

## THE HIGH COURT

[2013 No. 12987 P]

BETWEEN

GLEND A GENOCKEY

PLAINTIFF

AND

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND

DEFENDANT

**JUDGMENT of Mr. Justice Robert Eagar delivered on the 28th day of July, 2017**

1. This case concerns a claim of misrepresentation, negligent misstatement, and breach of contract arising out of the plaintiff being offered the position of Administrator by the Defendant, its servants or agent.

**Facts**

2. On the 19th of July, 2013, the plaintiff emailed Ed Meagher, Senior Manager in the Loans Administration department of the defendant employer. The email sent by the plaintiff asked if Mr. Meagher would consider her C.V. for any upcoming positions. Attached to the email was her C.V., which set out amongst other things her educational history. Included in this information was the plaintiff's leaving certificate results, which stated as follows: '1992-1997 – Holy Faith, Killester – 3 (honours) 4 (passes)'. In evidence, the plaintiff admitted that these results did not reflect what she had actually received in her leaving certificate. In reality, the plaintiff had received 4 passes and 3 fails in pass level subjects. She stated in evidence that she had forgotten over time what her results were, they went out of her head. She had never handed her leaving certificate results into any employer, as no previous employer had required leaving certificate results from her.

3. At the time of her emailing Mr. Meagher initially, no positions were available with the defendant employer. Mr. Meagher in email correspondence on the 15th of August, 2013, informed the plaintiff of this, but said that he would keep her C.V. on file in the event of a position opening up.

4. On the 19th of October, 2013, the plaintiff was contacted by agents of the defendant employer with a view to interviewing her for the position of Loans Administrator. She was asked to bring with her to interview the following documents – a completed and signed application form, and original proof of qualifications.

5. The plaintiff was interviewed on the 23rd of September, 2013. On this date she brought with her to the interview the relevant application form, however, she did not bring with her original proof of qualifications.

6. Several points regarding the application form completed by the plaintiff prior to interview are noted:

- a. The application form states that all applicants will undergo a pre-employment screening process.
- b. Additional documentation required of any successful candidate prior to commencing employment includes original documentation in relation to the required educational qualifications.
- c. Moreover, the application form ends with a declaration to be signed by the candidate, which makes the following points:

"an offer of employment is subject to verification of educational qualifications, proof of identification [...]"

Any deliberate misrepresentation or omission could result in the withdrawal of any offer of employment (if successful), or in dismissal should employment have commenced."

7. The plaintiff completed her interview and on 2nd of October, 2013, she received a phone call from Lynsey King. Ms. King works for the defendant employer in their recruitment department. Ms. King in evidence stated that she informed the plaintiff of her success at interview, and that she was being offered the job.

8. A point of dispute arises as to the precise wording utilised by Ms. King in offering the job to the plaintiff. The plaintiff contends that this was an unconditional offer, and she was asked when she could begin. The plaintiff in evidence stated that she was under the impression that the defendant employer wanted her to start as soon as possible. Ms. King stated that she does not specifically remember the conversation with the plaintiff on the phone. However, it is standard practice for her in making such phone calls to offer the job to the candidate, and if the candidate accepts the offer, she would inform the candidate that any offer from the defendant employer is subject to successful completion of pre-hire screening checks. This would include confirmation of documents and C.V.'s, which the plaintiff had not provided as of yet to the defendant, despite being asked to do so previously.

9. The plaintiff informed Ms. King that she would give her current employer two weeks' notice, and the agreed start date for the plaintiff to commence employment with the defendant was set at 21st of October, 2013.

10. On 15th of October, 2013, the plaintiff received a call from Emma Wadding, servant or agent of the defendant. She informed the plaintiff that she would require a reference from the plaintiff's current employer, as well as proof of educational qualifications. The plaintiff asked would her post leaving certificate results received from Marino College suffice, and on the 16th of October, 2013, she dropped these in to Ms. Wadding. She received a phone call from Catriona Delaney, servant or agent of the defendant employer on 17th of October, 2013, informing the plaintiff that her leaving certificate results were required before commencing employment. On this date, the plaintiff also received a job offer in the post from the defendant employer. This offer stated the following:

"I am pleased to formally offer you a position of Administrator as a fixed-term employee with the Governor and Company of the Bank of Ireland [...] This offer is subject to receipt of two satisfactory references, one from a previous employer and one from your current employer, Medical Assessment, verification of your qualifications and the information you have

provided on the Application Form.”

11. The plaintiff states that on the 18th of October, 2013, her partner collected her leaving certificate results from Holy Faith, and subsequently brought the results to the defendant employer’s recruitment office. Her then manager also provided a reference for the plaintiff to the defendant employer at approximately 2:30 pm that day.

12. The plaintiff later in the day received a call from a servant or agent of the defendant employer stating that the defendant employer could no longer offer her the position of Administrator, as she had failed Maths in the leaving certificate.

#### **Submissions of the Plaintiff**

13. The plaintiff’s claim is for damages for breach of contract, damages for misrepresentation and/or breach of warranty, damages for wrongful dismissal, damages for negligence and/or negligent misstatement and breach of duty of care. The central allegation of the plaintiff in these respects is that the defendant represented to her that she was receiving an unconditional offer of employment when she was phoned by Ms. King on 2nd of October, 2013, and that she was effectively advised to hand in her notice in her existing job, with a view to taking up employment with the defendant employer.

14. Counsel for the plaintiff argues that the court may find the defendant liable in contract and tort, citing *Carey v. Independent Newspapers* [2004] 3 I.R. 52.

15. He also cites the above judgment in support of the plaintiff’s claim for damages, and states that the court may look to what the plaintiff would have earned had she stayed in her position with her previous employer in awarding damages.

#### **Submissions of the Defendant**

16. Counsel for the defendant disputes that the offer made to the plaintiff on the 2nd of October, 2013 was an unconditional offer of employment. Ms. King in evidence that she informs the candidate that they should be aware that any offer is subject to the successful completion of pre-hire screening checks. He argues that the court should favour Ms. King’s evidence over that of the plaintiff’s. Ms. King’s evidence ought to be contextualised, in that her phone call was followed by a written offer from the defendant employer, which contained an express limitation, as set out above:

“I am pleased to formally offer you a position of Administrator as a fixed-term employee with the Governor and Company of the Bank of Ireland [...] This offer is subject to receipt of two satisfactory references, one from a previous employer and one from your current employer, Medical Assessment, verification of your qualifications and the information you have provided on the Application Form.”

17. He states that there can be no doubting that the offer made verbally to the plaintiff and the offer repeated in writing, received on 15th of October, 2013 was subject to several requirements. The case is simply that the plaintiff did not comply with these requirements.

18. He states that it for the court to draw inferences as to the reality of her results handed in to the defendant’s recruitment office, and the leaving certificate results the plaintiff claimed to have received when she initially emailed her C.V. to the defendant employer for consideration. He also highlights the lateness of the plaintiff handing her results in to her employer.

19. To further strengthen the defendant’s claim that the job offer was subject to requirements, counsel points to the initial application form filled out by the plaintiff. First, the application form states that all applicants will undergo a pre-employment screening process. Secondly, the form states that additional documentation will be required of any successful candidate prior to commencing employment, including original documentation in relation to the required educational qualifications. The plaintiff failed to provide the defendant employer with this documentation. Furthermore, the declaration the plaintiff signed at the end of the application form, to which she attached her C.V. stated the following:

“an offer of employment is subject to verification of educational qualifications, proof of identification [...]

Any deliberate misrepresentation or omission could result in the withdrawal of any offer of employment (if successful), or in dismissal should employment have commenced.”

20. The plaintiff declared the information she had provided, that she had received 3 honours and 4 passes in her leaving certificate exams, was true and accurate. In reality, the plaintiff had received 4 passes and 3 fails in pass level subjects in her leaving certificate exams.

21. Counsel for the defendant thus argues that any misfortune that befalls the plaintiff stems from her own failings: her failure to fill out the application form accurately; her failure to bring her results to the interview.

22. He states that on the facts, it is evident that no unconditional offer was made to the plaintiff. The likelihood of this is supported by the defendant’s standard hiring process.

#### **Negligent Misrepresentation/Misstatement**

23. In *Carey v. Independent Newspapers* [2004] 3 I.R. 52, Gilligan J. held that it was a fundamental term of the employee’s contract that she would not have to work in the mornings. The plaintiff in that case relied on the employer’s misrepresentation and acted to her detriment, as she would not have taken up employment with the defendant unless she could work out of the office at the agreed times.

24. In *Forshall & Fine Arts & Collections Ltd. v. Walsh* (Unreported, High Court, Shanley J., 18th June, 1997) Shanley J. stated that:

“A party seeking damages for negligent misrepresentation must establish that the representor failed to exercise due care in making the representation as a result of which representation the person to whom it was made was induced to enter into the particular agreement and suffered damage in consequence of the inaccurate representation.”

25. In *King v. Aer Lingus Plc.* [2002] 3 I.R. 481, it was held that there is a duty of care to avoid making negligent representations or statements in pre-contractual, negotiation stages, which will have the effect of inducing a person to act to their detriment by leaving a previous position.

#### **Employer’s Right to Dismiss**

26. In *Sheehy v. Ryan* [2008] 4 I.R. 258, Geoghegan J. held that an employer is entitled to dismiss an employee for any reason or no reason on giving reasonable notice, dependent on the contract, in the absence of clear terms of the contrary.

#### **Decision**

27. Applying *Forshall & Fine Arts & Collections Ltd. v. Walsh* (Unreported, High Court, Shanley J., 18th of June, 1997), the plaintiff has not established that the defendant failed to exercise a duty of care in making a representation to the plaintiff to enter into the agreement, acting to her detriment. At all stages of the hiring process, it was made clear that the job offer was conditional upon the plaintiff meeting certain requirements: in the declaration she signed at application stage; at interview stage; when she was offered the job on the phone; when she was sent a written offer in the post.

28. This Court believes the plaintiff when she states that she overstated her results unwittingly. However, in applying *Sheehy v. Ryan* [2008] 4 I.R. 258, it was made clear by the defendant employer that a term of any successful candidate's employment would be that they meet specific educational criteria. Unfortunately, the plaintiff did not meet these criteria, and thus the defendant employer had the right to dismiss the plaintiff for this reason.

29. For all these reasons, the court cannot find in favour of the plaintiff. No damages arise.