into a different category, in my view. The former looks suspiciously like an inquiry by the plaintiff into the nature of the evidence which the defendants intend to rely upon at the hearing and I so conclude. On the application of the above principles I find that the particulars of contributory negligence, the subject of para. 2 of the notice for particulars, have been sufficiently detailed, in broad outline, as is required.

26. I therefore direct the defendants to reply to particulars raised at para. 1(a) of the plaintiff's notice for particulars raised by letter

dated 26th May, 2017. I dismiss the application in respect of the particulars raised at para. 1(b) and 2.