

THE HIGH COURT

[2015 No. 9954 P.]

BETWEEN

**GRANT THORNTON (A FIRM) AND
GRANT THORNTON CORPORATE FINANCE LIMITED**

PLAINTIFFS

AND

GERALDINE SCANLAN

DEFENDANT

JUDGMENT of Mr. Justice Paul Gilligan on the 27th day of July, 2017

1. The first motion to come before the Court is the defendant's motion to permit the defendant to join the Attorney General, the Data Protection Commissioner and Danske Bank to the within proceedings.

2. The proceedings concern an incident whereby following a data request in September, 2015 from the defendant, the plaintiff as a result of inadvertence forwarded to the plaintiff a disc which allegedly contained confidential information and/or personal data relating to third parties and alleged confidential proprietary information of the plaintiffs including material that is legally privileged.

3. By letter dated the 3rd of October, 2015 the defendant advised the plaintiff that she had found on the CD furnished to her items of information including deeds of appointment of receivers in respect of properties unconnected with her.

4. The plaintiffs allege that the defendant has utilised the alleged confidential information and shared it with third parties. In these circumstances an application was made to this Court which made an interlocutory order on the 4th December, 2015 pending the determination of these proceedings as follows:

"(1) The defendant (and any person having notice of such order) be restrained from disseminating, communicating by any means whatsoever to any third parties, or otherwise making any use of the confidential information, as more particularly described in the Schedule hereto ("the Confidential Information"), or any part thereof, for any purpose, pending the determination of these proceedings.

(2) The defendant (and any person having notice of such order) be restrained from processing any personal data (other than her own personal data) provided to her by the plaintiffs other than in accordance with the provisions of the Data Protection Acts, 1988 and 2003, pending the determination of these proceedings.

(3) The defendant do provide to the plaintiff's details of all third parties to whom the defendant has disclosed and/or disseminated the confidential information.

(4) The defendant do forthwith deliver up to the plaintiffs all documents and other records containing the confidential information.

(5) The defendant do take all necessary steps to retrieve, recall and/or remove from the public domain, the confidential information which the defendant has disseminated, communicated or otherwise made available to the public.

(6) The defendant do forthwith destroy, erase and delete any confidential information remaining in her possession.

(7) The defendant do forthwith take all practicable steps to retrieve from William McKeogh all of the confidential information provided to Mr. McKeogh by the defendant."

5. It appears to be the position that the defendant copied the contents of the disc onto three USB keys which contain some or all of the information and the ongoing situation appears to be that the original disc and two of the three USB keys have been returned to the plaintiff but one USB key remains outstanding.

6. The plaintiffs maintain that the defendant has retained the information to which she is not entitled and the defendant denies that she has done so.

7. In the background unidentified third parties have contacted the defendant and discussions have taken place and in this regard the defendant avers that nothing of any consequence arises out of these discussions but it does appear that information relating to third parties who previously had dealings with Danske Bank have come into the public domain and at least one set of proceedings has been instituted against the plaintiffs in this regard.

8. The reality of the situation is that the plaintiffs accept that there is information relating to third parties on the disc that was supplied to the defendant in respect of her data request. Some of the information is totally unrelated to the defendant, a mistake was made, and if the plaintiffs could be satisfied that there is no confidential information arising from the disc in the public domain and that the defendant will not disseminate any confidential information of which she is aware that these proceedings can be at an end.

9. The principal issues that arise between the parties are that having supplied the defendant with the disc with the information thereon relating not only to the defendant but also to third parties:

- is the information relating to the third parties as contained on the disc confidential;
- is the defendant entitled to utilise the information that was on the disc and which relates to third parties for her own purposes?

10. The defendant and her estranged husband lost their property which was subject to a mortgage from Danske Bank by reason of the fact that the loan fell into arrears and the loan was eventually sold in a portfolio of loans.

11. There were proceedings between Danske Bank and the defendant and as between the defendant as plaintiff and Danske Bank and Stephen Tennant as defendants which proceedings came on for hearing before this Court (Fullam J.) under Record No. 2016/2 JIC 2506.

12. In the first of set of proceedings Danske Bank sought an order for summary judgment against the defendant in the sum of €84,439.80. In a second motion Danske Bank and the appointed receiver Stephen Tennant sought an order dismissing a claim by the defendant on the basis that the proceedings disclosed no reasonable cause of action and that the inherent jurisdiction of the court should be evoked to dismiss the proceedings as they were frivolous and vexatious. The defendant is highly critical of the manner in which these proceedings were conducted and in essence allege that the Bank and/or the receivers as appointed misled the court but in any event the result of the proceedings was that judgment was entered in favour of the plaintiff against the defendant, and the defendant's claim was dismissed by the Court in a reasoned written judgment.

13. I take into account the submissions as made on the plaintiffs' behalf by Mr. Collins and the defendant's own submissions as presented by her to the Court both in written form and by way of oral submissions.

14. Insofar as the defendant makes an application to join Danske Bank to these proceedings I take the view that there is no role for Danske Bank within the parameters of the plenary summons or statement of claim as issued and delivered on the plaintiffs' behalf. The issues in this case revolve around its own specific facts and the legal consequences arising therefrom. The involvement of the defendant with Danske Bank relates to a loan she drew down from that Bank, the fact that the loan appears to have fallen into arrears, then a whole range of criticism of the Bank and the proceedings.

15. The judgement of the Court as handed down on the 25th day of February 2016 and the orders arising therefrom have not been appealed and no further proceedings or applications are in being to seek in any way to set aside the orders of Fullam J. and I cannot see any connection between the plaintiffs' action herein and the specific reliefs that are being sought and the defendant's complaints involving Danske Bank. It is also clear that a previous set of proceedings against Danske Bank and Stephen Tennant have already been struck out.

16. Accordingly, the relief as sought by the defendant herein as regards joining Danske Bank to these proceedings is refused.

17. As regards to the defendant's application to join the Attorney General to these proceedings it does appear to be the situation that the pleadings herein do not raise any issue that would require the Attorney General to be joined to the proceedings. It does not appear that any issue is being raised in relation to the constitutionality of any statute nor is any issue being raised in relation to the incompatibility of any statute with the European Convention of Human Rights and no reliefs are referred to either in the pleadings to date or in submissions as against the Attorney General. In these circumstances the application to join the Attorney General to these proceedings is refused.

18. There is also an application to join the Data Protection Commissioner as a party to the proceedings. It does appear that no cause of action is demonstrated as against the Commissioner and no relief as such is sought against her. It is contended by Mr. Fennelly on behalf of the Data Protection Commissioner that no basis is set out as to why the Data Protection Commissioner should be joined as a party to these proceedings or as a defendant to any proposed counterclaim.

19. As regards the possibility of the Data Protection Commissioner being given a role as *amicus curiae* Mr. Fennelly contends on behalf of the Commissioner that it would be wholly inappropriate as she is an independent regulator who acts in a statutory role and there is a pending investigation involving the parties to these proceedings ongoing at this very point in time in respect of which once a finding is made an appeal can be taking to the Circuit Court and thence by way of a point of law to the High Court. It also appears from Mr. Fennelly's submissions to the Court that there is engagement between the parties in relation to the complaint before the Data Protection Commission with a view to ascertaining if it would be possible to reach a resolution of the issues prior to formal enforcement action.

20. In all of these circumstances it does not appear to this Court to be appropriate that the Data Protection Commissioner should be involved in any way either as a party or as an *amicus curiae*. Accordingly, the application to join the Data Protection Commissioner in some way to these proceedings is declined.

21. The application by the defendant to prevent senior counsel Maurice Collins from taken any further involvement in the within proceedings on behalf of the plaintiffs is withdrawn as is the application for an order to prevent Mr. Collins from acting on behalf of the Office of the Data Protection Commissioner in the within proceedings which in any event he does not do.

22. The order requiring Aidan Connaughton to submit to cross-examination under oath in relation to his affidavit sworn for the grounding of the reliefs for the interlocutory injunction obtained in December, 2015 and a further order for cross-examination on the evidence he has provided in an affidavit sworn on the 30th of January, 2017, the 7th of February, 2017 are not grounded by the defendant on any reasoned basis and as the proceedings herein are by way of plenary summons and statement of claim if the matter proceeds to a trial the defendant can cross-examine these individuals *viva voce* in court or she can serve a witness summons upon them requiring their attendance to give evidence to the trial judge. The reliefs sought in this motion is refused.

23. By way of a second motion dated the 6th day of February, 2017 the plaintiffs seek the following orders:

"(1) An order pursuant to O. 19, r. 27 of the Rules of the Superior Courts striking out the defendant's defence and counterclaim on the grounds that it contains pleas which are unnecessary and/or scandalous and/or which may tend to prejudice, embarrass and delay the trial of the action.

(2) Further or in the alternative, an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts striking out the defendant's defence and counterclaim on the ground that it discloses no reasonable cause of action or answer and/or is frivolous and/or vexatious.

(3) Further or in the alternative, an order pursuant to the inherent jurisdiction of the court striking out the defendant's defence and counterclaim on the basis that it is frivolous and/or vexatious and/or an abuse of process and/or bound to fail.

(4) Further or in the alternative, an order pursuant to O. 19, r. 27, O. 19, r. 28 and/or pursuant to the inherent jurisdiction of the court striking out the defendant's counterclaim on the above stated bases.

(5) Such further or order orders, reliefs or directions as this Honourable Court deems fit.

(6) The costs of this application and the costs of the proceedings."

24. It is alleged that certain serious matters occurred at a without prejudice meeting held at the Green Isle Hotel on the 12th of January, 2017. The allegations made and denied would appear to raise an issue as regards a breach of the order of this Court of the 4th of December, 2015. This Court takes the view that on the hearing of this application and having regard to its sole purpose effectively being a matter relating to the pleadings it is not the appropriate moment to give consideration as to whether or not the fact that the meeting was held on a without prejudice basis is or is not to be considered relevant. The issue arising will be decided upon by the court, at another juncture.

25. The statement of claim in these proceedings only relates to the content of the CD that was furnished in error by Grant Thornton to the defendant and which concerns third parties. The particulars referred to breaches of the Data Protection Acts. The central allegation is that the defendant has misused the private and confidential information of the plaintiffs and has acted in breach of confidence, in breach of duty and in breach of statutory duty to the unlawful processing of personal data and that the defendant has failed and/or refused to supply the relevant information to the plaintiffs as regards the confidential information that was on the disc and the plaintiffs seek the reliefs as previously referred to. The content of the statement of claim does not go outside this remit.

26. The defendant is a lay litigant and is being assisted by a McKenzie friend.

27. Having read and considered the first 34 paragraphs of the defendants defence it is quite clear that they contain no denial of any matter as pleaded in the plaintiffs' plenary summons and statement of claim and are a prolix account of complaints that the defendant wishes to voice. It does appear to this Court that para. 35 is relevant as it appears to touch on an aspect that relates to the situation of the circumstances in which the defendant received the alleged confidential information from the plaintiffs albeit in error so I allow para. 35 to stand, but strike out para. 1-34 inclusive.

28. As regards para. 36-43 the content thereof appears to this Court to have no relevance and will be struck out.

29. Paragraph 44 will stand.

30. Paragraphs 45-52 appears to this Court to have no relevance to the nature and extent of the plaintiffs claim as against the defendant and will be struck out.

31. Paragraphs 53 and 54 are denials and will be allowed to stand.

32. Paragraphs 55-73 in the view of this Court are not in any way relevant to the nature and extent of the plaintiffs claim against the defendant and will be struck out.

33. Paragraphs 74-102 in the view of this Court are not in any way relevant to the claim of the plaintiffs as set out in the plenary summons and statement of claim and will be struck out.

34. Paragraphs 103 and 104 appear to have some relevance and will be allowed to stand.

35. Paragraphs 105-110 appears to this Court to be irrelevant to the issues and will be struck out.

36. Paragraphs 111, 112, 113, 114, 115 appear to be of some relevance and will be allowed to stand.

37. Paragraphs 116, 117, 118, 119, 120, 121, 122 appear to this Court to be irrelevant to the issues involved and will be struck out.

38. In the view of this Court para. 123 may be of some relevance and will be allowed to remain as will paras. 124, 125, 126.

39. Paragraph 127 relates to a recurring theme as regards the order of this Court of the 4th day of December, 2015. The defendant consistently claims that the court was misled and at all material times it was open to the defendant if she had a serious issue with the order to seek to set aside the order on the basis that the court was deliberately misled which obviously constitutes a very serious allegation or alternatively to appeal the order to the Court of Appeal but the defendant chose neither option but prefers to continue these allegations throughout the affidavits as delivered on her behalf and in the submissions which she has read and outlined to the court. Paragraph 127 will not be allowed to stand.

40. Paragraph 128 will stand as will para. 129, 130, 131, 132, 133, 134.

41. Paragraph 135 will be struck out.

42. At para. 136 the defendant makes reference to the defendant's claim against the plaintiffs in High Court proceedings bearing Record No. 8950P/2014. It is appropriate to state that these proceedings were decided and concluded in a full hearing before this Court (Fullam J.) who having considered the matter gave a reasoned judgment which found against the defendant and again the defendant has not sought to avail of any of the remedies that would be available to her which are to seek to set the judgment aside if the court was deliberately misled or in the alternative to appeal the decision of the court to the Court of Appeal. The findings of the Court as set out in the judgment of Fullam J. are a final binding judgment and issues that arose in those proceedings will not be permitted to be ventilated in these proceedings. Accordingly, para. 136 of the defendant's defence will not be allowed to stand.

43. Paragraphs 137 and 138 will stand.

44. Paragraph 139 will be struck out as the content goes outside of the issues that are for trial in these proceedings and which are claimed against the defendant.

45. Paragraph 140 will stand as will paras. 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160.

46. Paragraph 161, 162 and 163 will be struck out as again the defendant deviates into the alleged outrageous behaviour of the plaintiff.

47. Paragraph 164-167 will be allowed to stand.

48. As regards the defendant's counterclaim para. 1 will not be allowed to stand and it is self-evident that the plaintiffs are entitled to bring a claim as set out in the proceedings against the defendant which will either succeed or fail and if the claim fails the defendant will be entitled to apply to the trial judge for her costs and expenses as occurred in defending the claim. Paragraph 1 is struck out.

49. Paragraph 2 of the counterclaim will not be allowed to stand as it has no known basis in law, and will be struck out.

50. Paragraph 3 of the counterclaim will not be allowed to stand as this aspect has already been dealt with and refers to extraneous matters which are not relevant to the plaintiffs claim herein. The allegation that the plaintiffs does not have clean hands effectively relates to matters already referred to and in which regard could have been dealt with appropriately if the plaintiffs considered that any court was deliberately misled. Paragraph 3 will be struck out.

51. Paragraph 4 of the counterclaim will be struck out as there is no claim displayed. In a democratic society the facility of constitutional right of access to the court is available so that disputes between citizens and other parties can be dealt with in accordance with the applicable law.

52. There is no known action at law regarding the publication of a defendant's name and address and no basis is set out for the allegation relating to malicious actions of the plaintiff. Paragraph 5 will be struck out.

53. Likewise, para. 6 will be struck out.

54. An allegation in relation to trespass by a summons server has no connection whatsoever with the subject matter of the plaintiffs claim against the defendant and para. 7 will be struck out.

55. Paragraphs 8 and 9 of the counterclaim run along the same lines as previously referred to herein to the extent that the defendant is alleging that the plaintiffs created untrue pleadings and statements and misled the court and allegations relating to conniving and/or convincing the High Court. Insofar as these allegations relate to alternative proceedings as already referred to herein this Court has outlined the appropriate remedies available and likewise the only stage arrived at in these proceedings so far is an interlocutory order as previously referred to herein and the issues that the plaintiffs raise as against the defendant will be decided by the Court on the evidence adduced before it. Paragraph 8 and 9 will be struck out

56. The plaintiffs are entitled to bring an application to this Court for attachment and committal if they consider that the defendant has been in breach of the order of this Court of the 4th day of December, 2016. There is nothing unusual about such a procedure and if such a procedure is implemented the defendant will have every opportunity to put in a full replying affidavit to explain to the Court her evidence on the matters raised by the plaintiffs. In any event, Mr. Collins on behalf of the plaintiffs has specifically stated no such application is before the Court and that the plaintiffs have no wish to make such an application.

57. There is no doubt but that the plaintiffs' express various serious concerns as regards the defendant disseminating their alleged confidential information to third parties. They have set out such a basis and it is a matter for the trial judge to decide as to whether or not the defendant has such information as referred to, as to whether it is confidential and as to whether as a matter of law the plaintiff is entitled to disseminate such information to third parties.

58. The plaintiff does not set out any basis for a claim for defamation.

59. There is only one aspect of the proposed counterclaim in my view which is capable of being left to stand and that is the defendant's claim as against the plaintiff for damages pursuant to s. 7 of the Data Processing Act 1988-2003. This claim however must necessarily arise out of the actual facts of the giving of the disc to the plaintiff with her own information thereon in addition to information relating to third parties with whom the plaintiff has no connection.

60. The defendant accepts that her defence as pleaded is prolix and in order to stream line matters the following are the court's directions:

- The defendant is entitled to deny and transverse the content of the plaintiff's plenary summons and statement of claim and that is to be done by way of simple denials if they be appropriate.
- In addition, this Court will allow the following paragraphs of the existing defence to stand and they are: paras. 35, 44, 53, 54, 103, 104, 111, 112, 113, 114, 115, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 137, 138, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 164, 165 and 167. In this regard these paragraphs are to be succinctly pleaded by way of denials and where appropriate positive assertions.
- All other paragraphs will be struck out.

61. The entire of the defendant's counterclaim will not be allowed to stand save for a singular aspect in respect of a claim pursuant to s. 7 of the Data Protection Acts 1988-2003 and in this regard the defendant shall succinctly set out the nature and extent of the claim that she is making and the basis for that claim which is to be particularised in detail.

62. I will hear the submissions of counsel for the plaintiffs and of the defendant personally as to the form of the order to be drawn up and the time limits to be imposed so that these proceedings can be brought to a conclusion.