

THE HIGH COURT

2016 No. 23JR

Between:

GERARD RYAN

Applicant

– and –

THE COMMISSIONER OF AN GARDA SÍOCHÁNA

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 5th May, 2017.

1. This is an application for discovery made in the context of the above-entitled judicial review proceedings.

2. Mr Ryan is a detective garda sergeant. On 21st August, 2012, certain debt recovery proceedings were commenced against him by St Raphael's Garda Credit Union Limited. On 26th November, 2012, he was declared bankrupt in the United Kingdom and was discharged from that bankruptcy a year later. In January, 2013, he was served in the debt recovery proceedings. It appears that at some time in the past, a firm of solicitors by the name of Mark Cassidy & Co., acting for St Raphael's Garda Credit Union Limited, had some form of written interaction with the Garda Commissioner regarding Mr Ryan. (That there was contact between Mark Cassidy & Co and the Garda Commissioner seems clear; the precise substance of the exchange is less so, though it does appear from the evidence before the court in the within application that the existence of the UK bankruptcy order was touched upon). The interaction with Mark Cassidy & Co. had the result, it is claimed, that on 19th May, 2015, the Garda Commissioner, acting pursuant to the Garda Síochána (Discipline) Regulations 2007 (S.I. No. 214 of 2007), established an independent board of inquiry to enquire into certain alleged breaches of discipline arising from the various facts aforesaid. Those alleged breaches (and they are but alleged) comprise the following: (i) that Mr Ryan did not notify the authorities that High Court proceedings had been or were about to be commenced against him by St Raphael's Credit Union, (ii) that Mr Ryan provided false information to a UK insolvency court to support his application for an order for bankruptcy, and (iii) that certain false and misleading entries were made in the course of applying for the UK bankruptcy order.

3. The board of inquiry convened on 7th and 8th September, 2015. On those dates, Mr Ryan and his legal team attended and made representations concerning the jurisdiction, authority and lawfulness of the disciplinary proceedings. On 16th October, 2015, those submissions were rejected by the board of inquiry which indicated an intention to proceed with its inquiry. Following on the decision of the board of inquiry rejecting Mr Ryan's submissions as to the board's jurisdiction, etc., Mr Ryan, in January, 2016, commenced the within judicial review proceedings seeking the following reliefs, as per the notice of motion of 2nd February, 2016:

"i. An Order of Certiorari by way of application for Judicial Review quashing disciplinary proceedings which have been commenced, carried on and conducted by the Respondent, which said disciplinary proceedings concern the Applicant and the Applicant's Legal, Personal and Constitutional Rights.

ii. A Declaration by way of Application for Judicial Review that the disciplinary proceedings as they are presently being carried on and conducted, fall outside the scope of authority conferred and/or are being conducted and carried on in excess of the authority conferred.

iii. A Declaration by way of Application for Judicial Review that the said disciplinary proceedings as they are presently formulated and are being carried on and conducted amount to an abuse of process and/or are otherwise null and void and of no effect.

iv. A Declaration by way of Application for Judicial Review that the disciplinary proceedings as they are presently formulated, and are being carried on and conducted, have as their object and concern an adjudication upon evidence that has already been the subject-matter of a determination by a court.

v. A Declaration that the proceedings as they are presently formulated and are being carried on and conducted amount to a collateral attack on the judgment of a court.

vi. In the alternative, a Declaration that the said disciplinary proceedings in so far as they are presently formulated, and are being carried on and conducted, fall outside the scope of the Garda Síochána (Discipline) Regulations 2007 and have strayed beyond the parameters of the investigation already completed, in that the board of enquiry are conducting investigations of their own as distinct from the holding of an Inquiry.

vii. An Order of Prohibition by way of Application for Judicial Review restraining the Respondent from the taking of any further steps, in particular an Order restraining the Respondent from holding or continuing with a Sworn Inquiry schedule for April 2016",

and certain ancillary reliefs.

4. The rationale for the reliefs sought is amplified upon in some detail in the statement grounding Mr Ryan's application for judicial review:

a. Certiorari

Mr Ryan alleges that when it comes to the disciplinary proceedings, inter alia: (i) the Garda Commissioner has acted in excess of authority and, unless restrained by court order, will continue to act in disregard of Mr Ryan's legal, personal and constitutional rights; (ii) they have been instituted for an improper purpose, being to assist St Raphael's Garda Credit Union Limited in or about the pursuit of proceedings which are presently pending before the court; (iii) the Garda Commissioner is seeking to uphold the integrity of the UK bankruptcy order for certain purposes, and for others is seeking to condemn or disregard that order; (iv) they are parallel proceedings that co-exist with the debt recovery proceedings and have as their object an inquiry into the same subject-matter of a judgment given by a court; (v) they are unlawful as

they constitute an interference with the administration of justice in civil matters; (vi) they are irregular as they have the potential to arrive at findings in conflict with the findings and judgment already given by a court; (vii) they fail to respect and uphold the rule of law; (viii) they fail to respect and/or uphold the judgment given by a court; (ix) they have as their object the undermining of a judgment given by a court; (x) they present with procedural and evidential shortcomings requiring the intervention of the court; (xi) they are akin to the exercise of a judicial power where same has already been exercised; (xii) as formulated and presently carried on, they are not confined to the making of findings in respect to allegations but also have the potential to inflict a penalty on foot of same; (xiii) there is a public interest in the observance, respect and obedience of court orders, the applicant has an interest in the UK court order, and there is a presumption of validity attaching to court orders that are enforceable in this jurisdiction.

b. Declaratory Reliefs

Mr Ryan makes the same allegations, *mutatis mutandis*, in support of his claims for declaratory relief. By way of further particulars, Mr Ryan alleges, *inter alia*, that (i) he will not receive a fair hearing having regard to the rulings made by the Board on 16th October, 2015, (ii) he will not receive a fair hearing having regard to the conduct of the proceedings and the responses of the Board thus far in relation to what Mr Ryan contends were and are reasonable requests for adjournments and in terms of facilities generally, (iii) he will not receive a fair hearing having regard to the directions given by the board of inquiry thus far pursuant to the Regulations of 2007, (iv) certain provisions of the said Regulations are adverse to the interests of Mr Ryan as they have the effect of requiring him to engage with facts, notwithstanding his objection to the jurisdiction of the Board and related matters, (v) that insofar as the said Regulations require Mr Ryan to produce a document or thing, or to submit an account of circumstances giving rise to the alleged breaches of discipline, the production of documents or the provision of such account, necessarily arises only in circumstances where the board of inquiry have jurisdiction and where the procedures are in conformity with the rule of law, and (vi) in the circumstances, the board of inquiry has adopted an autocratic approach towards and inflicted excessively harsh and authoritarian treatment as regards Mr Ryan and the disciplinary proceedings.

c. Prohibition

Mr Ryan makes the same allegations as referred to at a., *mutatis mutandis*, in support of his claims for declaratory relief. By way of further particulars, Mr Ryan alleges, *inter alia*, that (i) the institution of disciplinary proceedings in the circumstances of this case amounts to an unreasonable and irrational exercise of a discretionary power, (ii) the conduct of the disciplinary proceedings as they are presently being carried on and conducted before the board of inquiry amounts to an unreasonable and irrational exercise of power conferred, (iii) the proceedings before the board of inquiry are manifestly irregular, (iv) the board has evidenced an intention to proceed and to determine a matter or matters that have already been the subject of a determination by a court, (v) the board of inquiry has evidenced an intention to perform its function in excess of power conferred by conducting, it is claimed, an inquiry that is outside of the applicable statutory framework and outside of, or in excess of authority confirmed (Mr Ryan flags in this regard a decision of the board, contrary, it is claimed, to an earlier decision made, to await any development in civil proceedings commenced in the UK concerning the set-aside of the UK bankruptcy order), (vi) the taking by the Board of the course of action referred to in (v) is a measure that strays beyond the purpose of the original investigation, with the board, it is alleged, taking an impermissible 'wait and see' approach, rather than exercising and completing its functions with regard to such evidence as is now at hand; (vii) the disciplinary proceedings are unsatisfactory in all the circumstances; (viii) the respondent has taken into account irrelevant considerations; (ix) the respondent has arrived at findings having misdirected itself in law; (x) it is inappropriate for An Garda Síochána to invite a board of inquiry to make a ruling or determination in respect of matters that are already the subject of a ruling/determination by a court; (xi) no further steps, actions or activities in or about the conduct of the disciplinary proceedings ought to be allowed until such time as Mr Ryan's legal, personal and human rights are observed; (xii) the orders, directions and arrangements that have been made by the board of inquiry thus far have the effect of circumventing Mr Ryan's legal and personal rights; (xiii) the bankruptcy order given by the UK court is available for public scrutiny whereas any orders, directions or arrangements that might be brought into effect as a consequence of the disciplinary proceedings are not available for public scrutiny; (xiv) the proceedings are grossly defective; and (xv) the actions and activities and the proceedings as they have been carried on and conducted by the board of inquiry cannot be regarded as incidental to, or consequential upon, matters which the Legislature has expressly or by implication authorised.

5. It need hardly be emphasised that the various allegations made by Mr Ryan and described above are but allegations at this time. They are recited here merely as part of the court's description of the background facts to the within application for discovery.

6. On 10th June, 2016, the respondent delivered a statement of opposition denying all the allegations and assertions advanced by Mr Ryan. On 12th July, 2016, the solicitors for Mr Ryan wrote to the Chief State Solicitor's Office requesting voluntary discovery under three categories, being:

"1. All documents, records, papers and communications of whatever kind exchanged between the Respondent and St Raphael's Garda Credit Union and Mark Cassidy & Company Solicitors for Saint Raphael's Garda Credit Union, insofar as they relate to the Applicant....

2. All documents, records, communications and papers furnished by the Respondent to the Chairman of the Board of Enquiry....

3. All documents, records, relevant papers and communications relating to the Respondent's investigation of the [UK] bankruptcy order..."

7. Reasons were offered for each category of discovery sought. In a letter of 23rd September, 2016, the Chief State Solicitor's Office replied, refusing to make any discovery under any of the three categories sought, on the basis that each category represented a "fishing expedition" and, additionally, that Category 2 was "disproportionately broad". By notice of motion of 24th November, 2016, Mr Ryan now seeks discovery of the above-recited categories of documentation, save that the words "insofar as they relate to the Applicant" have been excised from Category 1.

8. As good a summary as any of the present law relating to discovery in a judicial review application is to be found in *Hogan and Morgan's Administrative Law in Ireland* (4th ed.), para. 16-69, which states as follows:

"While the ordinary discovery rules apply in judicial review, there are nevertheless special factors which have operated to limit the discovery in judicial review matters. First, the facts are generally not the subject of controversy in judicial review matters. Secondly, as judicial review is normally concerned with procedure rather than substance, this inevitably

will narrow the range of documents which are relevant. Indeed, 'discovery will not normally be regarded as necessary if the judicial review application is based on procedural impropriety as ordinarily that can be established without the benefit of discovery'. [Carlow Kilkenny Radio Ltd v. Broadcasting Commission of Ireland [2003] 3 IR 528, 537] Thirdly, discovery will generally be refused where the applicant has made out no positive case on a particular ground, but where discovery is simply sought 'in the hope of turning up something out of which he could fashion a possible challenge'. [Re Rooney's Application [1995] NI 398, 414-5] Here again if the challenge is based on irrationality or unreasonableness grounds, discovery 'will not normally be necessary because if the decision is clearly wrong it is not necessary to ascertain how it was arrived at'. [Kilkenny Broadcasting Co Ltd v. Broadcasting Authority of Ireland [2003] 3 IR 528, 537] The result of these factors is that discovery in judicial review applications is thus generally confined to cases where information is improperly withheld or where there is a relevant and material conflict of fact in the affidavits." (Emphasis in original).

9. The court turns now to a consideration of the various categories of discovery sought.

"1. All documents, records, papers and communications of whatever kind exchanged between the Respondent and St Raphael's Garda Credit Union and Mark Cassidy & Company Solicitors for Saint Raphael's Garda Credit Union."

10. It is pleaded that Mark Cassidy & Co. approached An Garda Síochána on behalf of St Raphael's Credit Union and that this interaction precipitated the impugned disciplinary proceedings. It is claimed by Mr Ryan that An Garda Síochána and St Raphael's Credit Union (or its solicitor) possess the communications that passed between them in this regard, which communications have not been seen by Mr Ryan. Although the disciplinary breaches alleged of Mr Ryan (and they are but alleged) are relatively net in terms of what they allege, being, it will be recalled, that (i) Mr Ryan did not notify the authorities that High Court proceedings had been or were about to be commenced against him by St Raphael's Credit Union, (ii) Mr Ryan provided false information to a UK insolvency court to support his application for an order for bankruptcy, and (iii) certain false and misleading entries were made in the course of applying for the UK bankruptcy order, notably it is pleaded as part of the judicial review application, *inter alia*, that the disciplinary proceedings have been instituted for an improper purpose, i.e. for the purpose of assisting the credit union in the debt recovery proceedings that are presently before the court. This is denied, which has the result that the fact as to whether or not the proceedings have been instituted for an improper purpose has been placed in issue. It does not appear to the court that what Mr Ryan is alleging in this regard is purely speculative: he claims that an alleged course of action by Mark Cassidy & Co. (acting for St Raphael's Garda Credit Union) had the result that the disciplinary proceedings were established with what he deduces, from the sequence of events arising, to have been established with the improper objective of ensuring his debt to the credit union goes paid. He may be right in this interpretation of events, he may be wrong in this interpretation of events; however, it does not appear to the court that one can point to those facts as described and conclude that Mr Ryan has simply made wild assertion and sought discovery in the hope that documents will come to light which support this assertion. Thus, subject to the comments that follow as to proportionality, it seems that the documents sought in Category 1 are relevant and necessary. As to proportionality, no question of disproportionality appears to the court to arise provided the words "*insofar as they relate to the applicant*" are reinstated as in the original request for voluntary discovery. (The court notes in this regard that there is no suggestion that there has been correspondence between the respondent and the credit union concerning the applicant which does not relate to the subject matter of the within proceedings). The court will, therefore, order discovery of this category of material, subject to the proviso just stated.

"2. All documents, records, communications and papers furnished by the Respondent to the Chairman of the board of inquiry"

11. It is alleged by Mr Ryan that the board of inquiry has strayed outside the scope of its remit. A board of inquiry, when discharging its responsibilities under the Regulations of 2007 at the pre-hearing stage, must supply the affected member of An Garda Síochána with, *inter alia*, the particulars of the serious breach(es) of discipline alleged against her or him; in doing so, a board, it seems, formulates the alleged breaches by reference to such information as has been communicated to it by the respondent. Thus the information sought appears to the court to form but a part of the applicable, and now impugned, disciplinary process. To the extent that a question of proportionality arises (if at all), it seems to the court that this can be resolved by the insertion immediately after the words "*board of inquiry*" of the words "*, the actions of which are, the subject of the within proceedings*", though this may be implicit in any event. The court will, therefore, order discovery of this category of material, subject to the addition of the words just stated.

"3. All documents, records, relevant papers and communications relating to the Respondent's investigation of the [UK] bankruptcy order..."

12. There is considerable overlap between this and the last category: both categories touch on the pleaded issue that the board of inquiry has strayed beyond its remit. Among the breaches of discipline alleged (and they are but alleged) against Mr Ryan at this time is that he provided false information to a UK insolvency court to support his application for an order for bankruptcy, and that certain false and misleading entries were made in the course of applying for the UK bankruptcy order. It seems likely that the chairman and members of the board of inquiry could not have formulated the said breaches of discipline without access to some form of documentation. It is possible that discovery of the documents within this category 3 would in any event fall to be discovered as part of Category 2. But on the chance that they would not, it seems to the court by reference to the pleadings and factors aforesaid, that this category of documentation is in and of itself relevant and necessary in any event. No question of proportionality appears to the court to arise as this category is clearly constrained by reference to the UK bankruptcy order that is a central concern in the disciplinary proceedings.