THE COURT OF APPEAL

Neutral Citation Number: [2016] IECA 328

Record No. 2016 38

Peart J.
Hogan J.
Hedigan J.

BETWEEN/

RYANAIR LIMITED

APPELLANT

- AND -

JOHN GOSS

RESPONDENT

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 15th day of November 2016

1. In August 2013 the British television channel, Channel 4, broadcast a programme entitled "Dispatches: Secrets from the Cockpit" in which it claimed that the well-known Irish airline (and plaintiff in these proceedings), Ryanair, had compromised passenger safety in a number of respects. It would appear that this particular broadcast has given rise to a good deal of litigation. The present appeal is, indeed, now the third appeal within the last fifteen months or so in which this Court has had occasion to consider questions arising from this particular programme.

2. The defendant was a pilot formerly employed by Ryanair. He was, however, dismissed on the 14th August 2013, two days after the broadcast of the programme. Mr. Goss was interviewed by the Channel 4 team and excerpts from that interview were broadcast in the Dispatches programme. Ryanair commenced these defamation proceedings on 22nd August 2013.

3. Ryanair delivered a statement of claim on 6th September 2013 and Mr. Goss filed a defence and counterclaim on 16th December 2013. A defence to counterclaim is still awaited. A detailed notice for particulars was served by Ryanair on 28th March 2014 and the defendant replied with an equally detailed response on 2nd May 2014. A notice for further and better particulars was served on 24th November 2014 and the defendant replied on 15th October 2014.

4. The plaintiff was dissatisfied with this response to its requests for particulars and it issued a motion on 19th January 2015 seeking an order compelling a response to its notice for further and better particulars. At the hearing in the High Court before O'Connor J. the outstanding issues were, at his suggestion, reduced to two specific requests for further and better particulars, the details of which I will shortly set out. In an *ex tempore* judgment delivered on 20th October 2015 O'Connor J. dismissed the application on the basis that the plaintiff had sufficient knowledge from the pleadings and the particulars of the case it might meet at trial: see *Ryanair Ltd. v. Goss* [2015] IEHC 874. Ryanair has appealed against that decision to this Court.

5. It is, however, necessary to explain in summary the background to the pleadings before examining the disputed particulars. The general thrust of the *Dispatches* programme was that Ryanair had potentially compromised passenger safety by reason of its fuel conservation policies, the suggestion being that Ryanair pilots were discouraged from carrying excess fuel capacity in order to save costs. The defendant was interviewed for the programme and in the course of the broadcast he alleged that most of the Ryanair pilots had little confidence in aviation safety agencies and that two thirds of them did not feel comfortable "raising safety related issues to Ryanair's own internal systems". The defendant further alleged that a number of Ryanair pilots had made complaints to the Irish Aviation Authority ("IAA") on a confidential basis, but that he was not aware of any pilot who had received a satisfactory response to such a complaint.

6. In its statement of claim Ryanair gave particulars of the alleged defamatory comments, including a claim that the programme had stated or implied that the IAA "is turning a blind eye to safety issues in Ryanair" and that safety issues at Ryanair "are being ignored and overlooked by aviation authorities." So far as these specific particulars are concerned, the defendant pleaded that these allegations were true in fact and in substance for the purposes of s. 16 of the Defamation Act 2009 ("the 2009 Act"). The defendant specifically gave particulars of the material facts upon which he intends to rely at trial by way of support of this plea. These particulars included a plea that he had submitted confidential reports to the IAA in 2006 and 2007 and that the issues raised by him "in these reports included the operational effects of aggressive management behaviour" and simultaneous refuelling and boarding.

7. So far as the particulars of material fact supplied by the defendant in its defence regarding the allegations of inaction by the IAA are concerned, the defendant contended, *inter alia*, at paragraph 14 (iv) of his defence that:

> "The defendant, and other pilots working for the plaintiff, have made reports to the IAA and received no substantive response from the said Authority."

First disputed particular: details of alleged aggressive management behaviour

8. Against that background of the pleadings I can turn to the two disputed particulars which were the subject of the High Court decision. The first was particular no. 2 of its notice for particulars (as slightly reformulated). This particular sought details of the "instances of aggressive management behaviour on the part of the plaintiff which the defendant intends to reply upon." Whatever uncertainty might hitherto have attached to the scope of these particulars of material fact in the defence (and, candidly, I am not sure that there was in fact any such uncertainty), counsel for Mr. Goss, Mr. Whelan, clarified that all the instances of alleged aggressive management behaviour upon which the defendant relies are contained in the reports made by him to the IAA. Ryanair has already been supplied with copies of this material. In these circumstances and in the light of this clarification, Mr. Hogan S.C. now accepts that the claim has been adequately particularised. It is, accordingly, unnecessary to consider this issue further.

The second disputed particular: details of other complaints made by Ryanair pilots who have reported issues to the IAA and have received no substantive responses

9. It is clear that the plaintiff has already adequately particularised the nature of his complaints to the IAA in respect of which he said that he had not received any adequate response and no issue arises in relation to this. The second particular relates to details of other similar complaints allegedly made by *other* Ryanair pilots to the Authority in respect of which it is alleged they have not received any substantive response.

10. The classic test regarding object of particulars remains that as articulated by Henchy J. in *Cooney v. Browne* [1984] I.R. 185, 191:

> "Where particulars are sought for the purposes of delivering a pleading, they should not be ordered unless they can be said to be necessary or desirable to enable the party seeking them to plead, or for some other special reason: see Ord. 19, r. 6(3). Where the particulars are sought for the purpose of a hearing, they should not be ordered unless they are necessary or desirable for the purpose of a fair hearing….Thus, where the pleading in question is so general or so imprecise that the other side cannot know what case he will have to meet at the trial, he should be entitled to such particulars as will inform him of the range of evidence (as distinct from any particular items of evidence) which he will have to deal with at the trial."

11. It follows, therefore, 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. The case-law shows that this is essentially the governing principle in all cases where the issue of whether the particulars should be ordered has been considered.

12. In *Mahon v. Celbridge Spinning Co. Ltd.* [1967] I.R. 1 Fitzgerald J. stated that the object of pleadings (of which particulars form part) was to ensure that a party "should know in advance, in broad outline, the case he will have to meet at the trial." This basic principle - namely, that particulars must convey "in broad outline" the nature of the case which the litigant must meet at trial - as distinct from the nature of the evidence which the other party may lead in support of that case – has also been consistently endorsed in the subsequent case-law. It must be admitted, however, that this principle is sometimes easier to state than it is to apply.

13. The decided cases, however, give guidance in respect of the manner in which this test is applied. A good example is supplied by the decision of the Supreme Court in *McGee v. O'Reilly* [1996] 2 I.R. 229. In that case the plaintiff sued a medical practitioner for professional negligence in respect of the treatment of a young child. In his defence the medical practitioner had contended that he had examined the child following a house call and recommended that the child be brought immediately to hospital. Arising from this the plaintiff sought further and better particulars of the examination which the medical practitioner claimed to have undertaken, including the details of the observations and symptoms and the diagnosis made, and, in particular, the terms in which he had allegedly advised the parents to take the child to hospital.

14. The Supreme Court refused to order the particulars sought. As Keane J. noted, the plaintiff already knew from the defence "in broad outline" what was going to be said at the trial by the defendant regarding the house call. Keane J. further added ([1996] 2 I.R. 229 at 234):

> "In our system of civil litigation, the case is ultimately decided having regard to the oral evidence adduced at the trial. 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 judge."

15. Another example is supplied by the Supreme Court's decision in *Doyle v. Independent Newspapers (Ireland) Ltd.* [2001] 4 I.R. 594. Here the plaintiff, who was a former coach of the Irish rugby team, sued for defamation in respect of a newspaper article which alleged that he had "become ostracised by the decision-making core among the players." In response to a plea of justification, the plaintiff raised particulars in respect of the manner in which it was contended that he had been ostracised by senior players of that team and the High Court ultimately directed the defendant to furnish these details.

16. The plaintiff had, however, also sought the actual names of the members of the team who were said to have ostracised him. Although the High Court directed that these names be furnished, an appeal against this specific aspect of the order was allowed by the Supreme Court. Keane C.J. concluded that it could not be said that the plea of justification was so "general or imprecise" that the plaintiff did not know the nature of the case he had to meet at the trial. While the plaintiff did not know the actual names of the players concerned, Keane C.J. further noted ([2001] 4 I.R. 594 at 598) that the cases "in which a court will actually order a defendant to say what witnesses he is going to produce at the trial are extremely rare and unusual."

17. It could, of course, be said that the pleading of the material facts by the defendant is in some respects imprecise in that it does not disclose either the range of years in which the complaints were made or the number of complainants to the Authority. The plaintiff is, of course, anxious to obtain third party discovery from the IAA in respect of such complaints – as is, doubtless, the defendant - and if it had further details in respect of these complaints it would undoubtedly assist in identifying the complaints in respect of which it seeks discovery.

18. In *Playboy Enterprises International Inc v. Entertainment Media Networks Ltd.* [2015] IEHC 102 – which was an action for copyright infringement under the Copyright and Related Rights Act 2000 - Baker J. held that in the case of an alleged breach of a statutory tort, the defendant was entitled to particulars of the alleged breach(es) by reference to the provisions of the statute itself. This decision is, however, no more than a general application of the general principle to which I have just referred, as without knowing the details of the alleged statutory infringements, the defendant cannot know in broad terms the case it had to meet.

19. In one sense, however, almost every pleading is imprecise and general. The defence in *McGee* did not identify the details of the observations and symptoms and the diagnosis made or the terms in which the defendant doctor had allegedly advised the parents to take the child to hospital. The same was true in *Doyle* where the defendant was not required to identify the names of the Irish rugby squad who were said to constitute the decision-making core who had ostracised the plaintiff. In neither case, however, were particulars ordered because the plaintiff was adjudged in each case to know in broad outline the case they respectively had to meet.

20. The role of discovery in the context of particulars was touched on by Clarke J. in *Thema International Fund plc v. HSBC Institutional Trust Services (Ireland)* [2010] IESC 19:

> "…overly broad discovery carries with it the risk that in virtually every case, the costs of the proceedings will be

> increased for no gain in terms of the likely justice in the vast majority of cases, so that whatever party has to bear the burden of paying for that discovery (normally the losing party), will bear a larger burden than might otherwise have been the case. The injustice, to at least one party in virtually every case, that would arise in those circumstances is obvious."

21. Clarke J. went on to acknowledge that the Court is obliged to engage in a balancing act in cases of this kind:

> "To enable a party to move to discovery without having adequately pleaded its case is to run the risk of a significant injustice by virtue of that party being allowed to trawl through the other side's often confidential information without real justification. On the other hand, to require a party to plead at a level of detail (in advance of discovery or the like) which it could not reasonably obtain other than by discovery or other procedural steps can lead to an obvious injustice. A balance again needs to be struck."

22. Judged by these standards, I am driven to the conclusion that Ryanair knows in broad terms the case it has to meet, namely, that some of its pilots filed confidential reports with the IAA complaining about safety to which the Authority gave no substantive response. While the distinction articulated by Henchy J. in Cooney between being entitled to know the range of evidence on the one hand as distinct from any particular item of evidence on the other is – as this aspect of the present case readily illustrates - sometimes a subtle one, I nonetheless think, on balance, that the allegation regarding the other pilots filing confidential reports falls into the former rather than the latter category. In other words, Ryanair knows the range of evidence, but not the details of any particular item of evidence, such as the date of a particular complaint or the identity the pilot or pilots in question. The authorities are clear, however, that it is not entitled to the latter information by way of particulars.

23. While further details and particulars in respect of these complaints would probably assist Ryanair in its conduct of the litigation – by, for example, narrowing down the range of documents it might seek in discovery from the Authority – I am not persuaded that it does not already know in general terms the case it might meet at the trial. That is ultimately the test which the Supreme Court has mandated in the trilogy of leading cases on this topic: *Cooney, McGee* and *Doyle*. The fact that, if additional details were supplied by way of particulars, this would be likely to assist the plaintiff in the subsequent conduct of the litigation *is not in itself* a reason to order further particulars if, as here, the particulars already supplied to the plaintiff enable it to know in broad outline the case it has to meet. In any event, as Clarke J. pointed out in *Thema*, it would be generally unfair to require a defendant to plead to such a high level of particularity in advance of discovery.

Conclusions

24. In summary, therefore, for the reasons set out in this judgment I would affirm the decision of the High Court to refuse to make an order directing the defendant to answer the disputed two particulars. I would, accordingly, dismiss the appeal.