

THE HIGH COURT

[1987 No. 1120 S.P.]

BETWEEN

JOHN ROONEY (No. 1)

PLAINTIFF

AND

THE MINISTER FOR AGRICULTURE AND FOOD, THE MINISTER FOR FINANCE, THE TAOISEACH, IRELAND, THE ATTORNEY GENERAL, DONAL MCDAID, PATRICK DELANEY, THE IRISH FARMERS ASSOCIATION, ERAD THE MANAGEMENT BOARD FOR DISEASE ERADICATION, ALAN GILLIS, PATRICK DELANEY, DENIS COFFEY, TERENCE O'CONNOR, DENIS G HICKEY, JAMES NOONAN AND JOHN MALONE - AS BOARD MEMBERS OF ERAD THE MANAGEMENT BOARD FOR DISEASE ERADICATION, THE MINISTER FOR THE PUBLIC SERVICE, THE OMBUDSMAN

DEFENDANTS

JUDGMENT of Mr. Justice Eagar delivered on the 5th day of May, 2017

1. This is a judgment on a notice of motion brought on behalf of the remaining defendants one to five and seventeen, seeking an order dismissing the proceedings and making such further and other order as the court deems appropriate and costs.
2. Mr. Rooney who represents himself did not take any part in the hearing of the motion before this Court (it appears for tactical reasons on his behalf), thus did not allow the Court to hear what he would say in response to counsel for the defendant.
3. The notice of motion is grounded on the affidavit of Donagh McGuinness solicitor of the Chief State Solicitors Office. He said he is the solicitor for the first to fifth and the seventeenth named defendants. He refers in his affidavit to a judgment of the Supreme Court dated the 28th of January, 2016 in respect of two appeals brought by the plaintiff in respect of the present proceedings, and in reliance upon and in conjunction with the order of the Supreme Court dated the 5th of April, 2016. The remaining defendants now pursue the present application for an order from the Court dismissing the plaintiff's proceedings.
4. The judgment of the Supreme Court concerns certain appeals by the plaintiff in this action which was commenced in 1987. As is apparent from the judgment of the Supreme Court, its decision in particular to dismiss the appeal by the plaintiff from the decision of Murphy J. refusing to amend the statement of claim means that all substantive matters in the proceedings have been dealt with, in particular by the decision of the Supreme Court on a special case in December, 1991 as referred to by Mr. Justice O'Donnell in his judgment on behalf of the Supreme Court dated the 28th of January, 2016.
5. Mr. McGuinness swears that no matters remain to be decided and the remaining defendants are seeking a formal order from the Court dismissing the proceedings. He also says that in the light of the very clear analysis of the history of the proceedings as outlined in the Supreme Court's judgment of the 28th of January, 2016. The Supreme Court stated that if fresh proceedings were to issue seeking the determination of the issue which had been determined in the special case by the Supreme Court in 1991, it is certain that they will be doomed to fail.
6. Mr. McGuinness refers to para. 44 of the judgment of O'Donnell J. in the Supreme Court:

"However, if the plaintiff attempted to commence new proceedings arising out of matters which had been the subject of an earlier case, any such proceedings would be bound to fall foul of the rule in Henderson v. Henderson which has been restated in A v. The Medical Council [2003] 4 IR 302 and Carroll v Ryan [2003] 1 IR 309. If the issues raised were not already res judicata because of the determination made in those proceedings, then they were matters which plainly could have been raised in 1987 and addressed. When it is further appreciated that notwithstanding these principles, Mr. Rooney was allowed in the course of the 1993 proceedings to make extensive argument as to the legality and alleged invalidity of the non-statutory scheme, then such a conclusion would be irresistible. Indeed, Mr. Rooney recognised as much when asked why he had not commenced separate proceedings he replied:

'Sure I'd be entitled to be kicked out in Henderson v. Henderson because it [the claim] should be in the first ones'."

Continuing in para. 45 of its judgment, the Supreme Court stated:-

"45. In my view Mr. Rooney's analysis is correct. Furthermore, the logic of this analysis cannot be avoided by framing the application as one to amend the statement of claim in proceedings which have been determined in substance and have been dormant for a quarter of a century. The principle in Henderson v. Henderson and A v. the Medical Council, and Carroll v. Ryan, is that court resources and judicial time should not be wasted by bringing further proceedings to advance claims which could have been advanced in earlier proceedings. Nor should an opposing party be subjected to the cost and stress involved in repeated court applications which seek to ventilate matters which could have been advanced in one set of proceedings. That logic applies here with greater, indeed almost overwhelming, force."

7. The first application before the Supreme Court, was a motion for judgment in default of defence, the second was a motion to amend a statement of claim and O'Donnell J. commented:-

"In this case however, the hearing of both matters in this Court involved voluminous and almost impenetrable papers, lengthy preparation, and occupied considerable court time although relatively little of that time was occupied by the substance of the motions themselves."

The appeals relate to proceedings which were commenced in 1987 and concerned events which occurred in 1983. The motion for judgment dates from 1990. The motion to amend the statement of claim commenced in 2001, and was determined in the High Court in 2010.

8. Mr. Justice O'Donnell stated:-

"The fact remains however that the continued existence of these proceedings twenty-eight years after they were first

initiated is not justifiable, even in a system where the progress of litigation is controlled by the parties and not by the court itself."

9. The roots of this dispute go back to 1993 when Mr. Rooney's herd of cattle was tested for bovine tuberculosis. This is a Class B disease under the Disease of Animal Acts 1966 ("the 1966 Act") and has been a serious problem in the agricultural sector in Ireland. No one disputes the necessity of the State introducing comprehensive measures to detect the disease and prevent or restrict its spread. In many other areas of mass screening, the testing process employed is indicative of the presence of the disease, rather than definitive. The testing at the time was only available post-mortem. If an animal reacted to the tuberculosis test (a "reactor") it had significant consequences, both legal and practicable.

10. Mr. Rooney's stated on affidavit that twenty-six reactors were identified in his herd of 103 cattle. Mr. Rooney had complaints about the manner in which the testing was carried out and the accuracy of the results. This was the starting point for his many disputes with the Department of Agriculture.

11. On the 19th of November, 1987 Mr. Rooney issued a special summons against the Minister for Agriculture and Food, the Minister for Finance, Taoiseach and Ireland and Attorney General. The endorsement of claim sought a declaratory judgment or declaratory order from the High Court that Mr. Rooney was legally and constitutionally entitled to compensation and in accordance with the Disease of Animals Act 1966, also in accordance with the Bovine Tuberculosis (Attestation of the State and General Provisions) Order, 1978.

12. The special summons came before the High Court on the 21st of December, 1987 and Barr J. directed that the matter proceed to plenary hearing which required the delivery of a statement of claim. On the 15th of January, 1988 Mr. Rooney's first statement of claim was delivered and a defence was delivered on the part of the State defendants on the 11th of March, 1988. Mr. Rooney amended the statement of claim on the 18th of May, 1988 and the 1st of March, 1989. On the 16th of October, 1989 he sought and obtained an order from the then President of the High Court, Hamilton J. permitting him to withdraw the existing statement of claim and to substitute a new statement of claim. This was a very lengthy document running to thirteen pages, and included a claim not simply for the alleged difference between the amount he received and what he contended he was entitled to for reactors which were slaughtered, but also very substantial damages alleged to be consequential, and also for exemplary damages.

13. On the 2nd of February, 1990 the State defendants attempted to deliver their defence however, Mr. Rooney had in compliance with the rules written to the defendants extending the time for delivery of defence until the 25th of January, 1990. When no defence had been delivered as of that point, he issued on the same day, (the 25th of January, 1990) the motion for judgment in default of defence which was returnable for the 19th of February, 1990. This motion for judgment was the subject matter of the first part of the proceedings in the Supreme Court in which judgment was given on the 28th of January, 2016.

14. In the meantime, a number of other parties to the proceedings being the last named defendant, the Ombudsman, and the fifth, sixth, seventh named defendants (representatives of the Irish Farmers Association) brought separate motions to strike out the claims against them on the grounds that the November statement of claim disclosed no cause of action against them. All of the matters came before Mr. Justice Barron in the High Court on the 19th February, 1990.

15. Barron J. exceeded to both applications to strike out portions of the claim against the respective defendants (that is the Ombudsman and the representatives of the Irish Farmers Association) and refused the plaintiff's motion for judgment on the ground that a defence had been delivered by the time the motion came on.

16. Mr. Rooney appealed these three orders (of Barron J.) to the Supreme Court (Appeal No. 111 of 1990) and the case appeared to have come before the Supreme Court on the 12th of October, 1990 (Griffin, Hardiman and O'Flaherty J.J.). The Supreme Court did not decide the appeal on the motions but observed that the substance of Mr. Rooney's claim was that he contended that there was no power to have a non-statutory or extra statutory scheme. Mr. Rooney had sought the trial of a special case on this point and accordingly the Supreme Court decided to adjourn the hearing of the appeal on the motion and to order that the special case be tried. Mr. Rooney was happy to have the special case determined in accordance with the Supreme Court order and the order of the Supreme Court on the 12th of October, 1990 was made to accommodate Mr. Rooney in the hope of short-circuiting proceedings which were clearly already become elaborate.

17. Mr. Justice O'Donnell in dealing with this special case in his 2016 judgment stated:-

"There was nothing to be gained from Mr. Rooney's point of view in pursuing the hearing of the appeals and the motions. They were only holding up the trial of the case. It is virtually certain that the court would have had to uphold the orders striking out the proceedings against the Irish Farmers Association parties and the Ombudsman and the only question under motion for judgment in default of defence were the terms that the defendant would be permitted to deliver their defence which might involve some consideration of costs but since Mr. Rooney was a lay litigant such expenses were minimal."

18. Accordingly, the motions were a distraction from the case and the order fixing the special case was in ease of Mr. Rooney.

The Trial of the Special Case

19. The special case came on for hearing in the High Court in January, 1991 before Lavin J. who delivered a careful judgment and dismissed the claim. That decision was appealed to the Supreme Court. The appeal came on for hearing in November 1991 before a three persons court (McCarthy, O'Flaherty and Egan J.J.). On the 19th of May, 1991 Mr. Justice O'Flaherty delivered a judgment which the other members of the court agreed dismissing the appeal on the special case. Mr. Justice O'Flaherty held that the Minister was entitled to set up a non-statutory scheme.

20. The court then turned to deal with the motions which had been adjourned from the 12th of October, 1990 pending the determination of the special case. The decision of the court on the special case meant that these were matters of little controversy other than on the question of costs. The court dismissed the appeals against the order striking out the claims against the Ombudsman, Donal McDaid, Patrick Delaney and the Irish Farmer's Association and did so with costs in favour of those parties.

21. Mr. Rooney got access to a transcript of the oral proceedings on the 19th of December, 1991 and referred to it in the Supreme Court in proceedings which culminated in a judgment of Finnegan J. on the 9th of March, 2010. However, and it appears that the transcript of the proceedings in 1991 indicated that the court did not make a final order disposing of the appeal on the motion for judgment.

22. In relation to the motion for judgment, Mr. Justice O'Donnell stated in the Supreme Court judgment delivered on the 28th of January, 2016:-

"The motion for judgment was also redundant because the High Court and the Supreme Court had now determined the substance of the controversy between the plaintiff and the defendants."

23. However, nothing happened in relation to the uncompleted motion for a very long time. In 2009, the matter came before the Supreme Court again and Finnegan J. delivered judgment on the 9th of March, 2010 (Hardiman and Mackin J.J. concurring). When the matter came before Mr. Justice Barron, the defences had been delivered and Mr. Rooney's complaint was that they were not delivered with the time limited by the Rules of the Superior Courts. Finnegan J. in his judgment stated:-

"It is in the interests of justice that this outstanding issue in these protracted proceedings be determined without further delay."

24. However, neither party took any steps to bring the matter back before the High Court to have the final orders made in the proceedings. Mr. Rooney brought an application to the Supreme Court to have the two appeals, (the procedural appeals including the motion for judgment and striking out rulings, and the decision on the special case) reheard by a court of five in the Supreme Court. There could be no question of any such order being made and in due course the application was dismissed. The plaintiff then sought to have an issue referred to the European Court of Justice.

25. There followed a reasonably lengthy period during which nothing occurred in relation to the 1987 proceedings. It appears that in 1994 a further issue arose in relation to Mr. Rooney's herd when after testing, it appeared that one animal may have been a reactor. Mr. Rooney refused to move the reactor in accordance with the regulations and insisted that he was entitled to compensation under the 1966 Act. This was directly contrary to the outcome of the decision of the court, the decision of which the Court will refer to as "Rooney No. 1". Whatever arguments may be made about the correctness or comprehensiveness of the 1987 proceedings, the court certainly had decided that he was not entitled to compensation under the 1966 Act.

26. Eventually Mr. Rooney commenced proceedings in 1995 against the State parties which had been referred to as in the words of O'Donnell J. "Rooney No. 2". That was a comprehensive challenge to the non-statutory scheme and involved oral evidence and a ten day hearing, but it only came to trial ten years later in 2004. In July 2000, Mr. Rooney applied to the Supreme Court to set aside the order of the Supreme Court in the three procedural motions. A special case determination was heard by the Supreme Court on the 4th and 5th of July, 2000 and the Supreme Court on the 23rd of October, 2000 delivered a judgment rejecting the application.

27. Having failed to have the decision of the Supreme Court set aside, Mr. Rooney brought a motion in January, 2001 to amend the November 1989 statement of claim. This was now ten years since the Supreme Court had delivered judgment on the special case. On the 12th of March, 2001 Mr. Rooney brought an application to the Supreme Court seeking to have the decision of the Supreme Court set aside on the grounds that he contended that the Supreme Court had been in error in directing the trial of a special case on the plaintiff's action when the facts were disputed.

28. The Supreme Court dismissed the application on the 1st of October, 2001 and made an order restraining Mr. Rooney "from taking any further steps in these proceedings other than in relation to the taxation of costs whether in the High Court or the Supreme Court except with the leave of the Supreme Court such leave to be sought by application in writing made to the Registrar of the Supreme Court". This is an order which is generally described as an Isaac Wunder order. The order only related to the proceedings in the Supreme Court and only restrained Mr. Rooney from taking a further step in those proceedings without the leave of the Supreme Court.

29. In 2004, Mr. Rooney's claim in relation to the events of 1993 to 1996 came on for hearing before the High Court. Evidence was called and there was a full hearing of the claim. The proceedings were at hearing for ten days. On the 13th of July, 2004 Laffoy J. delivered a fifty-nine page judgment which dismissed the plaintiff's claims.

30. The statement of claim in "Rooney No. 2" is formulated as closely connected to the 1987 proceedings. In the aftermath of the decision in "Rooney No. 2" before Laffoy J., Mr. Rooney made an application in 2006 to reactivate the application to amend the statement of claim in "Rooney No. 1". Clarke J. re-entered the motion and the matter came before Smith J. who held that the application was covered by the Supreme Court order of the 5th of October, 2001 and that the application could not proceed since leave had not been obtained. This was appealed to the Supreme Court. In the circumstances the court also addressed the question of whether the motion for judgment had been disposed of, or still remained to be determined under the appeal (No. 111/190).

31. In relation to Appeal No. 217/2007 Finnegan J. held that the Isaac Wunder order "should be interpreted narrowly and as relating to the special case". Accordingly, the High Court should proceed to hear and determine the claim to amend the statement of claim. Pursuant to that decision of the Supreme Court on the 9th of May, 2010, the matter came before Murphy J. in the High Court on the 18th of November, 2010. This was the application to amend the statement of claim in "Rooney No. 1". This matter came before Murphy J. on the 18th of November, 2010.

32. Mr. Rooney commenced a further set of proceedings raising complaints about the manner in which the Supreme Court had dealt with this previous appeal seeking an injunction restraining the execution of costs order that had been made against him. He sought declarations among other things that the proceedings had not reflected the true issues between the parties and consequently that those issues had not merged in the judgment in both cases. The proceedings also make complaints about the conduct of some members of the judiciary who had heard Mr. Rooney's cases. The proceedings were case managed by Feeney J. An application was brought by the defendants to strike out the proceedings on the grounds that they failed to disclose a cause of action and were frivolous and vexatious and bound to fail. Feeney J. delivered a lengthy judgment on the 4th of July. Feeney J. stated:-

"It is manifest from the judgment of all courts and in particular from the judgments in Rooney No. 2 that Mr. Rooney was given every opportunity to make the case he sought to make based upon his claim as made by him and formulated by him in the pleadings. Mr. Rooney pleaded his own case. The claims in those proceedings were considered after he had made a full opportunity to expand such claims. Now after he has lost he seeks to reformulate his claim based upon a different basis which he did not plea. He cannot do that, as the case is complete and the reason was no duty on either the lawyer of the other side or on the court or judges to direct or advise or identify any matter to be pleaded or claimed by Mr. Rooney. It was a matter for Mr. Rooney to ensure that any question in controversy was identified by him and pleaded by him and it was not for any other party. The claim breach of duty is a claim based upon an obligation to identify the real issues. There is no such duty. The duty on the court is to decide the cases pleaded by a plaintiff, lay or otherwise. The duty on the lawyers for the defence is to defend the case as pleaded and not to identify other extra or

real issues that might have been pleaded by the plaintiff”.

Feeney J. granted the defendants application.

33. The issues that came before the Supreme Court on the 9th of December, 2015 were the two outstanding aspects of the 1987 proceedings, namely the motion for judgment in default of defence refused by Barron J. on the 19th of February, 1990 which the Supreme Court did not formally deal with on the 19th of December, 1991 and the application to amend the statement of claim which was initiated in 2001, re-entered on the 31st of July, 2006 determined and refused by Murphy J. on the 18th of November, 2010 and appealed to the Supreme Court.

The Motion for Judgment in Default of Defence

34. Mr. Rooney according to O'Donnell J.:-

"recognised, sensibly, that the order Mr. Justice Barron made was itself unimpeachable. The only possible issue in relation to it, was the absence of a formal order extending time for delivery of the defence and the question of costs. However, in circumstances where the Department had already a defence delivered and on file, and the case proceeded to hearing and the special case was determined both in the High Court and Supreme Court, and any question of extending time for delivery of the defence is irrelevant."

O'Donnell J. on behalf of the Supreme Court dismissed Mr. Rooney's appeal against Barron J.'s order.

The Motion to Amend the Statement of Claim

35. O'Donnell J. in relation to this matter stated:-

"That application must be approached on the basis that the determination of the Supreme Court of the special case decided the core legal issue raised in that case. The matters which remained on the pleadings (damages and costs) were purely consequential upon a successful determination of the special case. Once that was determined against Mr. Rooney, there was no independent claim giving rise to these reliefs, and had the matter been pressed to a conclusion in 1991, there could have been no answer to an application to dismiss the claim, with all probability of an award of additional costs being made against Mr. Rooney."

He continued:-

"The application to amend the proceedings must also be viewed against the background of the multiple other applications brought by Mr. Rooney and the claims which were determined in the 1987, 1995 and 2013 proceedings."

36. Mr. Justice O'Donnell stated at para. 44:-

"44 While this application is nominally to amend the proceedings commenced in 1987, it is in fact an attempt to introduce in to the claim an entirely new legal claim as to the alleged invalidity of the non-statutory scheme."

37. In the circumstances the Supreme Court dismissed the appeal against the order of Murphy J. refusing to permit an amendment to the statement of claim. The remaining matter for this Court having regard to the decision of the Supreme Court in the hearing in the dismissal of the special case and the various other orders made by the High Court and Supreme Court is to make a decision in relation to the 1987 proceedings. And it is clear that Mr. Rooney's case has been heard in full and given plenty of time – perhaps too much time in the Superior Courts.

38. The primary claim of Mr. Rooney, that he was entitled to compensation for reactors which were slaughtered and also substantial damages alleged to be consequential and for exemplary damages was heard by Lavin J. in January, 1991 and the appeal in relation to that came on for hearing before the Supreme Court in 1991. Therein O'Flaherty J. delivered a judgment which the other members of the court agreed with, dismissing the appeal on the special case. The only other issue that Mr. Rooney raised were the claims in respect of the events of 1993, when Laffoy J. delivered a judgment dismissing the plaintiff's claim.

39. There are no outstanding issues in relation to these proceedings. The Court is of the view that the only step that should be taken in relation to these proceedings is to dismiss them.

40. The Court however does note that this judgment does not exhaust Mr. Rooney's domestic remedies. The Court will make an order for costs in relation to this motion against Mr. Rooney.