

THE HIGH COURT

COMMERCIAL

[2016 No.4530 P]

BETWEEN

JERRY BEADES

PLAINTIFF

AND

MATTHEW ELDERFIELD, STEVEN MAIJOOR, JACQUES DE

LAROSIÈRE, MARIO DRAGHI, EWALD NOWOTNY, JAN SMETS,

CHRYSTELLA GEORGHADJI, ARDO HANSSON, ERKKI LIIKANEN,

FRANÇOIS VILLEROY DE GALHAU, JENS WEIDMANN, YANNIS

STOURNARAS, IGNAZIO VISCO, ILMÂRS RIMDČVIÈS, VITAS

VASILIAUSKAS, GASTON REINESCH, JOSEF BONNICI, KLAAS KNOT,

CARLOS DA SILVA COSTA, JOSEF MAKÚCH, BOSTJAN JAZBEC AND

PHILIP R LANE

DEFENDANTS

JUDGMENT of Ms. Justice Costello delivered on the 21st day of December, 2016

1. This is a motion brought by the twenty-second named defendant seeking an order dismissing and/or striking out the plaintiff's proceedings and/or reliefs sought against him pursuant to O.19 r.27 and/or r.28 of the Rules of the Superior Courts 1986, and/or pursuant to the inherent jurisdiction of this court.

Background

2. The plaintiff instituted related proceedings at the same time as he instituted these proceedings. The related proceedings are entitled "Beades v. the European Banking Authority & Ors. [Record No. 2016/4531P]" ("the Institutional Proceedings"). Six motions were brought for hearing before this Court; the application of the first to fourth defendants in the Institutional Proceedings seeking an order setting aside the service of the proceedings on them ("the set aside applications"); the application of the twenty-second defendant in the Institutional Proceedings seeking an order striking out the proceedings against it ("the Central Bank of Ireland's strike out application"); and the application of the twenty-second defendant in these proceedings (the "Individual Proceedings") seeking an order striking out the proceedings against him. This judgment is concerned with the strike out application of the twenty-second defendant in the "Individual Proceedings". I have set out the background facts to both sets of proceedings more fully in my judgment of the "Institutional Proceedings". This judgment should be read in conjunction with that judgment.

The Plaintiff's Claim

3. The plaintiff's claim is set out in the general endorsement of claim in the plenary summons as follows;

"1. The Plaintiffs' claim against the defendants collectively and individually for their negligence and breach of duty including statutory duty in failing to perform their mandate within their office of supervising or adequately supervising the banks and other financial institutions within their jurisdictions which have become over exposed and the devaluing of investments in the petroleum industry and are seeking to disguise this fact through the wholesale removal of such assets by undervalued sales.

2. An Order of Mandamus compelling the defendants collectively and individually to perform their mandate within their office of supervising the banks and other financial institutions within their jurisdictions which have become over exposed and the devaluing of investments in the petroleum industry and are seeking to disguise this fact through the wholesale removal of such assets by undervalued sales.

3. A Declaratory Order that the Defendants collectively and individually failed to perform their mandate within their office of supervising the banks and other financial institutions within their jurisdictions which have become over exposed and the devaluing of investments in the petroleum industry and are seeking to disguise this fact through the wholesale removal of such assets by undervalued sale

4. Such further or other as this Honourable Court shall deem necessary (if it can)

5. Costs"

4. The plaintiff therefore in essence seeks the following orders/makes the following claims against Governor Lane individually and collectively with the other defendants:

a) negligence and/or breach of statutory duty by the defendants for failure to perform their alleged mandates of supervising banks and other financial institutions in their jurisdiction which have become over-exposed due to devaluing investments in the petroleum industry;

b) an order compelling the defendants to perform their alleged mandates;

c) a declaration that the defendants have failed to perform their alleged mandates

5. In the judgment in the Institutional Proceedings I summarised the plaintiff's claim in those proceedings as seeking a number of mandatory injunctions and declaratory orders *inter alia* compelling the institutional defendants individually and collectively to adhere to their mandates as provided by their constitutional instruments; to investigate all banks and other financial institutions, their servants and agents within their remit involved in the oil industry directly, indirectly or otherwise through their servants or agents; to sanction all banks and other financial institutions within their remit involved in the manipulation of global oil prices; to direct all banks and other financial institutions within their remit to cease their activities, divest themselves of all assets and other involvement in the oil industry, including their respective subsidiaries, servants and agents and to regulate the European banking system and to implement and comply with the Basel Rules.

6. It can thus be seen that while the reliefs in the Individual Proceedings have been cast in different terms the central claim remains the same. The plaintiff is alleging that the individuals sued in the Individual Proceedings, being the heads of the institutions sued in the Institutional Proceedings, are failing to perform their mandate of supervising the banks and other financial institutions in relation to the oil industry. At the hearing of the six motions no distinction was made between the essence of the plaintiff's claims in the Institutional Proceedings and the Individual Proceedings and the arguments advanced on both sides proceeded on that basis.

Submissions of the twenty-second defendant

7. Counsel for the twenty-second defendant submits that he is entitled to an order pursuant to O.19 r.27 and/or 28 of the Rules of the Superior Courts 1986, and/or the inherent jurisdiction of the Court striking out the Plaintiff's proceedings and/or on the grounds similar to those that were argued in the Central Bank of Ireland's application in the Institutional Proceedings. Those were that:

- a) the plaintiff has no *locus standi*;
- b) the proceedings impermissibly claim public law relief;
- c) the proceedings disclose no reasonable cause of action;
- d) the proceedings are an abuse of process and a vehicle for the plaintiff to seek to scandalise the defendants and the court;
- e) the court has no jurisdiction to make orders concerning acts undertaken by Governor Lane in his role within the EU framework;

(a) The Plaintiff has no locus standi

8. Counsel for the twenty-second named defendant submits that the plaintiff has no *locus standi* to bring these proceedings. This is submitted on the basis that he has no interest in this matter to distinguish himself from any other member of the public, and that he has identified no legal right or interest which is being affected or threatened. It is submitted that the plaintiff himself implicitly admitted that this is the case in a letter dated 24th May, 2016, sent to the Minister for Finance, and accompanied by the plaintiff's plenary summons, in which he stated; "*I am not a financial or commodities trader and you may ask on what basis, I as a businessman am pursuing this as a citizen in the courts*".

9. Counsel for the defendant submits that it is clear that the plaintiff's own factual circumstances do not take him beyond an ordinary citizen and submits that the reasoning of Haughton J., in *Beades v Ireland & Ors* [2016] IEHC 302 at para.67 applies, in which it was stated that the plaintiff could not obtain a "*benefit in any material or personal sense*" from the action. It is submitted that his claims ought to be dismissed on this ground alone.

(b) The proceedings impermissibly claim public law relief

10. Secondly, it is submitted that having regard to the nature of the claims and reliefs sought against Governor Lane, they are quintessentially public law proceedings, which ought to have been brought by way of judicial review rather than plenary proceedings. It is submitted that the claims and reliefs involve administrative decisions and decisions making procedures, which can only be brought by way of judicial review and that the plaintiff has sought to circumvent the threshold requirements for seeking public law relief through judicial review by issuing plenary proceedings.

11. Counsel for the defendant submits that the declaratory relief is directed to the exercise of public law powers by Governor Lane and that it is initiated outside the time limits prescribed by O.84 of the Rules of the Superior Courts 1986.

12. It is submitted that the plaintiff has not identified, and further that he would be unable to identify, any obligations owed to him by Governor Lane which have been breached or in respect of which action would be required to be taken. Counsel for the defendant submits that the plaintiff seeks declaratory and mandatory orders of a public law nature in circumstances where he has neither provided any basis for establishing any failures on the part of Governor Lane to take action, or established any grounds upon which he would be entitled to make such public law claims. Counsel submits that there has been no prior communication to Governor Lane setting out any basis for justifying a claim that he has not adhered to any mandate in respect of the subject matter of the proceedings or that he has failed in any alleged obligation to carry out the alleged investigation in respect of which relief is claimed. He says that at no time previously has the plaintiff claimed that Governor Lane has failed in any alleged obligation to require banks and financial institutions to cease their activities and divest themselves of all assets and other involvement in the oil industry.

13. It is further submitted that there has been no communication by the plaintiff to the Central Bank of Ireland or Governor Lane justifying any claim that there has been a failure on its part to regulate the European banking system or to implement or comply with the Basel Accords as provided in Irish Law in the European Union (Capital Requirements) Regulations 2014 (SI 158/2014) and the Capital Requirements Regulation (Regulation (EU)) No 575/2013. It is submitted that as there was no such prior communication to the defendant setting out any basis for the claim, this indicates that the plaintiff's choice not to apply by way of judicial review procedures and not to seek, and obtain, leave, is all the more serious and deliberate.

(c) The proceedings disclose no reasonable cause of action

14. Thirdly, it is submitted that the proceedings against Governor Lane do not disclose a reasonable cause of action and ought to be dismissed on this basis. It is further submitted that the orders claimed are not such orders which the court could make against Governor Lane. Counsel for the twenty-second defendant submits that the claims made and relief sought against Governor Lane are founded on an alleged cause of action founded in negligence and/or breach of statutory duty by the defendants for failure to perform their alleged mandates of supervising banks and other financial institutions in their jurisdiction which have become over-exposed due

to devaluing investments in the petroleum industry. It is submitted that the claim by the plaintiff in negligence and/or breach of statutory duty by Governor Lane discloses no reasonable cause of action and is bound to fail as the plaintiff has not identified and would not be able to identify any statutory duty owed to him, as a citizen, by Governor Lane, nor any duty the breach of which could give rise to a claim in negligence. It is submitted that the duties of Governor Lane are owed to the Central Bank of Ireland and not to any member of the public.

(d) The proceedings are an abuse of process and a vehicle for the plaintiff to seek to scandalise the defendants and the court

15. Fourth, it is submitted that the claims, reliefs sought and the proceedings are frivolous, vexatious and an abuse of process. Counsel for the defendants says that this is so, not only because the plaintiff has adopted the wrong procedure, has avoided the threshold for judicial review, did not correspond with the defendants, has no *locus standi*, but also due to the absence of any legal basis upon which the court could make any of the orders sought, or that the plaintiff is seeking the intervention of the court in that regard against Governor Lane. He further submits that the plaintiff has conducted himself in a disrespectful manner throughout the proceedings by seeking delays, adjournments, and refusing to comply with court orders and that this is relevant to this analysis.

16. It is further submitted that these proceedings are being used as an opportunity for the plaintiff to scandalise and disrespect Governor Lane alongside the Central Bank of Ireland in the "Institutional Proceedings" and to make unfounded allegations against them for a collateral purpose. Counsel for the twenty-second defendant says that at hearing on 10th October, 2016, the plaintiff acknowledged that the letters containing the allegations had been sent by him to the Minister for Justice using his political email address, during his Seanad campaign and on this basis, it is clear that the proceedings are motivated by these considerations.

17. It is submitted that applying the factors approved by Irvine J. in *Behan v McGinley* [2011] 1 IR 47 at para.69, as relied upon by Haughton J. in *Beades v Ireland & Ors* at paras.66 and 67, it is submitted that indicators (b) ("*the action would lead to no possible good*"), and (c) ("*action brought for an improper purpose*") would also have application to the present proceedings.

(e) The Court has no jurisdiction to make orders concerning acts undertaken by Governor Lane in his role within the EU framework, enjoying immunity in that regard under Article 10 of Protocol (No 7) to the TFEU in addition to those enjoyed by the European Bodies

18. Fifth, it is submitted that the proceedings are bound to fail on the grounds that they would require the determination of issues in respect of which the CJEU has exclusive jurisdiction.

19. It is submitted that the determination of any liability of Governor Lane acting within the EU framework is a matter in which the court has no jurisdiction. It is submitted that Governor Lane is entitled to immunity under Article 10 of Protocol (No 7) on the Privileges and Immunities of the European Union, which provides as follows:

"Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities. This Article shall also apply to members of the advisory bodies of the Union."

20. It is submitted that, given the express recognition of immunity to suit before national courts for officials and other servants of the Union, as set out in Article 11(A) of Protocol (No 7), "customary privileges and immunities" in Article 10 contemplates immunity from legal proceedings in respect of acts performed by Governor Lane when taking part in the work of the institutions of the Union.

Submissions of the plaintiff

21. The plaintiff's submissions were as set out in paras. 72 — 76 of my judgment in the Institutional Proceedings. In summary, he asserts that he has *locus standi* to bring the proceedings, he brings them as a citizen, he accepts that the proceedings are part of a wider campaign rather than an end in itself, if the proceedings ought to have been brought by way of judicial review, the proceedings should not be struck out as the issues raised are too important to fail on that basis and he denies that Governor Lane is entitled to immunity from suit or that the Court lacks jurisdiction to deal with the case. He was asked to explain why it was necessary to institute the Individual Proceedings in addition to the Institutional Proceedings and he stated that he did so "to get their attention". He did not identify any claim unique to the individual defendants which he required over and above the claims encompassed in the Institutional Proceedings.

Relevant legal principles

22. The principles which I outlined in paras. 77 — 82 in the Institutional Proceedings are equally applicable to Governor Lane's application in these proceedings and I do not propose to repeat them in this judgment.

Discussion

23. There was a large overlap between the arguments in Governor Lane's application and those in the application of the Central Bank of Ireland in the Institutional Proceedings. There were, however, some differences. The first claim in the Individual Proceedings is a claim in negligence and of breach of statutory duty. It follows that in order to have any prospect of success in respect of this claim the plaintiff must be in a position to show that Governor Lane owed him a duty of care. The plaintiff has failed to advance any basis upon which it could be said that the Governor of the Central Bank of Ireland owed him a duty of care based on the law of negligence. Likewise he has identified no statutory duty owed by the Governor to him as a citizen.

24. In addition, he has failed to identify any damage he allegedly suffered as a result of the unspecified negligence alleged against Governor Lane.

25. In those circumstances I am satisfied there is no basis for this claim nor any possible basis for the claim advanced. That being so it discloses no reasonable cause of action and is bound to fail.

26. Even if the claim was one known to the law, it is a claim in respect of the role of Governor Lane in the context of the European banking system. The allegations relate to the Governor's mandate to supervise banks and other financial institutions within the jurisdiction of the Central Bank of Ireland. This can only be in the context of the European system outlined in the judgment in the Institutional Proceedings. For the reasons set out in that judgment, this Court has no jurisdiction in respect of these matters. Exclusive jurisdiction has been conferred upon the CJEU.

27. In addition, I accept the submission of counsel for Governor Lane that the Governor is entitled to immunity in the performance of his duties. He is sued in these proceedings in respect of his acts performed (or not performed) when taking part in the work of an institution of the Union, that is, the ECB. As such he is a representative of a Member State taking part in the work of the institutions

of the Union. Representatives of Member States taking part in the work of the institutions of the Union enjoy immunity in the performance of their duties as provided in Article 10 of Protocol (No. 7) on the Privileges and Immunities of the European Union. Article 11(A) clarifies that the immunity contemplated by Article 10 includes immunity from legal proceedings in respect of the acts performed by Governor Lane when taking part in the work of the institutions of the Union. The entitlement to immunity in the performance of his duties must include an allegation that he has failed to perform his duties. I am satisfied therefore that Governor Lane is entitled to immunity in these proceedings on the basis of Articles 10 and 11(A) of Protocol (No. 7). It follows that for this reason also these proceedings are bound to fail.

28. In relation to the second and third claims, for an order of *mandamus* and a declaration, these are essentially the same as the reliefs sought in the Institutional Proceedings and are likewise bound to fail for the reasons set out in the judgment in the Institutional Proceedings, in particular at paras. 84 and 85. The plaintiff himself has accepted that the institutions have introduced rules such that the claim that there has been a failure to regulate is now moot (as explained in paras. 95 — 96 of the judgment in the Institutional Proceedings). Insofar as the proceedings as public law proceedings ought to have been brought by way of judicial review, these proceedings are bound to fail for the reasons set out in paras. 98 — 101 of my judgment in the Institutional Proceedings.

Conclusion

29. For the reasons set out in this judgment and in the judgment in the Institutional Proceedings, the plaintiff's case against Governor Lane is bound to fail. It follows, as explained in the other judgment, that it is vexatious within the meaning of O. 19, r. 28 and accordingly I must dismiss the proceedings on that basis.