

THE HIGH COURT

[RECORD NO. 2007 7939 P]

BETWEEN

KEVIN TRACEY

PLAINTIFF

AND

THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM, IRELAND, THE ATTORNEY GENERAL, THE COMMISSIONER OF AN
GARDA SIOCHANA, THE DIRECTOR OF PUBLIC PROSECUTIONS, THE COURTS SERVICE AND KEITH LAMBE

DEFENDANTS

JUDGMENT of Mr. Justice Robert Eagar delivered on the 20th day of April 2018.

1. This is a judgment on the plaintiff's application for discovery from all defendants in respect of his notice of motion issued on the 12th July, 2017.
2. The affidavit of Mr Kevin Tracey grounding the application for a notice of motion in respect of discovery of documents set out the background to the case. Mr Tracey states in his affidavit that the case involves a further malicious prosecution of the plaintiff on the 6th July, 2006, for alleged threatening, abusive and insulting behaviour with intent to provoke a breach of the peace at the offices of the Courts Service at Áras Uí Dhálaigh involving a member of An Garda Síochána (Keith Lambe of the Bridewell Garda Station) who allegedly responded to a call to the Gardai made by an employee of the Courts Service (Hazel Bell) acting in accordance with a standing order. Garda Lambe confirmed that Ms. Bell had called the Gardai and that she informed him that they had been instructed to call the Gardai prior to dealing with Mr. Tracey. On 6th July 2006, the plaintiff was present in the Summons Office of Áras Uí Dhálaigh in an investigation of ongoing fabricated and malicious summonses and prosecutions of him which came from that office. This particular malicious prosecution was struck out in the District Court on the 9th August, 2007.
3. He further suggests in this affidavit that the particular malicious prosecution coincided with a planning dispute with his next door neighbour.
4. On the 15th July, 2009, the plaintiff wrote a letter to the Chief State Solicitor representing the State defendants (Defendant 1, 2, 3, 4, 5 and 7) seeking voluntary discovery with categories listed and reasons given. He said that this correspondence was ignored by the Chief State Solicitor.
5. On the 18th January, 2010, the State proceeded with a motion to have this case and six other cases managed by a judge of the High Court. On the 3rd March 2010, the plaintiff wrote a further letter to the Chief State Solicitor representing the State defendants regarding the issue of voluntary disclosure sought earlier in his letter of the 15th July, 2009. He says that this correspondence was also ignored by the Chief State Solicitor.
6. On the 7th January, 2011, the State proceeded with a motion to strike out the case along with five other cases. On the 4th March, 2011, this case and three other cases were struck out in his absence and he explains that his absence was due to a critical illness.
7. On the 26th July 2016, the Supreme Court allowed the appeal of the plaintiffs and discharged the order of the High Court judge, dismissing each of the relevant proceedings. Clarke J. in the Supreme Court stated: - "It is of utmost importance, in that context, that it be understood that any directions given by a case management judge in the future should be strictly complied with".
8. This Court has been managing the cases the subject matter of the Supreme Court decision.
9. In respect of the Courts Service defendant, the plaintiff states that on the 15th July, 2009, he wrote a letter to the solicitor for the Courts Service defendant (the sixth named defendant) seeking voluntary discovery with categories listed and given. He said that this correspondence was ignored by the solicitors for the sixth named defendant. He said that on the 11th January, 2010, he wrote a further letter to the solicitor for the Courts Service defendant seeking voluntary discovery with categories listed and reasons given. He says that this correspondence was also ignored by the solicitor for the sixth named defendant. He said that on the 5th March, 2010, he wrote a letter to the solicitors for the Courts Service defendant regarding the issue of voluntary discovery sought earlier in his letters of the 15th July, 2009 and the 11th January, 2010; he said that this correspondence was also ignored by the solicitor for the sixth named defendant. He said that on the 28th March, 2017, the solicitor for the sixth named defendant wrote to him in response to his letter of the 15th July, 2009 but failed to respond to his later letter of the 11th January 2010. On the 2nd May 2017, at a case management hearing, a booklet of correspondence for this case and case number 6407P/2006 were presented to him by the solicitor for the sixth named defendant, some documents in both cases were omitted and he says that he is seeking inspection of all discovery documents.
10. This motion was heard on the 23rd March, 2018, and by letter dated the 22nd March, 2018, the State defendants wrote to the plaintiff "with a view to narrowing the issues before the court tomorrow". The letter indicates that consequently the only categories now an issue before the Court are Categories 3, 4, 8, 10 and 15.

The State Defendants**Category 1**

11. In his letter of the 15th July 2009, the plaintiff sought a copy of the entire application paperwork in the possession of the State defendants in relation to District Court summons including the SA 1 form.
12. The response of the State defendants was that the plaintiff is not entitled to this category of documentation. The plaintiff is aware of the nature and contents of the District Court summons and does not require the application paper related thereto. In any event the said documentation is privileged.
13. However, strictly without prejudice to the foregoing, they were instructed that the application paperwork in relation to the District Court summons was sent to the Courts Service for processing, they note that the Courts Service are agreeable to making

discovery of this documentation and they confirmed that the State defendants have no documentation pertaining to same. The State defendants agreed to make discovery identifying that they have no documents.

Category 2

14. The plaintiff sought a copy of the declaration of service for District Court summons in relation to the alleged offence in the public offices of Áras Uí Dhálaigh at the Four Courts.

15. The State defendants say that the documentation is irrelevant, that the plaintiff was served with the summons and pursuant to which he attended court. However, they say that, strictly without prejudice to the foregoing, they are instructed that this documentation is not in the power, possession or procurement of the State defendants and note that the Courts Service are agreeable to make discovery of this category of documentation. The State defendants agreed to make discovery identifying that they had no documents.

Category 3

16. The plaintiff sought copies of statements from all witnesses and other people who were present at the public offices of Áras Uí Dhálaigh at the Four Courts on the 6th July, 2006.

17. The response of the State defendants was that their documentation was privileged. Further that, strictly without prejudice to the foregoing they were instructed that no statements were taken by the state defendants at the time of the incident. Statements were taken after the initiation of these proceedings – these proceedings attract litigation privilege as they were taken in contemplation of litigation.

18. The Court notes, that the plaintiff has sought statements from “all witnesses and other people who were present in the public offices of Áras Uí Dhálaigh at the Four Courts on the 16th July 2006”. This category of documentation is too wide. Further, the Court rules that statements taken in contemplation of litigation are subject to litigation privilege.

Category 4

19. The plaintiff sought copies of documentation setting out the reasons for the withdrawal of the prosecution on the date of trial.

20. The State defendants say that the plaintiff is not entitled to this category of documentation as it is privileged and specifically that, the category of documentation attracts public interest privilege in that it relates to the decision of the Director of Public Prosecution to prosecute or not.

21. It is the view of this Court, that the category of documentation attracts public interest privilege in that it relates to a direction of the Director of Public Prosecution to prosecute or not. The plaintiff is aware clearly that the summons was withdrawn by the prosecution. .

Category 5

22. The plaintiff sought a copy of the notebook entries of Garda Keith Lambe dated the 6th July, 2006.

23. The response of the State defendants is that this documentation is privileged, but without prejudice to the foregoing the State defendants agreed to provide discovery in relation to this category of documentation.

Category 6

24. The plaintiff sought on discovery a copy of the notebook entries taken by Garda Keith Lambe of the Bridewell Garda Station on the 23rd May, 2007.

25. The State defendants say that this documentation is privileged but without prejudice to the foregoing the State defendants agreed to provide discovery in relation to this category of documentation.

Category 7

26. The plaintiff sought a copy of notebook entries taken by Garda Keith Lambe on 9th August, 2007.

27. The State defendants claimed that this documentary information is privileged and strictly without prejudice to the foregoing the State defendants agreed to provide discovery in relation to this category of documentation.

Category 8

28. The plaintiff sought a copy of the file sent to the Director of Public Prosecutions in the prosecution of this alleged offence by Garda Keith Lambe of the Bridewell Garda Station.

29. The State defendants say that the plaintiff is not entitled to this documentation, that the said documentation is privileged and particularly attracts public interest privilege in that it relates to a decision of the Director of Public Prosecutions to prosecute or not.

30. The Court is satisfied that the State defendants are correct in that a file sent to the Director of Public Prosecutions in respect of the prosecution of an offence is privileged.

31. The Court is also of the view that special consideration is given in relation to proceedings involving the State. In *McGrath v. The Commissioner of An Garda Síochána* [1991] 1 I.R. 69, McCarthy J. stated at pp 75: “Where one organ of State has been a contestant in the first trial of the issue, (in this case the District Court proceedings), then, in my view, another organ of the State has the necessary privity.” on the grounds of issue estoppel. The Court will refuse the plaintiff discovery in relation to Category eight, as sought against the State defendants.

Category 9

32. The plaintiff sought documentation relating to the setting up of the standing order against the plaintiff.

33. The State defendants say that there are no documents relating to the setting up of any standing order involving the plaintiff, the plaintiff has been furnished with the précis of evidence prepared by Garda Keith Lambe for the purpose of prosecution arising from the events of 16th June, 2006. Strictly without prejudice to the foregoing, the State defendants are agreeable to making discovery which will identify that there are no documents in this category.

Category 10

34. The plaintiff sought requisition documents in the possession of the Gardai and that they be given to the Courts Service regarding the obtaining video footage as the incident that caused the creation of the standing order.

35. The State has responds that this category is irrelevant and unnecessary. The events referred to do not form part of the plaintiff's claim. The State defendants assert that there was no standing order referred to by the plaintiff and there is no video footage claiming same. The Court's view is that the category is far too wide and does not relate to the plaintiff's claim and in those circumstances refuses discovery of the documents sought in Category 10.

Category 11

36. The plaintiff sought requisition documents in the possession of the Gardai and DPP given to the Courts Service regarding the obtaining of video footage as the incident in court to create the standing order.

37. The State defendants say that the category is irrelevant and unnecessary and the events do not form part of the plaintiff's claim. Strictly without prejudice to the foregoing no such requisition documentation exists and the State defendants agreed to make discovery identifying that no such documentation exists in their possession.

Category 12

38. The plaintiff sought a copy of the standing order that the Gardaí be called in the event of the plaintiff appearing in the public offices of Áras Uí Dhálaigh at the Four Courts.

39. The State defendants response is that no such documentation exists and the State defendants agreed to make discovery identifying that no such documentation exists.

Category 13

40. The plaintiff sought video footage supporting Garda Keith Lambe's allegations of 6th July, 2006, in the ground floor public areas of Áras Uí Dhálaigh.

41. The State's defendant's response is that neither the Gardaí nor the DPP requisitioned any such video evidence and the State defendants agreed to make discovery identifying that no such documentation exists.

Category 14

42. The plaintiff sought copy of requisition documentation in the possession of the Gardaí and the DPP, given to the Courts Service.

43. The State defendants response is that neither the Gardaí nor the DPP requisitioned any such video evidence and the State defendants agreed to make discovery identifying that no such documentation exists.

Category 15

44. The plaintiff sought discovery in relation to the procedure regarding the storage of video tape footage in the Bridewell Garda Station.

45. The State defendants say that this category is irrelevant. The Court is of the view that the storage or otherwise of video tape footage is not a matter which is relevant to this particular action. The Court, therefore, refuses discovery of this category.

Category 16

46. The plaintiff sought documentation in the possession of the Gardaí indicating the attendance and names of the Gardaí in the public offices of Áras Uí Dhálaigh on 6th July, 2006.

47. The State defendants response is that this category is irrelevant. Strictly without prejudice to the foregoing no such documentation exists and the State defendants agreed to make discovery identifying that no such documentation exists.

The Courts Service

48. Mr. Tracey had sought discovery by letter dated the 15th July, 2009 in respect of the Courts Service.

Category 1

49. The plaintiff sought discovery of copy of the entire application paperwork in possession of the Courts Service relating to the District Court summons including the SAI form. The response of the Courts Service was to agree to make discovery of its file in relation to the District Court's summons.

Category 2

50. The plaintiff sought a copy of the declaration of service for the District Court summons in relation to the alleged offence. In response, the Courts Service agreed to make discovery of this category.

Category 3

51. The plaintiff sought copies of statements from all witnesses including Hazel Bell and other people who were present in the public office of Áras Uí Dhálaigh in the Four Courts on the 6th July 2006 and the Courts Service agreed to make discovery of this category.

Category 4

52. The plaintiff sought a copy of the District Court order for the 9th August, 2007 setting out the reasons for the withdrawal of the prosecution on the date of trial. The Courts Service agreed to make discovery of the District Court order of the 9th August, 2007.

Category 5

53. The plaintiff sought a copy of telephone records in the possession of the Courts Service for the 6th July 2006 at the ground floor public offices for summonses in Áras Uí Dhálaigh at the Four Courts. The Courts Service agreed to make discovery of this category.

Category 6

54. The plaintiff sought a copy of all details in the possession of the Courts Service that led to the setting up of the standing order against the plaintiff including all documentation, details of all personnel and all that was written and said by them.

55. The Courts Service objected to this category as it is too broad and onerous and would lead to the Courts Service having to make enquiries and searches encompassing every record held by the Courts Service in all its offices from 1999 to date regardless of whether it related to the plaintiff or the plaintiff's case, however without prejudice to the foregoing, the sixth named defendant

agreed to make discovery of the following documentation created prior to the 6th July 2006 by personnel working in the Dublin District and Circuit Court offices relating to any complaints about the plaintiff and limited by the search terms and named custodians to be agreed. This Court is of the view that Category 6 is far too broad and also largely irrelevant to the case being made by the plaintiff.

Category 7

56. The plaintiff sought a copy of the standing order in the possession of the Courts Service that the Gardaí be called in the event of the plaintiff appearing in the public offices of Áras Uí Dhálaigh at the Four Courts. The Courts Service agreed to make discovery of this category.

Category 8

57. The plaintiff sought copies of all videotape footage in possession of the Courts Service prior to the 6th July, 2006, that sustains its reasoning for the existence of the standing order against the plaintiff. The Courts Service agreed to make discovery of this category.

Category 9

58. A copy of the videotape footage in the possession of the Courts Service for the 6th July, 2006, in the ground floor public area of Áras Uí Dhálaigh at the Four Courts covered by Garda Keith Lambe's allegations. The Courts Service agreed to make discovery of this category.

Category 10

59. The plaintiff sought copies of all standard operating procedures (SOP) documentation in the possession of the Courts Service regarding videotape footage that contains material that is considered evidence of a crime. The Courts Service agreed to make discovery of this category.

Category 11

60. The plaintiff sought a copy of all standard operating procedures documentation in the possession of the Courts Service regarding the storage of videotape footage in the premises of Áras Uí Dhálaigh in the Four Courts. The Courts Service agreed to make discovery of this category.

Category 12

61. The plaintiff sought a copy of the requisition documentation in the possession of the Courts Service issued by Garda Keith Lambe with regard to obtaining the video footage of the incident he alleges occurred on the 6th July, 2006. The Courts Service agreed to make discovery of this category.

Category 13

62. The plaintiff sought copies of documentation in the possession of the Courts Service indicating the presence of security personnel in the ground floor public area of Áras Uí Dhálaigh in the Four Courts on the 6th July, 2006.

63. The Courts Service objected to this request in the terms sought as drafted, the reference to "documentation" would require the sixth named defendant to carry out a complete review of all documents within its possession regardless of whether they related to the plaintiff's case or not. Accordingly the discovery sought was too wide and onerous. Without prejudice to the foregoing the sixth named defendant agreed to make discovery on the following terms: -

"A copy of all procedures in the possession of the Courts Service regarding the presence or otherwise of security personnel on the ground floor public areas of Áras Uí Dhálaigh at the Four Courts on the 6th July 2006."

The Court agrees that the reference to documentation would require an overly onerous requirement of the Courts Service and the court agrees and believes that the compromise offered by the Courts Service is appropriate.

Category 14

64. The plaintiff sought copies of documentation in the possession of the Courts Service indicating the attendance and names of Gardaí in the ground floor public area of Áras Uí Dhálaigh at the Four Courts on the 6th July, 2006. The Courts Service objects to this category on the basis that it is neither relevant nor necessary for the disposal of the issues between the parties. This request is also a fishing expedition, is far too broad and onerous. This request would require the sixth named defendant to make inquiries and carry out searches that would encompass every record held by the Courts Service in all its offices from 1999 to date regardless of whether it relates to the plaintiff or the plaintiff's case.

65. Without prejudice to the foregoing, the sixth named defendant is neither responsible for the presence of or otherwise of An Garda Síochána in any part of Áras Uí Dhálaigh, therefore, there is no reasonable basis to require the sixth named defendant to undertake a review of all of its documents.

66. The Court is also satisfied that this category is far too wide, that it is a fishing expedition, and that it is neither relevant nor necessary for the disposal of the issues between the parties. The Court refuses the discovery of this category.

67. Subsequently, the plaintiff sought voluntary discovery dated the 11th January, 2010, and the categories were as follows:

Category 1

68. The plaintiffs sought in respect of the issuing of the summons of the 13th November, 2006, with regard to the alleged incident in Áras Uí Dhálaigh, on the 6th July, 2006, official record of any application for decision to issue same, issuing of same, and any documents upon which the defendant intends to rely in support of the claim, the summonses brought against the plaintiff was not malicious or based on falsity. The Courts Service agreed to make discovery of this category.

Category 2

69. The plaintiff sought evidence of any instruction from anywhere in the Courts Service or outside to Hazel Bell or /any member of staff at the summons counter in Áras Uí Dhálaigh, or any other person within or outside of the Courts Service to establish that the person receiving instruction should call Gardaí prior to dealing with the plaintiff.

70. The Courts Service objected to the making discovery of this category of documents on the basis that the category is too broad in its terms and the documentation sought is already sought in amended Categories 6 and 7 of the plaintiffs' letter dated the 15th July, 2009. The Court is satisfied that making discovery of this category of documents is too broad in its terms and the relevant documentation has already been agreed to be discovered in respect of Categories 6 and 7 of the plaintiff's application of the 15th July

2009.

Category 3

71. Any evidence on which the defence will rely in their contention that witnesses were present when the defendant allegedly engaged in outrageous behaviour including name-calling Garda Lambe in Áras Uí Dhálaigh on the 6th July 2006 including names and addresses of witnesses present, affidavits and statements on the matter.

72. The Courts Service objected to making discovery of this category of documents on the basis that the category is too broad in its terms and the documentation is also sought in amended Categories 3, 6 and 7 of the plaintiff's letter dated the 15th July 2006. The Court is satisfied that the response of the Courts Service is satisfactory in regard to this category.

Category 4

73. The plaintiff sought any evidence on which the defence will rely to show cause why servants or agents of the sixth named defendant called the Gardaí, and how such a call was made "reasonably and without malice", plus evidence, law, case law or learned opinion in a manner in which the defendants will rely to show words spoken by agents or servants of the Courts Service were covered by qualified privilege.

74. The Courts Service objected to the making of discovery of this category of document on the basis that the category is too broad in its terms and the documentation sought is already sought in amended Categories 3, 6 and 7 of the plaintiff's letter dated the 15th July 2006.

The Court also notes that the seeking of evidence, law, case law, or learned opinion upon which the defendants will rely on are not matters which are covered by discovery.

Category 5

75. The plaintiff sought all communications by telephone, text or otherwise between the sixth named defendant and the office of the Director of Public Prosecutions on the 6th July, 2006.

76. The Courts Service objected to the making of the discovery of this category of documents on the basis that it was neither relevant nor necessary, and further, the sixth named defendant has agreed to make discovery of Category 5 of the plaintiff's letter dated the 15th July 2009. The Court is satisfied that making discovery of this category of document is far too broad for the purposes of this case, and the Court will refuse discovery, save with regard to the agreement of the Courts Service to make discovery of Category 5 of the plaintiff's letter dated the 15th July 2009.

Category 6

77. The plaintiff sought copies of all files which have entries including notes, whether electronic or otherwise in possession of the sixth named defendant in relation to the conduct of the plaintiff on or before the 6th July, 2006.

78. The Courts Service objected to the making of discovery of this category of documents on the basis that the category is too broad in its terms and the documentation sought is already sought in Categories 3, 6 and 7 of the plaintiff's letter dated the 15th July, 2009. The Court is satisfied that the making of discovery of this category of documents is far too broad and the Court refuses discovery of this category.

Category 7

79. The plaintiffs sought copies of video footage in possession of the Courts Service for the 6th July, 2006, from the time the plaintiff entered the area of the summons counter until he left on the same date, plus all standard operating procedures (SOP) documentation in possession of the Courts Service regarding storage and release of videotape evidence containing material which could be considered a crime.

80. The Courts Service agreed to making discovery of this category of documents but the Courts Service notes that the documentation falling within certain categories agreed to be discovered by the Courts Service may have already been destroyed, in the event that this is the case, the matter will be addressed in the relevant schedule of the Courts Service affidavit of discovery.

Decision of the Court

81. The Court directs discovery in respect of Category 1 as outlined by the State defendants and Category 2 as outlined by the State defendants. The Court directs discovery in relation to Category 5 and Category 6, as indicated by the State defendants, Category 7 as indicated by the State defendants, Category 9 as outlined by the State defendants, Category 11 as outlined by the State defendants, Category 12 as outlined by the State defendants, Category 13 as outlined by the State defendants, Category 14 as outlined by the State defendants and Category 16 as outlined by the State defendants.

The Courts Service

82. The Court directs in relation to the Courts Service, discovery in relation to Categories 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 as outlined by the Courts Service in its correspondence to the plaintiff on the 19th January, 2018.

Plaintiff's letter to the Courts Service of the 11th January, 2010

83. The Court directs discovery of Category 1 of this letter, Category 6 as outlined by the Courts Service and Category 7 as outlined by the Courts service.

84. The Court will direct that an affidavit of discovery be prepared by a named individual, for the State defendants and for the Courts Service.