Neutral Citation: [2015] IEHC 874

THE HIGH COURT

[2013/9011 P]

RYANAIR LIMITED

PLAINTIFF

AND

JOHN GOSS

DEFENDANT

JUDGMENT of Mr. Justice Tony O'Connor delivered on the 20th day of October, 2015

Introduction
1. This is an application by way of Notice of Motion issued on 19th December 2014, which concluded last Friday evening. Rather than delay the parties, the Court agreed to deliver its *ex tempore* judgment today (Tuesday, 20th October, 2015) to facilitate everyone.

The Motion
2. The Notice of Motion sought an order compelling replies to a Notice for Particulars dated 24th July, 2014 without referring to O. 19(7) of the Rules of the Superior Courts ("**RSC**") in the said request or in the Notice of Motion. The affidavit of the Legal and Regulatory Affairs Adviser of the plaintiff, Ms. Moynihan, grounded the Notice of Motion and averred that the defendant had failed to reply to queries raised while expressing a belief that replies to request two, five, seven, ten, twelve and thirteen were wholly inadequate. Ms. Moynihan expressed her belief that it is essential that the defendant provide proper replies. Counsel for the plaintiff, Mr. Hogan, correctly relied upon and referred to O. 19(7) of the RSC for this application.

The Pleadings
3. The pleadings reveal that these are defamation proceedings arising from comments made by the defendant pilot concerning confidence in the aviation authorities during a T.V. broadcast on 12th August 2013. The plaintiff airline has alleged that the wording of the comments meant or were understood to mean *inter alia*, that the plaintiff airline was not a safe airline. The plaintiff also alleged malice on the part of the defendant.

4. The Defence delivered on 16th December 2013, denied that the relevant excerpts from the T.V. broadcast were defamatory or that the five specified meanings were the alleged natural or ordinary meaning of the words used by the defendant. The defendant pleaded that two of the alleged meanings:-

> (i) The Irish Aviation Authority was turning a blind eye to safety issues in Ryanair and;
>
> (ii) Safety issues in Ryanair were being overlooked by aviation authorities;

were true, while giving particulars of material facts and reserving the right to adduce further particulars if necessary. Paragraphs 10 and 11 of the Defence pleaded that the defendant's statement in relation to fuel league tables and safety reporting requirements were true and gave particulars of the meaning.

5. Without prejudice to the denial of the three meanings alleged by the plaintiff airline, the Defence at para. 12, pleaded that those meanings were honest opinions. The defendant then set out the particulars of honest opinion together with the particulars of material facts for these opinions.

6. Counsel for the defendant, Mr. Whelan, submitted outline written submissions and made concise oral submissions last Friday to the effect, that the plaintiff's way of using O.19(7) of the RSC and more particularly, the issue of this motion is a clear misuse of O.19(7) of the RSC. It was suggested that it was oppressive and an abuse of process.

7. Counsel for the plaintiff focused on the necessity and desirability of the defendant to furnish outstanding issues of alleged fact which would assist the plaintiff airline to deal with all facts which may be alleged at trial.

8. It cannot be said in this application that the issue of this motion is an abuse of process. The Court, nevertheless, shares the view already expressed by Hogan J. in *Armstrong v. Moffatt* [2013] 1 I.R. 417: "*It must be candidly admitted that an important and useful forensic tool had become partially debased by the habitual and indiscriminate use of the notice for particulars procedure*".

9. The Court does not condone in any way the plaintiff's long request for particulars when determining that the issue of the Notice of Motion is not an abuse of process. The first request which is dated 28th March 2014, had 46 requests with some further sub-paragraphs of requests. The rejoinder delivered on 24th July 2014, took issue with fourteen replies and that is the subject of the Notice of Motion before the Court.

10. At the hearing of this motion, counsel for the plaintiff initially identified that the plaintiff was now only pursuing rejoinders two, seven, ten, twelve and thirteen. He explained that the Court of Appeal in a similar case recently ruled in an *ex tempore* judgment that rejoinder five seeking particulars of pilots referred to had not been ordered by the Court of Appeal. Suffice to say that during the course of exchanges between the Court and counsel for the plaintiff airline, rejoinders seven, ten and thirteen were abandoned effectively. Those requests were seeking the evidence to be adduced as they were more questions that ought to be cast for the interrogatory process of the RSC, if that process was going to be pursued.

11. After the luncheon interval, counsel for the plaintiff following the suggestion of the Court returned with two revised requests for the remaining rejoinders:-

> "(2) In relation to para. 8(ii) of the Defence provide particulars of the instances of aggressive management behaviour on the part of the plaintiff which the defendant intends to rely upon;
>
> (12) In relation to para. 14(iv) of the Defence provide particulars of the instances which the defendant intends to rely upon in which other pilots of the plaintiff have reported issues to the IAA and received no substantive response"

The latter mentioned revision to rejoinder twelve followed clarification by the defendant's counsel.

12. At this point, the Court feels obliged to comment that the tone and manner of the communications from the solicitors for the plaintiff together with the absence of a focused request from them left little scope for the defendant to reply positively. It was only last Friday that senior counsel for the plaintiff refined the request.

13. The Court further notes that little or no regard was had by the plaintiff or its solicitors to the extensive documentation furnished on 13th February 2014, in reply to the Notice to Produce for inspection dated 15th January 2014, served by the plaintiff's solicitors when drafting the first request or the rejoinder.

14. The Court now returns to the affidavit which grounded this application and expresses its disapproval of a Legal Affairs Advisor (whether an officer of the Court or not) deposing to the inadequacy of replies to and the necessity for adequate replies when, ultimately, the plaintiff now seeks replies to two requests and more significantly to revised requests. The Court accepts that the Legal Affairs Advisor may not have had the benefit of advice from senior counsel at that stage but the whole saga shows how the plaintiff or its advisors debased the Notice for Particulars procedure. Suffice to say that neither the plaintiff nor its legal advisors are alone at the moment or up to recently at least in the "indiscriminate use of the notice for particulars procedure" as described by Hogan J. in *Armstrong v. Moffatt*.

15. The Court also observes in relation to the submission that *Armstrong v. Moffatt* arose in different circumstances (i.e. a personal injury claim falling within the remit of the Civil Liability and Courts Act 2004) that the Defamation Act 2009 also modernised and codified the way in which defamation actions may be prosecuted and defended. There will be other occasions on which the Court can deal extensively with any issue requiring determinations in this area. Moreover, the Court reiterates its earlier call for "*a more discriminating approach on the part of the legal community to the question of particulars*".

16. Counsel for the plaintiff engaged with the Court's questions about the concept of asking too many questions which only expand the nature of a claim. He explained that sometimes it is better to be safe than sorry. Legal practitioners and legal advisors ought to be more circumspect and to heed the words of Hogan J. in *Armstrong v. Moffatt* that the fox is more likely to prevail than the lion.

17. So, does the plaintiff need the two revised particulars now sought, to deliver a reply and a Defence to the counter claim? The Court is firmly of the view that the plaintiff has had, since the earlier part of 2014, the necessary particulars to deliver its reply and its defence to the counter claim, given all that has been described earlier in this judgment.

18. The Court can consider any application today to extend the time for delivery in the reply and the Defence in order to allow the parties to close the pleadings and to proceed with the case, if the plaintiff and the defendant cannot or will not agree a short extension of time for the closing of the pleadings.

19. Order 19(7)(3) of the RSC as it applies to this application provides that:-

> *"Particulars shall not be ordered under this rule to be delivered before reply, unless the Court shall be of opinion that they are necessary or desirable to enable the plaintiff to plead or for any other special reason".*

No special reason has been advanced and even if the Court is wrong in its application of O. 19(7)(3) of the RSC, the Supreme Court, as long ago as 1985 in *Cooney v. Browne* [1986] I.R. 185 cited Gatley on Libel and Slander:

> *"That a party is entitled to an order for particulars only for the purpose of ascertaining the nature of his opponents case that he has to meet, and not for the purpose of ascertaining the evidence by which his opponent proposes to prove it".*

20. Therefore, in regard to the revised rejoinder two, the Court finds that the defendant has sufficient particulars of the alleged aggressive management behaviour and the trial court can deal with any application which may be considered necessary to confine the evidence to be adduced. If there are grounds for believing that witnesses will stray from the specific details of the alleged behaviour already given in the replies and the documentation given in reply to the Notice to Produce for inspection, the Court can deal with that at or immediately before the commencement of the trial. As far as rejoinder twelve is concerned, this request is directed at ascertaining evidence as opposed to discovering the nature of the defendant's case. The defendant is aware of the Defence and range of evidence which may be presented at trial. If the range of evidence goes beyond the extent of the particulars already given, the plaintiff can apply for directions at or before trial in regard to the evidence which may go beyond the information already given to the plaintiff and his legal advisors.

21. In the circumstances, the Court refuses the wide order originally sought in the Notice of Motion and also the revised application which arose during the course of the hearing of this application last Friday.

22. As stated, the Court can now hear applications in regard to the time for delivering a reply and defence to the counter claim and in respect of the costs of this application.

Following an exchange between counsel and the Court, the Court extended the time for the delivery of a reply and a defence to the counter claim by four weeks.