

## THE HIGH COURT

[2016 2838 P.]

BETWEEN

ANNE MCGUIRE

PLAINTIFF

AND

ULSTER BANK IRELAND LIMITED

DEFENDANT

**JUDGMENT of Mr. Justice Noonan delivered on the 7th day of December, 2018**

1. This application is brought by the defendant ("the Bank") for an order dismissing the plaintiff's claim on the grounds that it is frivolous and vexatious, is bound to fail and, insofar as it is a personal injuries action, fails to comply with the requirements of relevant legislation governing such claims.

**Relevant Facts**

2. In February 2004, First Active Plc, the defendant's predecessor in title, granted a loan facility to the plaintiff in the sum of €120,000. This was secured by a mortgage dated the 14th May, 2003 on the property known as 17 Station Court, Ennis, County Clare. On the 24th July, 2003, the mortgage was registered on the relevant folio as a charge against the property.

3. Subsequently in August 2006, First Active Plc granted a further loan facility to the plaintiff in the sum of €212,000 and the facility letter provided that the plaintiff's property known as 21 Rathban, Tulla Road, Ennis, County Clare would be provided by the plaintiff as security against the loan. There is no dispute that the plaintiff entered into these loan facilities with First Active Plc and drew down the funds. The loans were not repaid and a demand for payment was made by the Bank on the 13th January, 2011.

4. As the demand for repayment remained unsatisfied, the Bank instituted proceedings in the Circuit Court in 2013 seeking orders for possession of both properties. Proceedings bearing record number 2013/490 were instituted in respect of 21 Rathban, Tulla Road and proceedings bearing record number 2013/503 in respect of 17 Station Court.

5. On the 18th September, 2015, the proceedings 2013/490 were struck out by the Circuit Court because the Bank's proofs were not in order. The proceedings 2013/503 were struck out by the Circuit Court on the 5th April, 2016. The Bank says that the reason for this was that 17 Station Court was not the plaintiff's principle private residence thus giving rise to a jurisdictional issue for that court. The plaintiff says that the reason for the proceedings being struck out was non-compliance with a previous order of the court.

**The Plaintiff's Claim in these Proceedings**

6. The plaintiff issued a plenary summons on the 1st April, 2016 as a litigant in person and served a statement of claim in May 2016. In this document, the plaintiff makes a number of discrete complaints which appear to be in summary form as follows:

"(i) The Bank was in breach of the Code of Conduct on Mortgage Arrears ("CCMA") as a result of a call to the plaintiff's home by one of its employees;

(ii) The Bank improperly instituted both sets of proceedings in the Circuit Court;

(iii) The bank refused to "engage meaningfully" with the plaintiff in relation to her debts;

In consequence of the foregoing, the plaintiff has suffered personal injuries in the form of depression, panic attacks, severe anxiety and difficulty sleeping. Her driving instructor business failed, her ability as a teacher deteriorated and her rental income decreased dramatically because of the Bank's actions complained of.

The plaintiff's constitutional rights have been infringed upon in defaming her good name by being dragged through the courts and vilified in front of her tenants.

7. The plaintiff claims €1.25 million compensation and punitive damages together with special damages yet to be ascertained.

**Discussion**

8. Although a number of issues are raised by the plaintiff in her statement of claim, the gravamen of the claim is that she has an entitlement to damages because she was sued unsuccessfully in the Circuit Court. Although not explicitly articulated as such, the only recognised legal basis for such a claim is the tort of malicious prosecution. The ingredients for bringing such a claim were discussed by Costello J. in *Dorene v. Suedes* [1981] I.R. 312 where he stated (at p. 316):

"It seems to me that the authorities establish that a claim for damages at common law will lie for the institution or maintenance of a civil action if it can be shown that the action was instituted or maintained (a) without reasonable or probable cause, (b) maliciously, and (c) that the claimant has suffered actual damage or that the impugned action was one which the law presumes will have caused the claimant damage."

9. He went on to say (at p. 318):

"As to reasonable or probable cause, it is now well established that the test to be applied by the Court is an objective test and so, when considering a claim for damages based on a civil action, the Court must itself examine the facts and consider the legal principles applicable to them, and then decide whether there were reasonable grounds for instituting or maintaining the action which it is claimed was wrongfully instituted or maintained."

10. The court observed further (at p. 319):

"Malice means the presence of some improper and wrongful motive. An intent to use the legal process in question for a purpose other than its legally appointed and appropriate purpose can amount to malice in this connection..."

11. In relation to the proceedings bearing record number 2013/490 the plaintiff pleads the following at para. 4 of her statement of claim:

"The defendant initiated proceedings against the plaintiff in the Circuit Court, case number 490/2013 in September 2013 which was unlawful as it had no charge on the property at 21 Rathban, Tulla Road, Ennis, County Clare. This caused the plaintiff extreme stress, anxiety and fear, leading to serious health issues in the future."

12. The affidavit grounding the Bank's application herein was sworn by its solicitor, Stewart Curran of Ivor Fitzpatrick & Co. and it exhibits a number of documents relevant to the two loan transactions in issue. With regard to the August 2006 loan facility for €212,000, the exhibited loan offer documentation clearly states under the heading "Security Details" the following:

"21 Rathban, Tulla Road, Ennis, County Clare."

As I have said, there is no dispute that the money was drawn down and not repaid and it certainly appears to have been the intention of the parties at the time the transaction was entered into that the loan would be secured by a charge over the property at 21 Rathban, Tulla Road.

13. Whether that charge was created or not, or imperfectly created, is unclear but may well have led to the dismissal of the claim in the Circuit Court. The fact that a party's proofs may not be in order resulting in the dismissal of the claim cannot in my view be equated with the institution of proceedings without reasonable or probable cause. The Bank was seeking repayment of an undisputed debt by the enforcement of the security agreed between the parties. Even if that were not so, there is certainly no evidence or even suggestion on the face of the pleadings of an improper or wrongful motive on the part of the Bank so as to amount to malice in the legal sense.

14. Similarly, in the context of the proceedings bearing record number 2013/503, the plaintiff pleads as follows:

"5. The defendant also issued proceedings against the plaintiff in December 2013 case number 503/2013 without having been given security of the property at 17 Station Court, Ennis, County Clare and without having the original documentation to prove its claim."

15. The exhibits to Mr. Curran's affidavit include a copy of a mortgage apparently executed by the plaintiff which relates to the property described as follows in the third schedule:

"ALL THAT AND THOSE THAT PART of the property in the townland of Clonroad More and Barony of Islands and County of Clare being the property described in Folio 21508F of the register County Clare known as 17, Station Court, Ennis, County Clare."

16. On its face at least therefore, the Bank appears to have been the beneficiary of an executed mortgage over the property in respect of which it sought possession and to that extent, I cannot see how it could possibly be alleged that those proceedings were instituted without reasonable or probable cause in the circumstances I have outlined.

17. In my view therefore, even if the facts alleged by the plaintiff in her statement of claim are assumed to be correct, they disclose no basis upon which a claim for damages for malicious prosecution could succeed. Even if that were not so, the undisputed facts that are evident from the affidavit evidence before the court demonstrates that such claim would be bound to fail. The jurisdictions to dismiss as they arise under O.19 r. 28 and the inherent jurisdiction are of course separate and distinct as explained by Clarke J. (as he then was) in *Lopes v. The Minister for Justice, Equality and Law Reform* [2014] 2 I.R. 301 where he noted (at para. 17):

"An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out at p. 308 of his judgment in *Barry v. Buckley* [1981] I.R. 306, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the court to prevent abuse can be invoked."

18. All of the authorities establish that the jurisdiction in either case is one to be sparingly invoked but nonetheless should be utilised in clear cases to avoid injustice to a defendant.

19. The consequences pleaded by the plaintiff allegedly flowing from being "unlawfully" sued in the Circuit Court are also problematic for her. She claims to have been defamed and have suffered reputational damage as a result of being "dragged through the courts". Quite apart from the fact that any such matter arising from proceedings in court is absolutely privileged, alleged reputational damage caused by being sued is not, without more, damage of which the law can take cognisance.

20. In *Independent News and Media Plc v. The Director of Corporate Enforcement* [2018] IEHC 319, the applicant complained that it had been subject to very significant reputational damage as a result of proceedings having been brought by the respondent seeking the appointment of inspectors over the applicant's company. In the course of my judgment in that case, I referred to the decision of the Supreme Court in *G. v. Collins* [2005] 1 ILRM 1 and noted (at para. 25):

"25. It seems to me that if, as the Supreme Court held in *G. v. Collins*, the making of an *ex parte* order by a court cannot give rise to legally cognisable reputational damage, it must follow that neither can the antecedent step of simply suing a party give rise to damage of which the law can take cognisance."

Having analysed that and other cases, I reach the following conclusion (at para. 61 *et seq*):

"...These authorities also to my mind establish that the damage which the applicant claims to have suffered as a result of being sued is not damage of which the court may take cognisance. Clearly if no legally cognisable damage is suffered as a result of the impugned decision, there can be no right to fair procedures. Every party exposed to litigation suffers to a greater or lesser extent damage in the form of inconvenience and expense. The most serious allegations may be levelled against parties to litigation which may or may not ultimately be proven but the mere making of such allegations can have

a very significant adverse impact on the reputation of the party against whom they are made.

62. As the cases show, however, the law cannot take account of such damage, being as it is the unavoidable consequence of the administration of justice in public mandated by the Constitution. This is part and parcel of the legal system the people have chosen."

21. Accordingly, a claim such as that posited in the present case for damage to one's reputation as a result of being sued is not one that is maintainable at law.

22. The plaintiff's claim for damages for personal injuries suffers from the same infirmity and from the additional difficulty that the plaintiff received no authorisation to institute proceedings from the Personal Injuries Assessment Board which is a statutory prerequisite by virtue of s. 12 of the Personal Injuries Assessment Act, 2003. Such proceedings must further be brought under the terms of s. 10 of the Civil Liability in Courts Act, 2005 by a personal injuries summons.

23. At para. 10 of her statement of claim, the plaintiff pleads "the plaintiff's rental income decreased dramatically caused by the actions of the defendant and its agents towards the tenants."

24. The plaintiff gives no particulars whatsoever of this plea and was asked in a notice for particulars dated the 24th October, 2016 (at 6(i)):

"Please provide full particulars of the alleged actions of the defendant and its agents towards the tenants, including details of the tenants towards whom any actions were directed and when such actions occurred."

In an unnumbered and undated reply to particulars, the plaintiff entirely ignores this request. The plea is therefore so vague and lacking particularity that it could not be construed as disclosing any cause of action against the Bank.

25. What remains therefore is a claim by the plaintiff for damages based on an alleged failure to engage with her and observe the terms of the CCMA. The legal effect of such codes was considered by Baker J. in her judgment in *Ryan v. Danske Bank A/S* [2014] IEHC 236 where she noted (at para. 22):

"In my view the codes issued by the Central Bank cannot be said to have the effect that the obligations created on licensed banks are justiciable by borrowers. The requirements of compliance are ones to which the court will have regard in the exercise of its discretionary power, inter alia, in making orders for possessions of secured premises. Non-compliance with a relevant code ... may sound in equity or in defence but it does not offer a justiciable cause of action to a plaintiff at common law."

26. Accordingly, in this respect, the plaintiff's statement of claim pleads no cause of action known to the law.

27. For completeness, I should refer to the fact that one of the plaintiff's complaints is a complaint of having sought transcripts of telephone calls with the defendant. Insofar as this could be regarded as a data access request pursuant to the provisions of the Data Protection Acts, 1988 – 2003, the plaintiff has not pleaded that she suffered any damage as a result of this alleged request not being complied with and that is an essential prerequisite – see *Collins v. FBD Insurance* [2013] IEHC 137.

## **Conclusion**

28. For these reasons therefore, I am satisfied that the plaintiff's claim herein is both frivolous and vexatious and separately is bound to fail for the same reasons. I therefore propose to dismiss this action.