THE HIGH COURT

[2015 No. 9311 P]

BETWEEN

WILLIAM MULROONEY

PLAINTIFF

AND

BRENDAN J. LOONEY, FORMERLY PRACTICING UNDER THE TITLE AND STYLE OF BRENDAN J. LOONEY SOLICITOR

AND

FORENSIC SCIENCE NORTHERN IRELAND

DEFENDANTS

JUDGMENT of Mr Justice Paul Coffey delivered on the 20th day of February, 2018

1. This is an application by the second named defendant for an order pursuant to the inherent jurisdiction of the Court to dismiss the proceedings herein on the basis that they are bound to fail and are an abuse of process.

Background

2. The plaintiff's action is the fourth case that has been brought arising from the dissatisfaction of the plaintiff and his father, John Mulrooney ("the Mulrooneys") with the outcome of Circuit Court proceedings that were taken against them in 2002 by Edward Malone.

3. The proceedings in 2002 related to a lease agreement dated 1st April, 1999 between Edward Malone and John Mulrooney which on its face was for a term of five years. The claim against the plaintiff was based on an allegation that the interest which his father originally held under the lease had been transferred to him. Mr. Malone sought damages for breach of contract alleging that the plaintiff and his father had wrongfully terminated the lease after three years. The claim was contested by the Mulrooneys on the basis that the original lease document of 1999 ("the lease document") provided for a term of three years but was thereafter wrongfully altered to suggest that it had been for a term of five years. To that end, on the 21st July, 2003, the Mulrooneys applied to the Circuit Court for an order giving them liberty to issue and serve a third party notice on Shee & Hawe Auctioneers who were joined on the basis that they had "unilaterally, wrongfully and unlawfully altered the term of the said lease from a period of three years to five years without the defendants' knowledge or consent". On the 9th March, 2005, the action came on for hearing before His Honour Judge O'Donnabhain at Clonmel Circuit Court who determined that the lease was for a period of five years and found that the Mulrooneys were liable for the sums which would have fallen due in the fourth and fifth year of the lease which where measured in the amount of €12,436.82. The Mulrooneys appealed the order of the Circuit Court to the High Court but prior to the appeal coming on for hearing, they settled both the plaintiff's action as against them and their action as against the third parties for the sum of €13,500 inclusive of costs following which the appeal was struck out on 5th November, 2005.

4. In 2008 the plaintiff brought further proceedings in the Circuit Court against Edward Malone and against certain solicitors and auctioneers who had been involved in the negotiations leading up to the lease. On 11th November, 2008, the Circuit Court dismissed the proceedings on the basis that the civil bill failed to disclose a cause of action and that the proceedings were found to be frivolous and vexatious.

5. In 2011 the plaintiff's father, John Mulrooney (with the assistance of the plaintiff) brought High Court proceedings against twenty four defendants including four State defendants ("the 2011 proceedings"), in a further attempt to re-litigate the issue of whether the lease document had been wrongfully altered.

6. On 29th December, 2011, Charleton J. dismissed the proceedings as against thirteen of the defendants. On 27th November, 2014, Kearns P. struck out the proceedings as against the four State defendants on consent. On 19th January, 2015, Kearns P. dismissed the proceedings against three other defendants. That order was appealed to the Court of Appeal but the appeal was settled.

7. The order of Charleton J. made on 20th December, 2011, was appealed by John Mulrooney in respect of his claim as against Edward Malone, Shee & Hawe and John Shee & Company which was dismissed by an unanimous decision of the Supreme Court given on 9th May, 2013. The Supreme Court held that John Mulrooney was no longer in a position to attempt to re-litigate the allegation of unlawful altering which he and the plaintiff had "long since settled".

8. In 2015 the plaintiff brought further proceedings against three State defendants ("the 2015 proceedings") arising from a complaint that An Garda Síochána had failed to investigate certain criminal complaints properly and in particular his complaint that the lease document had been unlawfully altered.

9. On 27th July, 2017 Eagar J. dismissed the plaintiff's proceedings on the grounds that they relate to the same issues raised by the plaintiff in previous proceedings issued in the Circuit Court and on the grounds that the proceedings were an abuse of process or alternatively were bound to fail. The court further imposed an Isaac Wunder order on the plaintiff restraining him from issuing further proceedings without the leave of the court against the defendants in that case or any other defendants against whom the plaintiff has previously initiated pleadings in relation to the alleged amending of the lease by way of fraud.

The current proceedings

10. The second named respondent is an agency within the Department of Justice of Northern Ireland which provides forensic laboratory services for litigation purposes, predominantly to the Police Service of Northern Ireland but also on request to other clients. In 2010, the lease document was made available to a Mr. Brian Craythorne, a questioned document examiner at the agency, who produced a report in which he expressed the view that "all the evidence supports the position that the figure 5 and the figure 2004 have not been altered and thus the term was originally for five years and the end year was 2004". The report was referred to both by Charleton J. and the Supreme Court in the 2011 proceedings brought by the plaintiff's father, John Mulrooney.

11. The proceedings in the instant case were instituted by plenary summons issued by the plaintiff in person on the 24th November, 2015. A conditional appearance was entered on behalf of the second named on 21st December, 2015. The plaintiff delivered a statement of claim on 8th March, 2016 in which he makes two complaints as against the second named defendant, only one of which

is now being maintained. The sole case that is advanced by the plaintiff as against the second named defendant is that in or about the 27th August, 2010, Brian Craythorne of the second named defendant carried out an examination of the lease document which it is alleged was negligent as a result of which it is alleged the plaintiff has suffered irreparable loss and damage including reputational damage.

12. A notice for particulars was raised on behalf of the second named respondent on the 15th June, 2016 to which the plaintiff replied by letter dated the 7th July, 2016. Amongst the matters queried was the nature of the claim for loss and damage. In reply, the plaintiff stated that he was "currently preparing the vouching documentation to detail the loss and damage occasioned to him by the negligence of the defendants and will furnish same in early course". No documents have since been provided. At paragraph 64 of his written submissions to this Court, it is contended that the examination by the second named defendant (along with the first allegedly incomplete examination of the lease by An Garda Síochána) "has been responsible for the plaintiff (having) his respective cases dismissed and have prevented a full trial on this matter taking place". The clear and logical implication of this contention is that had there not been a negligent examination of the lease document in 2010 by Brian Craythorne of the agency, the second named defendant would have found in 2010 that the document had been unlawfully altered so that the 2011 and 2015 proceedings would have succeeded with the result that the plaintiff would now be in a position to reopen his litigation against Edward Malone and Shee & Hawe Auctioneers.

Inherent jurisdiction of the court

13. At the hearing of this application, counsel on behalf of the second named defendant indicated that he was relying not on the power conferred on the court by O. 19, r. 28 but rather on the inherent jurisdiction of the court under *Barry v. Buckley* [1981] I.R. 306, whereunder the court has an inherent jurisdiction to strike out or stay proceedings if they are frivolous or vexatious or bound to fail in order to ensure that an abuse of the process of the courts does not take place. He contends that the plaintiff's case constitutes an impermissible collateral attack on the finding of the Supreme Court that the Mulrooneys were no longer in a position to attempt to re-litigate the allegation of unlawful altering of the lease which they have long since settled.

14. Counsel for the plaintiff in reply contends that the finding of the Supreme Court does not apply to the plaintiff's claim as against the second named defendant by reason of the fact that the second named defendant was not a party to the settlements of the Circuit Court Appeals in 2005. However, this is to overlook the way in which the plaintiff has formulated his claim for damages and specifically the contention made at para. 64 of his written submissions which discloses that his true purpose in bringing this case is to seek damages on the basis he has been wrongfully deprived of an entitlement to reopen his litigation with Edward Malone and Hawe & Shee Auctioneers. It further ignores the fact that the Supreme Court held that by virtue of their settlement of the Circuit Court Appeals in 2005, the Mulrooneys had lost the right to litigate the issue of whether the lease document had been wrongfully altered as a result of which it dismissed John Mulrooney's appeal against, *inter alia*, John Shee & Company Solicitors notwithstanding the fact that the solicitors were not a party to the settlements of 2005.

15. It is implicit in the reasoning of the Supreme Court in *John Mulrooney v. John Shee & Co. Solicitors & Ors.* [2013] IESC 20 that even if the plaintiff had procured an expert report from the second named defendant in 2010, which supported his allegation of unlawful altering, it still would not have assisted him. This is because he was not at that stage by virtue of his settlements entitled to bring an allegation of unlawful altering of the lease document. Giving the judgment of the court, Clarke J. (as he then was) stated at p. 16:-

> "This is not, of course, a case of *res judicata* or *issue estoppel*. These proceedings were settled and did not come to an ultimate judgment by a court of competent jurisdiction. However, the same overall principle applies. To whatever extent it might be open to a party to go back on a settlement reached because of the availability of fresh evidence (and the circumstances in which such a course of action could be adopted, if it is possible at all, would, undoubtedly, be extremely limited), it could never be open to a party to seek to rely on the availability of fresh evidence which could, with reasonable diligence, have been made available at a time when a previous action involving the same allegation came to a settlement. It seems to me that the discovery of fresh evidence relevant to a case which has settled could never be a ground for seeking to reopen the case if the party, at the time of the settlement, could, with reasonable diligence, have obtained the evidence in question".

16. Clarke J. later went on to state:-

> "The original of the lease was, of course, available, if required, at the time of the Circuit Court proceedings. An application could have been made to have that lease made available to an expert of Mr. Mulrooney's choosing. For whatever reason it was decided not to go down the road of having the lease examined forensically at that stage… Any evidence which might now be obtained as to unlawful altering would clearly be evidence which could just as easily have been obtained at the time when Mr. Mulrooney made his allegation of unlawful altering in the Circuit Court proceedings. Having chosen to settle those proceedings, with that allegation in being, and without having sought then to have the document forensically examined, it is now far too late to seek to raise the issue again with the benefit of forensic evidence… The time to have obtained the forensic examination which Mr. Mulrooney now seeks is when he first made the allegation of unlawful altering in the context of the Circuit Court proceedings. Having failed to do it then and having settled those proceedings, he has now lost the right to seek to re-litigate the same question of unlawful altering which he has already settled. He is, in substance, asking not to be taken at his word when he settled those proceedings. The law does not allow him to depart from his word. He is bound by the settlement. The settlement binds him not to seek to re-litigate the issues which were then before the Circuit Court. Those issues clearly included the allegation of unlawful altering. Mr. Mulrooney is precluded from now seeking to make that allegation by virtue of his previous settlement of the proceedings and the trial judge was, therefore, correct to dismiss the proceedings as being an abuse of process."

17. Counsel for the plaintiff further argued that the settlements of 2005 were induced by fraud and specifically made an allegation that Edward Malone and his legal advisers fraudulently concealed the fact that consent for the granting of the lease under s. 12 of the Land Act, 1965 was not obtained until a date after the decision of the Circuit Court on the 9th March, 2005. Even if one assumes without deciding that the granting of the consent was a necessary proof in the case, the fact of the matter is that such point of objection, as might have arisen, was not taken by the plaintiff either in the Circuit Court or on appeal to the High Court prior to the settlement of the actions. However, the true significance of this argument is that it provides yet further evidence of an underlying intention on the part of the plaintiff to reopen the Circuit Court proceedings of 2002 and to reagitate the issue of unlawful altering by whatever means it takes.

Conclusion

18. For the reasons stated, this Court is satisfied that the true substance and intent of these proceedings is to re-litigate the issue of whether the lease document of 1999 was wrongfully altered, and thereby to challenge the outcome of the 2002 Circuit Court

proceedings which the Supreme Court has already determined can no longer be the subject of litigation. Accordingly, this Court will accede to the application and make an order dismissing the plaintiff's claim as against the second named defendant on the grounds that the proceedings are an abuse of process.