Neutral Citation Number: [2011] IEHC 245

THE HIGH COURT

2006 2926 P

BETWEEN

NICOLA CONWAY

PLAINTIFF

AND

IRISH TUG OF WAR ASSOCIATION, TUG OF WAR INTERNATIONAL FEDERATION, CO KOREN, AND CATHAL McKEEVER

DEFENDANTS

Judgment of Miss Justice Laffoy delivered on 7th day of June, 2011.

1. The applications

1.1 Three applications were before the Court for hearing on 26th May, 2010 in these proceedings. The proceedings were initiated on 29th June, 2006 by plenary summons in which there was one defendant, the first defendant (the Irish Association). By order of the Court (Peart J.) made on 31st July, 2006 the plaintiff was given liberty to amend the plenary summons and issue a concurrent plenary summons. As a result, the second defendant (the International Federation), the third defendant (Mr. Koren) and the fourth defendant (Mr. McKeever), who are collectively referred to herein as the applicant defendants, were joined as defendants and served with the proceedings. On 26th September, 2006 an appearance was entered on behalf of the applicant defendants by their solicitors. The prescribed form of appearance was amended so that the heading reads "Conditional Appearance". The procedural status of the proceedings as against the applicant defendants when the first of the applications with which the Court is concerned was initiated was that the plaintiff had delivered a statement of claim on 11th September, 2007 and she had served notice to proceed on 11th November, 2009.

1.2 In the statement of claim the plaintiff is described as bringing the action "in her capacity as a Member and Club Secretary" of St. Pat's Tug of War Club (the Club) "on her own behalf and that of [the Club] and all its members". The plaintiff is a personal litigant.

1.3 The International Federation is an international body which governs all national associations, including the Irish Association, participating in the sport of organised tug of war competitions. Its headquarters, in accordance with its constitution, is located in Lucerne, Switzerland. Its current administrative headquarters is in the United States of America. Mr. Koren, who resides in the Netherlands, was the president of the International Federation in 2006 and since 2007 he has been a Honorary Life-President thereof. Mr. McKeever, who resides in Northern Ireland, is the current president of the International Federation. Mr. McKeever, as an official of International Federation, was the technical delegate at the International World Indoor Championships at Killarney in February 2006, which were held pursuant to international rules and under the auspices of the International Federation, at which the incident, which has become known as "the Killarney incident" and which is at the heart of these proceedings, occurred.

1.4 Chronologically the earliest of the applications before the Court is an application initiated by a notice of motion, which issued on 8th September, 2010, in which the applicant defendants seek:

> (a) an order pursuant to Order 19, rule 28 of the Rules of the Superior Courts 1986 (the Rules) striking out the plaintiff's plenary summons and statement of claim on the grounds that the pleadings disclose no cause of action against any of the applicant defendants and/or are frivolous and vexatious;
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> (b) alternatively, an order pursuant to the inherent jurisdiction of the Court dismissing the plaintiff's claim as being vexatious and an abuse of process, the issues litigated by the plaintiff against the applicant defendants being moot and the reliefs sought accordingly conferring no material benefit on the plaintiff.

The applicant defendants also sought relief on a lack of jurisdiction basis. That relief was abandoned at the hearing of the application. I assume that it was on the basis on which that relief was claimed that the appearance entered into on behalf of the applicant defendants was described as a "conditional" appearance. As no jurisdictional point now arises, the appearance must be treated as an unqualified appearance. The application is grounded on an affidavit sworn by Glen Johnson, secretary general of the International Federation, on 2nd July, 2010 and on affidavits sworn by Mr. Koren on 12th July, 2010 and Mr. McKeever on 30th June, 2010. No replying affidavit was filed on behalf of the plaintiff.

1.5 The second application is the plaintiff's application for judgment in default of defence, which was filed on 7th March, 2011. The plaintiff reasonably acknowledged that, should these proceedings continue in being, the Court will allow the applicant defendants time in which to deliver a defence. That application is grounded on an affidavit sworn by the plaintiff on 7th March, 2011. One aspect of that affidavit is relevant to the plaintiff's answer to the applicant defendants' first application. In dealing with the jurisdiction of the Court she referred to, *inter alia*, the Lugano Convention and averred:

> "These proceedings have as their object a tort which occurred in Killarney, County Kerry … ."

1.6 The third application is the application of the applicant defendants filed on 9th March, 2011, in which the primary relief claimed is an order pursuant to Order 15, rule 9 of the Rules confirming that the plaintiff maintains the proceedings by way of representative action on behalf or for the benefit of the persons whose names are set out in the schedule exhibited to the affidavit grounding the application. The grounding affidavit is the affidavit of Feargal Logan sworn on 24th February, 2011. The persons named in the schedule annexed to that affidavit are the following members of the Club: Leo Conway, Club Chairman; Brian McLoughlin, Club Treasurer; the plaintiff, Club Secretary; and Hugh Conway, Club Trainer.

2. Settlement of proceedings against Irish Association
2.1 These proceedings as against the Irish Association were settled by an agreement dated 24th June, 2010 (the Agreement) which was expressed to be made between the Irish Association and the Club. By order of the Court (Murphy J.) made on 7th March, 2011 the said agreement was received and filed and was deemed to be part of the order. It was ordered that the proceedings be struck out as against the Irish Association. At the same time other proceedings in this Court instituted by the plaintiff against the Irish Association were struck out (Record No. 2007/3355P; Record No. 2009/8278P). Accordingly, the position is that these proceedings are extant only as against the applicant defendants.

2.2 It was provided in the Agreement that disputes and differences which had arisen between the parties thereto should be abandoned and resolved and all litigation between the parties should be terminated forthwith by consent and each party should take the required step for the implementation thereof and should bear their own costs and outlay of such litigation. Significantly, it was also provided as follows:

> "[The] …. Club shall be entitled to participate in all competitions organised or sponsored by the [Irish Association] on the same terms and conditions as shall be applicable to all other Clubs entitled to so participate."

3. The Killarney incident and its consequences as pleaded in the statement of claim
3.1 As pleaded in the statement of claim, the Killarney incident arose during the first competition of the championships, when a dispute arose concerning the wearing of "non-compliant footwear" by one team (Kilroe) and, as a consequence, the three other semi-final teams, including the Club's team, objected and refused to compete against Kilroe unless it used regulation footwear. The International Federation officials ruled that Kilroe be allowed to continue to participate in the competition, notwithstanding Kilroe's use of the non-compliant footwear. In the circumstances, the three other semi-final teams "had no honourable alternative but to withdraw from the competition unless [the International Federation] rules on footwear were adhered to".

3.2 Also in issue in the proceedings are the disciplinary sanctions levied against the Club as a result of its withdrawal from the competition. The sanctioning process is outlined in the statement of claim as having three stages. First, on 19th March, 2006 the executive committee of the Irish Association considered a request from the International Federation to ban, *inter alia*, the Club and the individual members involved in the Killarney incident from both "national and international tug of war" and decided that, while it would not condone the actions of the Club, neither would it condemn the actions. Secondly, the Club's representatives having been called to a meeting of what is described as an "*Ad-Hoc* Disciplinary Panel" conducted on 17th May, 2006, by letter dated 21st May, 2006 the Club was informed of the Irish Association's decision: a two year ban on taking part in international competitions, of which one year and nine months was suspended, and a fine of €1,000 were imposed on the Club. These proceedings were initiated on 29th June, 2006 prior to the third stage. The third stage, apparently, arose from a letter of 11th August, 2006 from the International Federation to the Irish Association, in which, according to the statement of claim, the Irish Association was informed that the International Federation "by using new powers received at Congress in May 2006 retroactively" was banning, *inter alia*, the Club and its members for two years, with the second year of the ban suspended for two years. However, as appears from the statement of claim, as between the International Federation and the Irish Association, the subsequent position of the International Federation was that the sanction imposed in the letter of 11th August, 2006 had not been accepted.

3.3 Having outlined what subsequently happened under the heading "Attempts at amicable resolution", it is pleaded in the statement of claim that on 18th January, 2007 the Club sent a letter to the International Federation, as requested by the Irish Association, in which it was stated that the Club was sorry that the "illegal footwear incident" in Killarney and the protest arising from it, in which the Club joined in solidarity with the other two clubs, had caused so much inconvenience, the Club had paid the fine levied by the Irish Association, and the Club was currently refraining from taking part in international competition in accordance with "the sentence imposed" in the letter of 11th August, 2006. By letter dated 2nd February, 2007 the Club confirmed to the Irish Association that it had served the ban imposed and paid the fine levied by the Irish Association and that it was then currently refraining from taking part in international competition and would not compete internationally until after 1st March, 2007 "in accordance with the sentence imposed by [the International Federation]".

4. The relief claimed against the applicant defendants in the statement of claim
4.1 The relief claimed against the applicant defendants as set out in the statement of claim is as follows:

> (a) a declaration that they acted *ultra vires* and contrary to the rules of the International Federation in allowing a team to compete in a competition with non-compliant footwear at the championships held in Killarney in February 2006;
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> (b) a declaration that the results of the competition are null and void;
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> (c) a declaration that any and all disciplinary sanctions made against the Club arising from the Killarney incident be deemed null and void;
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> (d) an injunction restraining all of the defendants from suspending or expelling the Club;
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> (e) an injunction restraining all of the defendants from suspending the Club from entering and/or competing in any national or international event; and
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> (f) a declaration that the applicant defendants acted *ultra vires* in the retrospective use of a power received at the International Federation Congress in May 2006 to sanction the clubs involved in the Killarney incident.

In relation to the relief sought at (b), as pleaded in the statement of claim, the Kilroe team was deemed to be the winner of the competition when the other teams, including the Club's team, withdrew from the competition.

4.2 The plaintiff also claims damages, on the basis that she has been occasioned loss, damage and expense, the only heading itemised being expenses and outlay, but no particulars being given.

5. Wrongs alleged against the applicant defendants in the statement of claim
5.1 The statement of claim contains 81 paragraphs prior to the paragraph in which the reliefs against the defendants are sought. Paragraphs 65 to 79 relate to matters in respect of which relief was sought against the Irish Association. Paragraphs 6 to 64 contain the narrative from which the matters set out in section 3 above have been abstracted. Unfortunately, as the plaintiff is a personal litigant who obviously does not have legal training, the statement of claim is not framed in a conventional manner which identifies the civil wrongs complained of and the consequential implications.

5.2 The rule which the plaintiff contends was infringed at the competition in Killarney is identified in the statement of claim as rule 8.4.2 of the International Federation's Rules for International Competition, 2005 – 2006 and it is quoted as follows:

> "The shoes to be used for indoor tug of war should be as originally produced by an acknowledged*) (sic) sport shoe manufacturer and the sole shall not be modified in any way. The sole must be made of rubber or such material as to give optimum grip but not cause damage to the pulling surface or floor.
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> *) Note: Championships controlling Officials shall arbitrate matters of dispute."

What happened in Killarney was that Mr. McKeever, as the International Federation's controlling official or technical delegate, rejected the contention of, *inter alia*, the Club, that the members of the Kilroe team were wearing non-compliant footwear. It is clear from the statement of claim that the plaintiff's position is that Mr. McKeever's decision was a bad decision. However, the basis on which it is contended that the decision was *ultra vires* and contrary to the rules of the International Federation is not pleaded. Nor is the basis on which the result of the competition is null and void, even if the decision of Mr. McKeever was wrong, pleaded.

5.3 In relation to the sanctions imposed on the Club, which the plaintiff acknowledges the Club acquiesced in, it is to be inferred from the relief claimed at (f) that the basis on which it is contended by the plaintiff that the third stage sanction was *ultra vires* was the retrospective use by the International Federation of a power which was conferred on it subsequent to the Killarney incident. In relation to the second stage sanction, it is to be inferred from the narrative description of what happened at the meeting on 17th May, 2006, that the plaintiff contends that there were procedural deficiencies in relation to the process engaged in on that occasion and that the making of the decision which ensued was without authority. For example, it is expressly pleaded that the point was made on behalf of the Club at the meeting that "no charge had actually been levelled" at the Club and it is implicit that the point was made that the *ad hoc* disciplinary panel had no power to overrule the previous decision of the executive committee. However, only one rule of the Constitution of the Irish Association is referred to in the statement of claim in this context, which is a rule which empowered the imposition of "maximum penalties of 1 years suspension and/fine" where a club should bring the Irish Association into disrepute in any way.

5.4 It is also implicit in what is pleaded in the statement of claim that the International Federation brought pressure to bear on the Irish Association to penalise the Club in relation to the Killarney incident and threatened to suspend the Irish Association's membership of the International Federation, if the Irish Association did not reconsider its disciplinary decision. However, it is not alleged that the behaviour of the International Federation constituted a civil wrong against the plaintiff of a type recognised in this jurisdiction.

6. Application to strike out under Order 19, rule 28
6.1 Order 19, rule 28 provides as follows:

> "The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

As is pointed out in Delany and McGrath on *Civil Procedure in the Superior Courts* (2nd Ed., at para. 14-04), it is well established that the jurisdiction conferred by Order 19, rule 28 is exercisable by reference to the pleadings only. Therefore, on the applicant defendants' application under Order 19, rule 28, the Court may consider the pleadings only and must ignore the affidavit evidence filed on behalf of the applicant defendants. Further, the Court must proceed on the basis that any statements or facts contained in the plenary summons and the statement of claim are true and can be proved by the plaintiff.

6.2 On an analysis of the statement of claim there are two distinct components in the plaintiff's claim.

6.3 One component relates to the decisions made by Mr. McKeever, as an official of the International Federation, at Killarney when he decided that the Kilroe team was not contravening rule 8.4.2 in relation to indoor shoes and when the Kilroe team was deemed the winner of the competition, effectively by default, the other three teams, including the Club's team, having withdrawn. The appropriate arbiter in relation to compliance or non-compliance with rule 8.4.2, which is, in effect, a playing rule, in accordance with the provisions of the rule as quoted by the plaintiff, was Mr. McKeever. The representatives of the Club and of the other two clubs which subsequently withdrew from the competition, were of the view that Mr. McKeever was wrong in holding that the Kilroe team was compliant with the rule. Even if it is the case that Mr. McKeever's conclusion was incorrect, that does not mean that the plaintiff has a cause of action against the International Federation or Mr. McKeever. That is the case, in my view, whether or not there was a contractual relationship between the Club and the International Federation. Counsel for the applicant defendants submitted by reference, *inter alia*, to the Constitution of the International Federation, that no such contractual relationship existed. For the purposes of the present exercise, the Court cannot have regard to the provisions of the Constitution. Equally, the Court cannot have regard to the averment of the plaintiff referred to at 1.5 above that the cause of action she is relying on is a tort, but that was the basis of her submissions, although no specific tort is pleaded. In my view, the plaintiff's case as pleaded would have to go beyond merely asserting that Mr. McKeever's conclusion was incorrect to support an action either for breach of contract or in tort on that account; it would have to be based on the irrationality of the decision. The second decision of Mr. McKeever was a consequence of the Club and the Club's team and the two other competing teams voluntarily withdrawing from the competition. I cannot see how that decision gives rise to a cause of action on the part of the plaintiff against the applicant defendants.

6.4 The other component, which, *prima facie*, is more likely to be justiciable, is the action taken against the Club by the Irish Association at the behest of the International Federation following the Killarney incident. In relation to that component, once again, the position adopted by the applicant defendants was that there was no relationship, contractual or otherwise, which entitled the plaintiff to seek the reliefs claimed against the applicant defendants and, once again, the provisions of the Constitution of the

International Federation were relied on. Very little insight into the relationship between the International Federation and the Irish Association can be gleaned from the statement of claim. However, in relation to the third stage of the sanction, it is revealed that the letter of 11th August, 2006 from the International Federation to the Irish Association referred to earlier gave the latter until 25th August, 2006 to either accept or refuse the ruling of the International Federation and threatened, in the event of a refusal, that the International Federation would bring a motion to Congress to suspend the Irish Association. It is further pleaded that a letter of 4th September, 2006 from the International Federation to the Irish Association stated that the International Federation understood that "its sanction as imposed in the letter of 11th August, 2006 had not been accepted" and, that being the case, the International Federation "would go ahead with its proposal to bring the matter to Congress 2007". There seems to be an implicit recognition in that plea that the International Federation could not compel the Irish Association to enforce its wishes, which is consistent with the position adopted by the applicant defendants that such sanction as was imposed was imposed by the Irish Association.

6.5 Having regard to the fact that the statement of claim is the product of a personal litigant, I am reluctant to strike it out under Order 19, rule 28 if it contains the substance of a cause of action, even if the cause of action is not properly pleaded. The inferences drawn in para. 5.3 above could be explicitly framed in the statement of claim in a manner which would disclose a cause of action. It is well settled that "if the statement of claim admits of an amendment which might, so to speak, save it and the action founded on it, then the action should not be dismissed" (*per* McCarthy J. in *Sun Fat Chan v. Osseous Ltd*. [1992] 1 I.R. 425 at p. 428). In the circumstances of this case, I do not think it would be proper to strike out the proceedings as against the International Federation under Order 19, rule 28 on a standalone basis. While I consider the position of Mr. Koren and Mr. McKeever to be different to that of the International Federation, in order to avoid duplication, I will deal with their respective positions when dealing with the Court's inherent jurisdiction.

7. Application under the Court's inherent jurisdiction

7.1 The Court's inherent jurisdiction to dismiss the plaintiff's claim is invoked in the applicant defendants' notice of motion on the ground that the plaintiff's claim is vexatious and an abuse of process on the basis that the issues litigated are moot and the reliefs sought confer no material benefit upon the plaintiff. In this connection, counsel for the applicant defendants relied on the following passage from Delany and McGrath at para. 14 – 28:

> "Proceedings may be considered to be an abuse of process where success therein will not confer any tangible benefit on the plaintiff. In *McSorley v. O'Mahony* Costello P. explained that:
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> > 'It is an abuse of the process of the courts to permit the court's time to be taken up with litigation which can confer no benefit on a plaintiff. It is also an abuse to permit litigation to proceed which will undoubtedly cause detriment to a defendant and which can confer no gain on a plaintiff.'"

That the proceedings which Costello J. ordered to be stayed permanently in *McSorley v. O'Mahony* would not confer any tangible benefit on the plaintiffs therein arose from the application of a statutory provision to the facts of the case. In summary, the plaintiffs had in earlier proceedings in the High Court obtained an order for damages against Cork Corporation for breach of contract in relation to the purchase by them of a property from Cork Corporation. The proceedings which were stayed by Costello J. were brought subsequent to that judgment against the plaintiffs' solicitor who acted for them in the purchase of the property and the action was for damages for negligence. Costello J., on the basis that Cork Corporation and the defendant solicitor in the proceedings before him were concurrent wrongdoers within the meaning of the Civil Liability Act 1961 (the Act of 1961), held that, by virtue of the operation of s. 18(1)(b) of the Act of 1961, the plaintiffs could not obtain a higher award for damages against the defendant solicitor than they had obtained against Cork Corporation, which was not insolvent or unable to discharge the award of damages. Accordingly, the plaintiffs could derive no benefit from maintaining the proceedings, the objective of which was to obtain an award against the defendant solicitor.

7.2 As is clear from the judgment of Costello J., the jurisdiction he was exercising was the Court's inherent jurisdiction to stay or strike out the proceedings which are frivolous or vexatious and an abuse of process, as recognised in *Barry v. Buckley* [1981] I.R. 306 and *Sun Fat Chan v. Osseous Ltd*. [1992] 1 I.R. 425, to which he referred. It is a power to be exercised only in clear and exceptional cases. However, in determining whether proceedings may be struck out under the Court's inherent jurisdiction, it is well settled that it is open to the Court to consider the evidence before it.

7.3 Broadly speaking, the position adopted on behalf of the applicant defendants was that the proceedings are an abuse of process for the following reasons:

> (a) they are bound to fail because there is no contractual relationship or nexus between the plaintiff, either in her personal capacity or as a representative of the Club, and the International Federation which would give rise to a cause of action against the International Federation;
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> (b) even if there is a contractual relationship between the plaintiff and the International Federation, the plaintiff is precluded by the Constitution of the International Federation from pursuing these proceedings in accordance with its Constitution;
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> (c) by her conduct the plaintiff is estopped from seeking the reliefs she claims at this juncture; and
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> (d) in any event, the issues raised by the plaintiff are moot and the reliefs she seeks are no longer necessary.

7.4 On whether a contract exists between the plaintiff and the International Federation, Mr. Johnson in his affidavit exhibited the Constitution of the International Federation and pointed to the following provisions: Article 5(1), which provides that it shall consist of 'affiliated Members'; Article 2(b) which defines 'Member' as a National Tug of War Association; and Article 2(a) which defines 'Associations' as the National Associations in control of tug of war in the relevant countries. The position of the International Federation is that, as an international governing body, its membership is not comprised of individual clubs or individuals, but only of national associations, so that the plaintiff does not enjoy a contractual nexus with the International Federation either as an individual participant nor as a Club representative.

7.5 Counsel for the applicant defendants cited the decision of the Court of Appeal in England and Wales in *Modahl v. British Athletic Federation Ltd*. [2002] 1 WLR 1192 on the issue as to whether there is or was a contractual nexus between the plaintiff or the Club, on the one hand, and the International Federation, on the other hand. As appears from the judgment of Latham L.J. (at para. 5) the structure of athletics in Great Britain at the relevant time was similar to the organisational structure of tug of war with which this

case is concerned. The structure was based on clubs of whom individual athletes became members, with the clubs in turn affiliated to a national association, which was the defendant in the case, and the defendant in turn being a member of the International Amateur Athletics Federation (IAAF). The core issue on that appeal was the propriety of the suspension of the claimant, Diane Modahl, from participating in any athletics competition on the basis of a finding that she had taken a banned drug while participating in an athletics' meeting in Lisbon. The Court of Appeal found, on the facts of the case, that the necessary implication from the claimant's conduct in joining a club, in competing at national and international level on the basis stated in the rules of the IAAF, which was not a party to the proceedings, and of the defendant, the national governing body for athletics in Great Britain, and in submitting herself to doping tests both in and out of competition, was that she became a party to a contract with the defendant subject to the relevant terms of its rules. Counsel for the applicant defendants relied on the following passage from the judgment of Mance L.J. (at para. 106):

> "I do not consider that it is necessary to seek to determine what the relationship was between the claimant and the IAAF, and whether that was in any respect contractual. The claimant's relationship with her own national federation was, on any view, much closer than any with the IAAF. The IAAF rules can, it seems to me, be viewed as directed primarily at national federations. Any relationship which the claimant had with the IAAF is even more sparsely evidenced than that which she had with the defendant. Making the assumption, which I am for the present purposes quite prepared to do, that she had no contractual relationship with the IAAF, that does not preclude or change my conclusion that a contract came into existence with the defendant. An absence of complete contractual protection, if that be the right analysis, is no reason for refusing to recognise the existence of limited contractual protection if the circumstances indicate that conclusion. As the facts of the present case show, the handling of any alleged incident of doping, wherever it occurred, would devolve upon the defendant."

Those observations, being obviously *obiter* and founded on the facts of that case, are of limited assistance in determining the issues in this case.

7.6 As regards the International Federation's involvement in the competitions at Killarney, the position adopted by Mr. Johnson is that the adjudication by officials of the International Federation on compliance with the rules laid down for international competition was in line with its objectives and purpose, in that Article 3(4) of its Constitution directs it to "regulate and control exclusively on the technical and sporting basis" various types of international competitions and that it did not constitute a contractual relationship.

7.7 The Court has not had sight of the rules of the Irish Association. The question which the Court has to consider is whether, insofar as the plaintiff's case is based in contract, and as counsel for the defendant applicants pointed out it is not expressly pleaded that it is, it is it bound to fail because there is no contractual relationship or nexus between the plaintiff and the applicant defendants in relation to the matters complained of by the plaintiff. While the likelihood is that there is no contractual relationship, or at most merely limited contractual protection, to use the terminology of Mancel J., in relation to the regulation of the Killarney competitions, on the state of the evidence I do not think it is possible to say definitively that there is or was none, which could give rise to a cause of action. In so stating, I am not overlooking the fact that the plaintiff's submission was that her case lies in tort.

7.8 The Constitution of the International Federation before the Court provides in Article 19 that the International Federation recognises the Court of Arbitration for Sport (CAS), with headquarters in Lausanne, Switzerland, to resolve disputes between the International Federation, members, clubs and individuals. Article 20 provides that members and clubs shall agree to recognise CAS and Article 20(2) provides that recourse to ordinary courts of law in matters associated with transgressions against articles and clauses contained in the International Federation's Constitution and Rules is prohibited until internal remedies and appeals procedures as listed within the Constitution and Rules have been exhausted, which remedies include referral to CAS. The plaintiff made the point that the version of the Constitution exhibited by Mr. Johnson is described as a 2008 edition. Be that as it may, it is usual for a court to lean in favour of disputes involving sporting bodies and clubs and members being resolved by the relevant internal mechanisms. Having said that, I am not satisfied that it would be proper to strike out the plaintiff's proceedings on that ground alone at this juncture.

7.9 The basis on which the International Federation contends that the plaintiff is estopped from continuing the proceedings against the applicant defendants at this remove is the unequivocal acknowledgment by the plaintiff that the Club actually acquiesced in the sanctions imposed on it and performed, and conformed to, them and that the sanctions are now spent. On the same basis, it was contended on behalf of the International Federation that the issues raised in these proceedings are now moot, as are the reliefs claimed by the plaintiff against the International Federation, having regard to what has happened between the Club and the Association. Having regard to those reliefs I would make the following observations:

> (a) in the light of what I have stated at 6.3 above, I consider that the plaintiff's claim based on the decision of Mr. McKeever to allow the Kilroe team compete must fail;
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> (b) similarly, I consider that the plaintiff's claim for a declaration that the results of the competition in Killarney are null and void must fail;
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> (c) the Club acquiesced in the disciplinary sanctions and performed, and conformed with, them and at this point in time a declaration that they were null and void would afford no tangible or practical benefit to the plaintiff or the Club;
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> (d) in the light of the Agreement with the Irish Association, injunctions restraining the suspension or expulsion of the Club on the basis of the historical issues on which these proceedings against the applicant defendants are based are unnecessary; and
>
> (e) similarly, a declaration that the sanctioning of the Club involved *ultra vires* retrospective use of a power of the International Federation would confer no tangible or practical benefit on the plaintiff or the Club.

7.10 Having regard to the fact that the Club acquiesced in, and performed, and conformed with, the sanctions, it is pertinent to ask why the plaintiff was intent on prosecuting these proceedings. Mr. Johnson has speculated in his affidavit that the answer is to be found in paragraph 65 of the statement of claim, wherein it is stated that, at an extraordinary general meeting of the Irish Association held on 1st April, 2007, it was decided to expel the Club unless the plaintiff withdrew these proceedings and the Club paid the International Federation's expenses. Mr. Johnson speculated that the continuation of the proceedings thereafter was an effort to challenge the expulsion by the Irish Association, a decision with which the International Federation was in no way connected. Indeed, as I have indicated, the succeeding paragraphs of the statement of claim all relate to the relief sought against the Irish Association. From April 2007 onwards the only tangible or practical benefit that the Club could have obtained from the continuation of these proceedings was the enforcement of the remedies it was pursuing against the Irish Association. Its claims against the Irish Association have now been compromised. In the circumstances, it seems to me that the pursuit of these proceedings against any of the applicant defendants is an abuse of process.

7.11 On her own submissions, the plaintiff is not pursuing a claim in contract; rather she is pursuing a claim in tort. She has not identified how the conduct of the applicant constitutes a tort recognised in Irish law, or, if it does, how these proceedings would afford relief which would put her or the Club tangibly in a better position than has been achieved by virtue of the Agreement between the Club and the Irish Association. There is no basis for a claim for damages set out in the statement of claim. While the plaintiff might achieve a sense of vindication or personal satisfaction if allowed to do so, in my view, that would not justify allowing the plaintiff to pursue these proceedings against the International Federation.

7.12 As I have stated earlier, the position of Mr. Koren and Mr. McKeever is different to that of the International Federation. Mr. Koren is correct in averring in his affidavit that there is only one explicit reference to him in the statement of claim, which merely records his attendance at a meeting in September 2006 between representatives of the International Federation and representatives of the Irish Association. No claim is pleaded against him, nor can any be inferred, arising from the conduct or outcome of that meeting. I am satisfied that there is no cause of action whatsoever disclosed against Mr. Koren personally and that he should not have been joined as a defendant in these proceedings. As regards the position of Mr. McKeever, because of his involvement in the competitions at Killarney, it is different to that of Mr. Koren. However, I have already held that no cause of action is disclosed in relation to the two decisions made by him at Killarney. As regards events subsequent to the Killarney incident, Mr. McKeever is also mentioned in paragraph 45 of the statement of claim, but no cause of action is disclosed against him. He is mentioned also in paragraphs 68 and 71 of the statement of claim because of his attendance at competitions in 2007. However, the statement of claim, in my view, does not disclose any cause of action against him personally arising out of such attendance. Overall, I am satisfied that the statement of claim discloses no cause of action against Mr. McKeever personally, or as an officer of the International Federation.

7.13 Finally, the manner in which the plaintiff responded at the hearing to the application of the applicant defendants under Order 15, rule 9 is of considerable significance in the exercise of the Court's inherent jurisdiction to strike out. As is pointed out in Delany & McGrath (*op. cit.*) at para. 6 - 15, where a person seeks to sue in a representative capacity, an application should be brought seeking a representative order authorising the party to sue on behalf of persons whose names and addresses are exhibited in the affidavit grounding the application. No such application was brought by the plaintiff in this matter. In response to the application of the applicant defendants, the plaintiff told the Court that, notwithstanding what is pleaded in the statement of claim, she did not bring these proceedings in a representative capacity and, moreover, she has no signatures, which I take to mean that she does not have the authority of the officials of the Club named in the schedule to Mr. Logan's grounding affidavit to sue in a representative capacity on their behalf. The contention of the plaintiff that she is not suing in a representative capacity, notwithstanding what she has pleaded in the statement of claim, raises additional issues, for example, what standing she has in her personal capacity to maintain these proceedings against the International Federation. It is noteworthy that the Agreement which was made a rule of Court in these proceedings compromising the claims against the Irish Association was made between the Irish Association and the Club and binds the Club. Clearly, neither the officers of the Club named by Mr. Logan nor the members of the Club are prepared to be bound by the decision of the Court in the proceedings against the applicant defendants. That is a compelling reason for treating these proceedings against the applicant defendants as an abuse of process, because the rights which the plaintiff seeks to protect, whatever their nature, are the rights of the Club, not her personal rights. In this context, it is appropriate to record that the Killarney incident related to a men's competition.

7.14 For the reasons set out above, I consider that these proceedings as against the applicant defendants are an abuse of process and I consider that it is proper that they be struck out pursuant to the inherent jurisdiction of the Court.

8. Orders

8.1 There will be an order on the application of the applicant defendants referred to at 1.4 above dismissing these proceedings as against the applicant defendants pursuant to the Court's inherent jurisdiction.

8.2 As regards the plaintiff's application for judgment in default of defence, that does not now arise.

8.3 In relation to the applicant defendants' application referred to at 1.6 above, the Court cannot make an order to the effect that the plaintiff was maintaining the proceedings by way of representative action on behalf of persons who have not signified their authority to be treated in that fashion.