

THE HIGH COURT

[2007 No. 433P]

BETWEEN

THOMAS TALBOT

PLAINTIFF

AND

HIBERNIAN GROUP PLC & AMICUS THE UNION

DEFENDANTS

Judgment delivered by Ms. Justice Irvine on the 14th day of November, 2007

1. The plaintiff in these proceedings first took up employment with Hibernian Group PLC in 20th October, 1956. The plaintiff appears to have retired from his employment as a claim's handler in November of 2001.

2. In 2006, under Record No. 1726P the plaintiff instituted proceedings against Hibernian Group PLC and Amicus the Union seeking to ventilate various claims against the defendants arising from his employment over the aforementioned period. In those proceedings the plaintiff's main complaints related to the nature and ever expanding volume of work which he was required to carry out in the course of his employment. The plaintiff also complained extensively regarding the level of remuneration furnished to him in respect of his employment which he contended had significant effects upon him throughout the latter years of his employment and as of the date of his retirement in terms of both lump sum and pension entitlements.

3. The aforementioned proceedings bearing Record No. 2006 1726P also included a multitude of complaints referable to decisions of the Legal Aid Board, the Employment Appeals Tribunal, Rights Commissioners and the Labour Court. In July 2006, a new Indorsement of Claim directed to the complaints against Amicus was delivered and in that document Mr. Talbot alleged that an employee of Amicus namely one Jerry Shanahan abandoned his obligations to take care of his interests both in respect of his position and salary entitlements. He stated that he had been a member of Amicus for 50 years and that collusion between his union and his employer over a number of years and in particular 1999 contributed to the position he found himself in as of the date of his retirement.

4. The defendants in the aforementioned proceedings brought applications to the court to have those proceedings under Record No. 2006 1726P dismissed under the Provisions of O. 19 of the Rules of the Superior Courts and also under the Courts inherent jurisdiction. By order of Ms. Justice Dunne dated 11th January, 2007, the trial judge dismissed all claims, according to Mr. Talbot, not on the basis that the proceedings were vexatious or an abuse of process but rather by reason of the failure on the part of Mr. Talbot to disclose any reasonable cause of action.

5. Immediately following upon the order of Ms. Justice Dunne Mr. Talbot issued the within proceedings against the same defendants who had been the subject matter of the earlier litigation. A plenary summons was issued on 22nd January, 2007 and this document sets out the statement of the plaintiff's cause and the nature of his claim. Separate documents were delivered in respect of the claim against Hibernian Group and the claim against Amicus.

6. An appearance on behalf of the second named defendant was entered to the proceedings on 24th January, 2007 and a motion was issued on 22nd February, 2007 by the second named defendant seeking to dismiss the within action.

7. There are two notices of motion before the court which form the subject matter of this judgment and they are:

a) The second named defendant's motion to dismiss the plaintiff's claim pursuant to O. 19 Rules 27 and 28 and also pursuant to the court's inherent jurisdiction and

b) A motion issued by the plaintiff seeking judgment in default of defence dated 20th February, 2007 but filed on 27th March, 2007

8. It appears to be the case that the defendants each treated the statement of cause and nature of the claim set out in the plenary summons of 22nd January, 2007 as the de facto statement of claim and both defendants have subsequently delivered a defence to the same. The first named defendant delivered its defence on 3rd April, 2007 and the second named defendant delivered its defence on 4th May, 2007.

9. In advance of the issue by the second named defendants of its motion to dismiss the plaintiff's claim Ms. Aileen Fleming, a solicitor in the firm of Daniel Spring Solicitors wrote to the plaintiff on 29th January, 2007 complaining that the plenary summons comprised 25 complaints but did not adequately state how the same gave rise to any cause of action against Amicus. Further, Ms. Fleming advised that in the circumstances particulars would have to be delivered.

10. The plaintiff brought a motion for judgment in default of defence and this was heard before Mr. Justice Herbert on 30th April, 2007 on which date he directed the defendants to deliver their defences within two weeks. As already stated the defences were delivered on 3rd April, 2007 and 4th May, 2007. The solicitors acting on behalf of the second named defendant further raised particulars seeking to obtain further details of the plaintiff's claim. This notice for particulars has not been replied to by the plaintiff.

11. Insofar as the within proceedings are concerned the court has the benefit of the initial "statement of cause and nature of claim" delivered against both defendants on 22nd January, 2007. Further, the court has been referred to a statement of claim which was apparently filed in the Central Office on 31st October, 2007 despite the fact that the defendants each treated the plenary summons as the document setting out the plaintiff's cause of action against each of them. Notwithstanding the fact that the second named defendants motion issued in response to the plenary summons setting out the nature of Mr. Talbot's claim on 22nd January, 2007 the parties are agreed that I should have regard to this more fulsome statement of claim for the purposes of dealing with the second named defendant's application.

12. The court notes with significant regret that it appears likely that Mr. Talbot because of his ongoing dispute with the defendants in this action has received no pension payments from the first named defendant since his retirement in November, 2001 and that he has been effectively surviving upon the State old age pension for a number of years. A significant "once off" offer by the solicitors on record for the first named defendant was rejected on the basis that the same might compromise his rights in the within proceedings.

13. I have carefully considered the content of the plenary summons delivered on 22nd January, 2007 and also the statement of claim delivered on 30th October, 2007 for the purposes of adjudicating upon the second named defendant's application. I have also

compared the statement of claim to the pleas made by the plaintiff in his earlier proceedings which were dismissed by Miss Justice Dunne on 11th January, 2007. Once again the present proceedings assert wrongdoing on the part of Mr. Talbot's employers in terms of the nature and volume of the work which he was required to undertake and also the level of remuneration received by him for such work. Mr. Talbot complains about the manner in which his complaints were dealt with by his employers and he refers to these matters being dealt with by way of an internal appeals system in 1999 and by further complaints being processed through the Labour Court in 2001 and the Employment Appeals Tribunal in 2002. Once again the assertion now made by Mr. Talbot is that he is due extensive payments in respect of arrears of salary from 1984 up to the date of his retirement and significant pension and lump sum payments based upon uplifted salary payments with effect from 31st November, 2001. Interspersed with this claim in respect of salary, lump sum entitlement and pension the plaintiff supplements his claim with damning allegations of fraud, malicious intent, defamation, theft, collusion, conspiracy, bribery and corruption. These allegations are made as against his former employers and it is asserted by the plaintiff that his union the second named defendant not only failed to protect him from such activities but actively colluded and conspired to act against his interests through the agency of one Jerry Shanahan.

14. In terms of the plaintiff's complaints the timeframe of the alleged wrongdoing is significant and much of the wrongdoing is ascribed to actions on the part of the defendants commencing in 1973 and extending beyond his retirement in November, 2001. There are clearly very significant issues as to whether or not any of these complaints, even if valid are maintainable at this point in time having regard to the statute of limitations. Further, some of the complaints now made by the plaintiff have been already been adjudicated upon in some shape or form in other tribunals and this fact may well stifle the validity of any potential valid complaints.

15. Insofar as the plaintiff's claim against Amicus is concerned in the updated statement of claim the plaintiff focuses upon the actions of a Mr. Jerry Shanahan whom he alleges colluded with his employers Hibernian PLC and failed to act diligently on foot of complaints. It is alleged that Mr. Shanahan negotiated against the plaintiff's interests and as proof of his corruption the plaintiff refers to an appointment procured by Mr. Shanahan for his wife's nephew in the Claim's Department of the Hibernian Insurance Group in Cork.

16. Order 19 Rule 28 of the Rules of the Superior Courts 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."

17. In addition to the foregoing the court has an inherent jurisdiction to stay or strike out pleadings where no action is disclosed. Principally the court makes such an order to ensure that there is no abuse of the courts process.

18. The second named defendant, for the purposes of this application, contends:-

- a) That the plaintiff's claim discloses no reasonable cause of action;
- b) That the action is frivolous and vexatious;
- c) That the pleadings delivered by the plaintiff are prolix;
- d) That the endorsement of claim should be struck out or amended so as to ensure that the same does not prejudice, embarrass or delay the trial of the action.

19. The second named defendants have conceded that the plaintiff's proceedings do not constitute an abuse of process but submits to the court that no reasonable cause of action is disclosed and that the proceedings are frivolous and vexatious insofar as the second named defendant is concerned.

20. The principles that the court ought to apply when deciding whether or not to strike out proceedings pursuant to its inherent jurisdiction are to be found in the decision of McCarthy J. in *Sun Fat Chan v. Osseous Ltd.* [1992] IR 425. The court must be slow to strike out proceedings on a preliminary application and must not do so unless it is satisfied that the pleadings can not be amended to permit of a bona fide cause of action to be pursued.

21. Insofar as the court's jurisdiction under O. 19 r. 28, Baron J. in *Farrelly v. Ireland* stated that:-

"If [a plaintiff] has no reasonable chance of succeeding then the law says that it is frivolous to bring the case. Similarly it is a hardship on the defendant to have to take steps to defend something which cannot succeed and the law calls that vexatious."

22. For the purposes of the court deciding to exercise either its inherent jurisdiction or the jurisdiction conferred upon it under O. 19 r. 28 of the Rules of the Superior Courts the court must accept and proceed on the basis that any statements of fact contained in the pleadings sought to be struck out are true and can be proved by the party concerned.

23. This court is of the belief that the claim being made as against the second named defendant is one which is bound to fail even if the court is to accept fully all of the facts pleaded by the plaintiff in his statement of claim. Whilst the court must give the plaintiff the benefit of his ability to prove the facts pleaded at the trial, the court does not have to accept the truth of the assertions, implications and inferences which it is asked to draw from these facts. For example, whilst the court, for the purposes of this application, may have to accept that Mr. Gerry Shanahan negotiated a deal which was unfavourable to the union's members including the plaintiff, the court does not have to accept as fact that his actions resulted from a deliberate conspiracy or collusion with the Hibernian Insurance Company. Similarly, whilst the court must accept that the plaintiff will prove as fact that Mr. Shanahan procured a position in the Hibernian Insurance Company for his wife's nephew, it does not have to accept as fact that this amounts to proof of the corruption alleged against Mr. Shanahan. Further, even in the event of the plaintiff being in a position to establish such corruption in terms of such appointment the same would not afford Mr. Talbot any cause of action against Amicus. The height of the evidence which Mr. Talbot will be in a position to adduce a trial will be his own evidence and the court cannot accept that he has any possibility of establishing claims of this nature even if he were in the position to overcome issues such as the statute of limitations and other formal objections to his claim.

24. The terms frivolous or vexatious as referred to in the Rules of the Superior Courts have meanings very different from every day parlance. Those terms can be used to describe proceedings which may in some alternative form have already been dealt with by a

competent court or where the court cannot conclude that the plaintiff might reasonably be expected to obtain judgment. The words are also deemed to apply to actions which tend to be rolled forward into another action involving much the same complaints.

25. The court has considered the decision of McCracken J. in *Fay v. Tegral Pipes Ltd.* [2005] 2 IR, *Dykun v. Odishaw* [Unreported, Alberta Court of Queens Bench Judicial District of Edmonton, 3rd August, 2000] *Denis Riordan v. An Taoiseach & Ors.*, 11th May, 2001 and *Flanagan v. Kelly*, 26th February, 1999. The court is satisfied that the plaintiff has failed to disclose a reasonable cause of action as against the second named defendant. The court further concludes that the plaintiff's action is frivolous and vexatious within the meaning of O. 19, r. 27 of the Rules of the Superior Courts and further concludes that exercising its inherent jurisdiction to claim against the second named defendant should be dismissed.

26. The court has taken into account in reaching its conclusions all of the facts pleaded in the plenary summons and statement of claim and has had regard to the possible inferences which the court has been asked to draw therefrom. The court in deciding whether or not the proceedings are vexatious or an abuse of process and/or whether the same disclose any reasonable potential cause of action has taken into account the periods of time covered by the plaintiff's complaints and the fact that the plaintiff has litigated previously many of the matters in dispute in the current proceedings in different fora.

27. Whilst the court has not been asked to draw any conclusions from the most recent pleadings delivered by the plaintiff it does appear that the most recent statement of claim sets out much more clearly, than on previous occasions, the plaintiffs complaints against the first named defendant and also the quantification of his losses which he alleges arises therefrom. The same cannot be said of the plaintiffs claim against Amicus which remains completely amorphous, and is not pleaded in accordance with the Rules of the Superior Courts. The plaintiff's pleadings against the second named defendant failed to set out facts which are adequately particularised so as to support any maintainable cause of action.

28. The court will accordingly dismiss the proceedings against the second named defendant. The court will make an order providing for the second named defendants costs of the proceedings as against the plaintiff and will grant a stay on such an order which will only be lifted in the event of the plaintiff instituting fresh proceedings under a new record number against Amicus Limited, the union.

29. The court will therefore accede to the relief sought by the second named defendant at paras. 1 and 2 of its Notice of Motion dated 22nd February, 2007. The first named defendant is to have three weeks for the delivery of its amended defence.