

THE HIGH COURT

[2013 No. 6274 P.]

BETWEEN

THERESA DUGGAN

PLAINTIFF

AND

COMMISSIONER OF AN GARDA SÍOCHÁNA, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr. Justice Noonan delivered on the 6th day of October, 2017

1. The two reliefs being pursued by the defendants in the within application are an order dismissing the plaintiff's claim pursuant to O. 19 r. 28 of the Rules of the Superior Courts on the grounds that it discloses no reasonable cause of action and is frivolous and/or vexatious or alternatively pursuant to the court's inherent jurisdiction on the grounds that the claim is bound to fail.

Background Facts

2. In or about 2007, the plaintiff was subjected to severe violence and rape by a man (B.F.) with whom she had been in a prior relationship and by whom she had children. The incident was investigated by the Gardaí and B.F. was convicted and sentenced before the Central Criminal Court. As a result of this incident, which the plaintiff alleges was absolutely terrifying for her, she took steps to protect herself and her children from a recurrence or reprisal in respect of the criminal process by changing her residence to an address unknown to the said B.F. or persons of his acquaintance.

3. The plaintiff believed her efforts in that regard to have been successful until on or about the 7th or 8th January, 2011, when the plaintiff answered the door of her home to be met by a summons server effecting service of family law proceedings on behalf of B.F. The plaintiff alleges that she was severely shocked and alarmed by the fact that B.F. appears to have known where she and her children were residing. She claims that it adversely affected her recovery from the psychological effects of the violence she had suffered at the hands of B.F. and that she suffered an acute anxiety reaction which required the administration of anti-depressants, anxiolytics and sleeping tablets. She complains of having developed stress related headaches as a result.

4. The plaintiff made inquiries from An Garda Síochána as to how her new address had become known to B.F. This became the subject of complaint by the plaintiff, first to An Garda Síochána and then to the Garda Ombudsman (GSOC). The plaintiff says that it was not until receipt of a letter of the 6th November, 2012, from GSOC that she became aware that a member of An Garda had accessed the Garda computer system on the 6th January, 2011, and apparently disclosed details of her address to a summons server instructed by B.F. and/or his legal adviser. It would appear that when a member of An Garda accesses the computer system, he or she has to input their I.D. Accordingly it would appear that when the I.D. of the member who accessed the computer system was discovered, GSOC placed that member under investigation and served him or her with disciplinary papers.

5. By a subsequent letter of the 15th June, 2013, the plaintiff was informed by GSOC that the member identified had denied being the person who provided her details to the summons server and it may be possible that another member accessed that information under a different member's I.D. GSOC accordingly concluded that it had not been possible to positively identify the Garda who disclosed the information. The investigation was closed.

6. The plaintiff commenced the within proceedings by personal injury summons issued on the 20th June, 2013. In her summons, the plaintiff pleads the foregoing facts and alleges that they give rise to a number of causes of action on foot of which she claims damages including aggravated or exemplary damages. The wrongs alleged by the plaintiff in the personal injury summons are as follows:

- a. Breach of personal confidence/privacy;
- b. Misfeasance of public office;
- c. Breach of the European Convention on Human Rights Act, 2003 and in particular s. 3 thereof;
- d. Breach of the duty of care owed to the plaintiff pursuant to s. 7 of the Data Protection Act;
- e. Intentional and reckless infliction upon the plaintiff of emotional pain and suffering.

7. The plaintiff further claims in her summons that the disclosure of the information in issue occurred as a result of the negligence, breach of duty and breach of statutory duty of the defendants.

8. Counsel for the defendants submitted that the plaintiff's primary claim arises from an alleged breach of the Data Protection Acts, 1988 and 2003. Section 2A of the Act as amended by the Data Protection Act, 2003 provides that personal data shall not be processed by a data controller unless s. 2 of the Act is complied with by the data controller and at least one of the conditions set out in s. 2A is met. Section 7 of the Act provides that a data controller or data processor owes a duty of care to the data subject concerned. A breach of that duty of care can give rise to a claim for damages. A breach of s. 7 is not actionable per se but only on proof of actual damage – see *Collins v. FBD* [2013] IEHC 137.

9. Insofar as relevant to this case, the conditions set out in s. 2A relied upon by the defendants to justify the release of the plaintiff's data are as follows:

"(b) the processing is necessary—

(iii) for compliance with a legal obligation to which the data controller is subject other than an obligation imposed by contract, or ...

(c) the processing is necessary—

- (i) for the administration of justice,
- (ii) for the performance of a function conferred on a person by or under an enactment,
- (iv) for the performance of any other function of a public nature performed in the public interest by a person..."

10. The defendants also rely on the provisions of s. 8:

"8.—Any restrictions in this Act on the disclosure of personal data do not apply if the disclosure is— ...

- (e) required by or under any enactment or by a rule of law or order of a court..."

11. The defendants submit that some or all of these exceptions apply to them by virtue of the provisions of the Garda Síochána Act, 2005 and in particular s. 7 thereof. That section provides *inter alia*:

"7.— (1) The function of the Garda Síochána is to provide policing and security services for the State with the objective of—

- (a) preserving peace and public order,...
- (c) vindicating the human rights of each individual, ...

(2) For the purpose of achieving the objective referred to in subsection (1), the Garda Síochána shall co-operate, as appropriate, with other Departments of State, agencies and bodies having, by law, responsibility for any matter relating to any aspect of that objective."

12. In essence, the submission of the defendants is that they had a duty to disclose the plaintiff's address to the summons server acting on behalf of B.F. under the provisions of s. 7 and the disclosure therefore is exempt from the provisions of the Data Protection Acts under ss. 2A and 8. If that is so, the defendants argue that the claim under this heading cannot succeed and is bound to fail. The defendants contend further that even if that were not the case, the plaintiff has not pleaded any loss known to law which would render the breach actionable at her suit. In this regard, counsel for the defendants submits that at its high water mark, the plaintiff's claim is that she suffered an anxiety reaction as a result of the events complained of and this does not amount to a recognised psychiatric illness of a kind that could ground a claim for damages for personal injuries.

13. It seems to me that the real gravamen of the defendants' application here is not that the pleadings on their face disclose no sustainable cause of action and should thus be dismissed under O. 19 r. 28 but rather that for the reasons they advance, they are bound to fail and accordingly their application falls within the court's inherent jurisdiction.

14. The law in this regard was accepted by both sides to be authoritatively set out in the judgment of the Supreme Court in *Lopes v. The Minister for Justice Equality and Law Reform* [2014] 2 I.R. 301. In delivering the judgment of the court, Clarke J. (as he then was) emphasised the distinction between the court's jurisdiction under the Rules and its inherent jurisdiction to dismiss. The court emphasised the principle established in many cases that the jurisdiction is one to be sparingly exercised and only in clear cases. The court should be slow to exercise the jurisdiction. In the course of the judgment, Clarke J. noted (at p. 309):

"In order to defeat a suggestion that a claim is bound to fail on the facts, all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings. Any assessment of the credibility of such an assertion has to be made in the context of the undoubted fact, as pointed out by McCarthy J. in *Sun Fat Chan v. Osseous Ltd.* [1992] I.R. 425, at p. 428, that experience has shown that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance."

15. Of importance, the court considered that because the plaintiff had raised a number of potentially complex legal questions to be addressed, it was not appropriate to dismiss the claim as being bound to fail on the basis of forming a view about those legal issues. Clarke J. felt that determination of those legal issues would more appropriately await a full trial which would also include a detailed consideration of the facts.

16. In the present case, the defendants have raised legal issues under the terms of both the Garda Síochána Act, 2005 and the Data Protection Acts 1988 and 2003. They argue that it is clear that these provisions when analysed show that the claim is bound to fail. I am not certain that this is so. The plaintiff alleges that the Gardaí in Dungarvan were responsible for the investigation that ultimately led to the conviction of B.F. She argues that those Gardaí, being fully au fait with the facts of the matter, cannot fail to have appreciated the seriousness from the plaintiff's point of view of the disclosure of her whereabouts to her assailant. It seems to me that it must at least be arguable that in the particular circumstances of this case, it could not be said that the Gardaí had a legal obligation to disclose that information to a servant or agent of B.F.

17. For the same reasons, it must also be at a minimum arguable that the disclosure was not necessary for the administration of justice. It might reasonably be argued by the plaintiff that the correct course for the Gardaí to adopt in the present case was to refuse to disclose the information in the absence of an appropriate court order. Had an application for such an order been made consequent upon such refusal, the court could have regulated the manner in which the disclosure took place by the imposition of any appropriate or necessary conditions such as that the information may be disclosed to B.F.'s lawyers only but not to B.F. himself. Alternatively some other mode of service might have been stipulated by the court which could have avoided the harm of which the plaintiff complains.

18. Further, if the disclosure occurred in circumstances where the party who accessed the Garda computer system did so on the false premise of using another member's I.D., then the plaintiff might reasonably argue that such a mode of access could not be viewed as complying with a legal obligation to assist in the administration of justice. These are all matters which may require to be canvassed in detail at the trial of the action. Although the plaintiff has alleged in her summons that some member of An Garda improperly accessed and disclosed her data, as the replying affidavit of the plaintiff's solicitor suggests, it is at least possible that in fact the unknown party who accessed the Garda computer with a false I.D. was not in fact a member of An Garda and if so, would not attract any of

the protections of the Garda Síochána Act, 2005.

19. The defendants' response to this point is that the plaintiff herself has pleaded that it was a Garda who accessed the computer. In fairness to the plaintiff however, she cannot at this juncture know what the true position is and it may well be that the plaintiff may ultimately amend her pleadings to include a plea that the party who accessed the Garda computer was not a Garda but a civilian member of staff for whom the defendants have vicarious responsibility.

20. All of this of course remains to be seen but merely serves to illustrate that, as Clarke J. noted, unusual and unanticipated turns on the facts frequently occur at trial.

21. For all these reason, in my view it would be wrong to come to the conclusion at this juncture that the plaintiff's claim on this issue is bound to fail. It seems to me that potentially complex legal questions may arise in the light of the facts ultimately determined at trial in this case which will call for detailed argument and analysis. It is therefore not a case where the court's inherent and sparingly resorted to jurisdiction should be engaged.

22. I am further not satisfied that the plaintiff has pleaded no actionable damage in this case. Whilst it might be said that an anxiety reaction is not a recognised psychiatric illness, depression certainly is and the administration of anti-depressant medication would at least form some basis for the suggestion that there may have been a depressive illness or an exacerbation thereof involved here. Apart from that, headaches, which are pleaded, are undoubtedly a form of personal injury for which compensation is frequently awarded.

23. Having regard to these conclusions, it seems to me that the claim cannot be dismissed and it is therefore not necessary to consider the further arguments advanced by the defendants in relation to the alternative causes of action pleaded by the plaintiff.

24. For these reasons I will dismiss this application.