

**THE HIGH COURT****2008 3758 P****ETWEEN****THOMAS GEANEY & ORS.****PLAINTIFFS****AND**

**THE BOARD OF MANAGEMENT OF POBALSCOIL CHORCA DHUIBHNE, CONSOLATA BRACKEN, VIVIENNE DUNNE AND BARNEY O'REILLY IN THEIR CAPACITY AS TRUSTEES AND JOINT PATRON OF POBALSCOIL CHORCA DHUIBHNE AND THE MINISTER FOR EDUCATION AND SCIENCE, IRELAND AND THE ATTORNEY GENERAL**

**DEFENDANTS****Judgment of Miss Justice Laffoy delivered on the 27th day of April, 2009****The application**

The background to this application for particulars on behalf of the first to fourth defendants, on foot of a notice of motion dated 19th December, 2008, is as follows:

- The first plaintiff is the father of the seventh plaintiff. The second to twelfth plaintiffs are all minors who sue by a next friend. They are pupils at Pobalscoil Chorca Dhuibhne (Pobalscoil). As is clear from the title to the proceedings the first defendant is the Board of Management of Pobalscoil and the second to fourth defendants are sued in their capacity as Trustees and Joint Patron of Pobalscoil. As pleaded in the plaintiffs' statement of claim delivered on 17th July, 2008, Pobalscoil was created by the amalgamation of two existing voluntary second level schools in Dingle, the Presentation Secondary School for Girls and the Christian Brothers' Secondary School for Boys. Pobalscoil commenced providing educational services at second level in September 2007. The statement of claim is a very comprehensive document running to 33 pages, which contains 85 paragraphs and in the prayer for relief seeks no less than 30 remedies, the first being a declaration that the defendants have failed to provide a comprehensive system of post-primary education open to all children of the community at Pobalscoil. In their written submissions on this application the plaintiffs' counsel summarised the grounds on which the plaintiffs allege that their rights have been breached as follows:

"In substance, the minor plaintiffs do not understand the subjects they are taught in the State curriculum in Pobalscoil .... Further, the teaching of the entire curriculum exclusively or predominantly through the medium of Irish has undermined the minor plaintiffs' course of education. It has also departed from the manner in which they were taught in both national school and in the former boys' and girls' secondary schools in Dingle prior to the establishment of Pobalscoil with effect from the start of the school year September 2007."

- The first to fourth defendants served a notice for particulars on the plaintiffs on 3rd September, 2008. The plaintiffs furnished replies on 24th October, 2008 and ascribed the delay to the time taken to having the notice for particulars translated from Irish to English. It was stated on behalf of the plaintiffs therein that the replies were being delivered without prejudice to the plaintiffs' contention that the particulars raised, containing some 390 queries, were oppressive and prolix and that the trial Judge would be asked in due course to take that fact into account in exercising his discretion on the matter of costs. While I have not analysed the replies in depth, they certainly appear to be full and comprehensive. In particular, in reply to query 15, the plaintiffs have set out in considerable detail the basis on which they allege that Pobalscoil has denied education to the minor plaintiffs.
- On 3rd November, 2008, on foot of a motion brought on behalf of the plaintiffs, it was ordered by the Court, pursuant to Order 15, rule 9 of the Rules of the Superior Courts (the Rules), that the plaintiffs be authorised to sue on behalf of the parents/guardians and children whose names and addresses were set out in the schedule to the order. Seventy one minors who attend Pobalscoil and the parent, parents or guardian of each, as the case may be, were named in the schedule. By that order the Court also directed that all issues other than any claim for damages be determined first in the proceedings.
- By notice dated 5th December, 2009 further and better particulars were sought on behalf of the first to fourth defendants and a notice was given that, unless the replies were furnished by 19th December, 2008, a motion would be brought. The notice was in Irish. According to the written submission of the plaintiffs, the plaintiffs received a translation of the notice from the Courts Service on 14th January, 2009.
- In any event, there was no response to the notice and, as threatened, the first to fourth defendants issued a notice of motion on 19th December, 2008, which was returnable for 19th January, 2009. The notice effectively replicated the notice of 5th December, 2008.
- Although the application has been before the Courts since 19th January, 2009, it was not heard until 20th April, 2009, because, as I understand the position, a mediation process was ongoing from January 2009 until recently.

**The law**

The law as to when a party to litigation is entitled to a further and better statement of the nature of the claim or further and better particulars of any matters stated in any pleadings pursuant to Order 19, rule 7(1) of the Rules was reiterated by the Supreme Court in *McGee v. O'Reilly* [1996] 2 I.R. 229. In his judgment (at p. 233) Keane J., as he then was, stated that, in considering whether in that case, or any other, particulars should be ordered, the purpose of pleadings, of which

particulars form part, must be borne in mind. He then went on to quote what he described as a convenient and compendious statement of the law in the judgment of Fitzgerald J., as he then was, delivered in the Supreme Court in *Mahon v. Celbridge Spinning Company Limited* [1967] I.R. 1 (at p. 3), which was in the following terms:

"The whole purpose of a pleading, be it a statement of claim, defence or reply, is to define the issues between the parties, to confine the evidence of the trial to the matters relevant to those issues, and to ensure that the trial may proceed to judgment without either party being taken at a disadvantage by the introduction of matters not fairly to be ascertained from the pleadings. In other words a party should know in advance, in broad outline, the case he will have to meet at the trial."

In the context of asserting that, having regard to its format and contents, what the first to fourth defendants are attempting to do is to deliver interrogatories and to cross-examine the plaintiffs, which is not permissible in a notice for particulars, counsel for the plaintiffs relied on a decision of the Court of Appeal in Northern Ireland in *Coyle v. Hannon* [1974] N.I. 160, in which Order 19, rule 7 of the Rules in Northern Ireland, which is in exactly the same terms as Order 19, rule 7(1) of the Rules, was being applied. The passage from the judgment of Lowry L.C.J. on which counsel for the plaintiffs relied stated that it has been long established, though not always recognised, that "the court will not sanction an attempt to serve interrogatories under the guise of seeking particulars", citing *Lister v. Thompson* (1890) 7 T.L.R. 107.

### **Application of the law**

In analysing the request of the first to fourth defendants for further and better particulars, it is convenient to break it down into segments. It should be noted that I am working off the original Irish version. I do not have a copy of the official translation. I mention this merely by way of explanation of any differences of terminology between what is stated below and the official translation.

My view on the particulars sought in each segment is as follows:

#### **A**

This segment covers items i to xxv. The first 15 items relate to the second plaintiff and the remaining 10 items reiterate the first 15 items in relation to the third to twelfth plaintiffs. In other words, there are 180 individual requests, none of which, in my view, complies with the tests propounded in *Mahon v. Celbridge Spinning Company Limited*, as the following examples illustrate.

Item i, like many of the items, is framed as an interrogatory, in that a "yes" or "no" answer is indicated. In that item, referring to certain paragraphs of the statement of claim, the second plaintiff is asked whether she stands by the allegation that she does not receive any instruction through English, referring to statements in the statement of claim that the plaintiffs are being taught "exclusively" through Irish. Paragraphs 27 and 28 of the statement of claim speak for themselves. In paragraph 27 it is alleged that at the commencement of the school year in September 2007 the first to fourth defendants "commenced for the first time to provide second level teaching exclusively through the medium of the Irish language". That is the plaintiffs' case, which, at the trial, the plaintiffs will have to prove and which the defendants will have an opportunity to challenge in cross-examination of the plaintiffs' witnesses.

Some of the requests are nothing short of bizarre, for instance, item xii, which queries whether the plaintiffs are denying that Irish can be learnt.

Other of the requests seek to explore the meanings of expressions used in the statement of claim. For instance, item iii queries whether the expression "intelligible education" means education exclusively through English. The expression is used by the plaintiffs in paragraph 28 of the statement of claim in the context of a plea that, since the commencement of the school year September 2007, the plaintiffs attending Pobalscoil have been denied "any or any adequate access to intelligible education", which is expanded on by the succeeding statement that the tuition is being supplied "exclusively and remorselessly" in a language which the plaintiffs do not comprehend adequately or at all. In my view, the first to fourth defendants must know, in broad outline, what is being contended for by the plaintiffs in that plea.

Information is also sought which has no relevance to the plaintiffs' case as pleaded. For example, in item xv, information is sought on any brother or sister of any plaintiff who attended any school other than Pobalscoil and its predecessor secondary schools, stating the school and the years of attendance. That information has absolutely no relevance to the plaintiffs' case as pleaded or to the defining of the issues between the parties.

Finally in relation to this segment, information is sought as to the damage the second plaintiff has suffered as a result of his or her tuition in Pobalscoil, including loss or damage in relation to academic results. Given the Court's direction in the order of 24th November, 2008 that any claim for damages be left over until the other issues were determined first, it was inappropriate for this information to be sought at this juncture. The objective of dealing with the issue of liability first is to minimise the costs of what will probably be a very costly action.

#### **B**

This segment contains items xxvi to xxviii, which seek particulars of the statutory and constitutional rights which the first plaintiff alleges have been infringed by Pobalscoil. I assume that the purpose of these items is to distinguish between the obligations of the State defendants, (the fifth to seventh defendants) and the first to fourth defendants. In paragraph 31 of the statement of claim, the case of the first plaintiff as to breach of his statutory, constitutional and Convention rights is made against all of the defendants and is made with particularity. It will be a matter for argument at the trial whether any obligations to the first plaintiff on the part of Pobalscoil are co-extensive with any legal, constitutional or Convention obligations of the State defendants in issue. These items are not appropriate matters for a notice for particulars.

#### **C**

In this segment, which contains items xxix to lix and also lxii, the first to fourth defendants seek information in relation to each of the representative minor plaintiffs referred to in the representative order whom the plaintiffs intend calling as witnesses. The information sought includes biographical details, specifically details in relation to each minor's education. It also repeats the matters set out in segment A which, for the reasons outlined earlier, cannot be pursued by way of notice for particulars. Apart from that, there are several reasons why the requests in this segment are wholly misconceived and

inappropriate.

First, the purpose of Order 15, rule 9 is to give rise to a situation where the decision of the Court in the substantive action will operate to the benefit of, as well as to bind, the 71 parties named. The plaintiffs' case is pleaded by reference to the twelve named plaintiffs, the issues are defined by reference to what is pleaded in relation to the twelve named plaintiffs and the evidence will be confined to matters relevant to those issues.

Secondly, it is well settled that particulars cannot be used as a ploy to identify witnesses who would be called by a party, save in exceptional circumstances (cf. Delany & McGrath on *Civil Procedure in the Superior Courts*, 2nd ed., at para. 5 – 51).

Finally, as I understand it, the 71 minor plaintiffs are pupils of Pobalscoil. Much of the information sought in relation to them must be on the school database of Pobalscoil.

D

On my reading of the notice, each of items lx and lxi is a discrete request.

Item lx repeats paragraph 39 in the notice of 3rd September, 2008, which was comprehensively replied to by the plaintiffs in their replies of 24th October, 2008. No case was made either in the notice of 5th December, 2008, the grounding affidavit of Ian O'Herlihy sworn on 19th December, 2008 or on the hearing of the application as to the inadequacy of the plaintiffs' reply. It is not the Court's function to assess its adequacy, without the benefit of some reasoned argument as to inadequacy on the part of the parties seeking the further particulars. Therefore, I must assume it was adequate.

In relation to item lxi, it repeats paragraph 40 of the notice of 3rd September, 2008. That item was addressed by counsel for the plaintiffs at the hearing. The defendants were asked in paragraph 40 whether *mala fides* is alleged in paragraph 73(m) of the statement of claim and were invited to give a "yes" or "no" answer. A comprehensive answer was given in which it was clearly and unequivocally stated that no allegation of *mala fides* is made in the paragraph.

In my view, not only does the request for particulars fail the tests set out in *Mahon v. Celbridge Spinning Company Ltd.*, but the plaintiffs' submission that it is both oppressive and vexatious and wholly unreasonable in the context of the pleadings is borne out. It is understandable that, given that the urgency of bringing the case to trial has been stressed throughout the case management process because the minor plaintiffs will be entering their third year in Pobalscoil next September, the perception of the plaintiffs is that the application was a delaying device. However, I make no finding on that point at this juncture.

#### **Order**

There will be an order dismissing the first to fourth defendants' application.