Neutral Citation [2012] IEHC 390

THE HIGH COURT

[2011 No. 6329P]

BETWEEN

MARK CRIBBIN

PLAINTIFF

AND

PLC INGREDIENTS LIMITED AND VINCENT O'SULLIVAN

DEFENDANTS

Judgment of Ms. Justice Laffoy delivered on 3rd day of October, 2012.

The background to the application

1. While this judgment relates to an application by the plaintiff for an interlocutory injunction on foot of a notice of motion dated 10th July, 2012, which was returnable on 17th July, 2012, in order to give a proper perspective on the plaintiff's application and the defendants' response to it, it is necessary to consider the background in some detail.

2. The context of these proceedings, which were initiated by a plenary summons which issued on 13th July, 2011, is that the plaintiff is an employee of the first defendant (the Company). The second defendant is the managing director of the Company. The plaintiff and the second defendant are shareholders of the Company, the plaintiff being a twenty five per cent shareholder and the second defendant being a seventy five per cent shareholder. They are both directors of the Company. However, these proceedings are solely concerned with the contractual relationship arising from the status of the plaintiff as an employee and the status of the Company as his employer.

3. What triggered these proceedings was that by letter dated 6th July, 2011 from the Company, and signed on its behalf by the second defendant, to the plaintiff, the plaintiff was "officially" notified that he was "suspended from all activities as an employee of [the Company] with immediate effect until further notice to allow for a full and impartial investigation into . . . serious matters" which had been outlined in earlier correspondence between the parties, and which in the first paragraph of the letter of 6th July, 2011 were referred to as "the apparent taking of confidential information belonging to the Company by you concerning the product makeup under which customs classification and tariff rulings are obtained in respect of the Company's products". It was made clear that the suspension was paid suspension. The plenary summons in these proceedings, which issued less than a week later, sought declaratory and injunctive relief in relation to the "purported" suspension of the plaintiff and a disciplinary investigation which was threatened.

4. Contemporaneously with the plenary summons the plaintiff issued a notice of motion dated 13th July, 2011 seeking interlocutory relief restraining the defendants from treating the plaintiff as being under suspension, directing the defendants to permit the plaintiff to continue to discharge his functions as a director and employee of the Company and restraining the second defendant from conducting or participating in any disciplinary investigation or disciplinary hearing in respect of any complaint against the plaintiff other than as a complainant or witness. That motion was grounded on the very comprehensive affidavit of the plaintiff sworn on 12th July, 2011. It was responded to by an equally comprehensive affidavit of the second defendant sworn on 18th July, 2011. It would appear that the motion was adjourned from time to time. Eventually, it was adjourned to enable a process which had been suggested in a letter of 27th October, 2011 from the defendants' solicitors to the plaintiff's solicitors, to which I will refer in detail later, to take place.

5. It appears from the evidence put before the Court that separate proceedings in this Court (Record No. 2011/6119P), which obviously were initiated before these proceedings, between the Company, as plaintiff, and the plaintiff in these proceedings, as defendant, have been settled except in relation to costs and that issue stands adjourned. Although finalised pleadings in those proceedings have not been put before the Court, as I understand the position, their objective was to procure for the Company injunctive relief restraining the plaintiff in these proceedings from accessing, using or passing on to others or disclosing confidential information of the Company. Those proceedings do not have a bearing on the issue with which the Court is now concerned, and I mention them only to illustrate that an awful lot had happened before the proposal contained in the defendants' solicitors' letter of 27th October, 2011 was made. As appears from a letter from the defendants' solicitors to the plaintiff's solicitors, which was also dated 27th October, 2011, that proposal was made because, while the plaintiff's motion in these proceedings had been adjourned in July 2011 to allow outstanding issues between the parties to be mediated on, the mediation failed to resolve the outstanding issues. Before considering the proposal and what transpired subsequently, it is important to record that the plaintiff has remained on paid suspension, and that he denies any wrongdoing.

6. The proposal in the letter of 27th October, 2011 was that a senior counsel be appointed to conduct "the full and impartial investigation" referred to in the letter of 6th July, 2011 imposing the suspension. The role of the senior counsel was explained in the letter as follows:

> "This investigation will be conducted pursuant to the Companies (sic) Disciplinary Procedure as set out in the Companies (sic) Hand Book and in particular Clause 2.1 thereof. The formal procedure provided for therein sets out the procedure for a disciplinary interview which refers to the "Manager/Supervisor" which role will be performed by Senior Counsel once appointed. However given the circumstances of the investigation being conducted outside the Company Senior Counsel has only been asked to determine whether or not the allegations that have been made against your client in [the second defendant's] correspondence as referred to above, are in fact well founded. If these allegations are found to be well founded, it will be a matter for the Company to determine the appropriate sanction to be imposed on [the plaintiff]. Again given the independent nature of this investigation, we do not consider it appropriate to have an Appeal from the decision of the investigator and in these circumstances, his decision will be final as will the decision of the Company in the event that the allegations or any aspect thereof are upheld by the Investigator."

The correspondence from the second defendant referred to was the letter of 6th July, 2011 and an earlier letter of 30th June, 2011.

It was specifically stated that the plaintiff would be "assured of fair procedures and natural justice throughout the process" and that the plaintiff's legal and constitutional rights would be respected. It was then stated:

> "[The second defendant] will prepare a written account of the issues as set out in the correspondence referred to above including any supporting documentation. This will be furnished to the Investigator and a copy will be furnished to your client via our offices."

7. While an extract from the Company's Handbook has been exhibited in the plaintiff's grounding affidavit on the first interlocutory motion in July 2011, the extract does not cover Clause 2.1. The only evidence the Court has as to the content of Clause 2.1 is such as is to be discerned in the response of the plaintiff's solicitors to the proposal of 27th October, 2011, which was dated 2nd November, 2011. Having said that, it was obviously prudent to propose the appointment of an independent person to investigate the complaints against the plaintiff, which complaints emanated from the second defendant.

8. In their response dated 2nd November, 2011 the plaintiff's solicitors set out their understanding of the various stages of the procedure provided for in the Company's Handbook and highlighted what they considered to be departures from those stages in the proposal contained in the letter of 27th October, 2011. It was stated that the plaintiff objected to such departures and required full compliance with the procedures set out in the Handbook. The plaintiff's solicitors sought confirmation that the procedures as set out in the Handbook would be complied with. Notwithstanding a reminder dated 11th November, 2011 and a further reminder dated 24th November, 2011 from the plaintiff's solicitors, there was no response from the defendants' solicitors addressing the issues raised on behalf of the plaintiff. However, on the basis of the position adopted on behalf of the defendants at the hearing of the application, my understanding is that the letter of 2nd November, 2011 fairly represents the plaintiff's entitlement under the Company's Handbook.

9. Instead of a response from the defendants' solicitors, what happened was that by letter dated 22nd November, 2011 the defendants' solicitors appointed a junior counsel to carry out the investigation, because the senior counsel who were approached were not available to take on the task and they so informed the plaintiff's solicitors by letter dated 25th November, 2011. The plaintiff and his solicitors subsequently participated in the investigation conducted by the junior counsel appointed and remunerated by the defendants, to whom I will refer as "the Investigator". However, the plaintiff's solicitors' immediate response to the letter of 25th November, 2011 was to refer to the fact that the letter of 27th October, 2011 had indicated that the second defendant would be preparing a written account of the issues as set out in the correspondence, which, including supporting documentation, was to be furnished to the Investigator and the plaintiff's solicitors. The plaintiff's solicitors sought copies of all documentation furnished to the Investigator and also confirmation that the investigation process would follow the stages outlined in their letter of 2nd November, 2011 in accordance with the Company's disciplinary procedure. The response of the defendants' solicitors by letter dated 2nd December, 2011 was that the Investigator had been appointed "to carry out an independent investigation into the allegations made as against your client". It was suggested that any issues which the plaintiff's solicitors had in relation to the conduct of the investigation should be addressed to the Investigator. A separate issue was raised by the defendants' solicitors in another letter of 1st December, 2011 to the plaintiff's solicitors, that is to say, the conduct of the plaintiff at a visit to a "Trade Show" in Paris after the plaintiff was put on paid suspension, which subsequent correspondence indicates occurred in November 2011. The defendants' solicitors advised that their client considered the matter to be completely unacceptable and proposed to have the matter further investigated to ascertain whether it constituted gross misconduct pursuant to the Disciplinary Procedure in the Company's Handbook. It was stated that this issue could be dealt with either in the context of the then current investigation or separately. The promised written account of the second defendant, apparently, never materialised.

10. The first direct contact by the Investigator with the plaintiff's solicitors was by letter dated 2nd December, 2011 seeking confirmation that the plaintiff's solicitors were in fact acting for the plaintiff in relation to the investigation. In that letter the Investigator stated that, notwithstanding that his fees were being discharged by the Company, he considered his primary professional obligation in the matter was to conduct the investigation in an independent and neutral fashion in accordance with the relevant provisions of the Company's Handbook and in accordance with natural and constitutional justice. In response, the plaintiff's solicitors confirmed that they were acting on behalf of the plaintiff in the investigation. This led to a further letter dated 16th December, 2011 from the Investigator to the plaintiff's solicitors, with which copies of the documents received by him from the Company were furnished. The Investigator set out his terms of reference. In summary, his position was that he was to investigate the allegations of gross misconduct made by the second defendant and to report to the Company his findings in relation thereto. In the event that he should find that there had been misconduct on the part of the plaintiff, having reported the finding to both sides, he would then be required to make a recommendation as to the sanction, if any, which should be applied arising therefrom. The Investigator then set out his understanding of the "allegations of gross misconduct" on the part of the plaintiff which he was to investigate on the basis of "a very brief discussion" with the second defendant, which consisted of three allegations. Items one and two related to alleged downloading from the Company's computer system or acquisition otherwise by the plaintiff of commercially sensitive information and the failure of the plaintiff to give an adequate or proper explanation to the Company in relation thereto or to account for his actions, allegedly in breach of certain provisions of the Handbook in relation to e-mail and internet use and confidentiality. The third item was formulated in the following terms:

> "That [the plaintiff] wrongfully countermanded or failed to implement instructions given to him by [the second defendant] his supervisor/manager."

By letter dated 13th January, 2012 the plaintiff's solicitors sought details of the allegations of misconduct referred to in the third item and a similar request was made to the Investigator in a reminder dated 22nd February, 2012. It appears that the request was never formally answered.

11. In the meantime, the defendants' solicitors were putting pressure on the Investigator to complete the investigation, as evidenced by letters of 26th January, 2012 and 27th February, 2012. In the latter letter, the defendants' solicitors noted that the Investigator had given an assurance that his investigation and report would issue by 1st March, 2012. The plaintiff's solicitors expressed surprise on receiving a copy of that letter, because they were still awaiting details of the third item of complaint which the Investigator had indicated he was investigating. The point was reiterated in a further letter of 8th March, 2012 from the plaintiff's solicitors to the Investigator in which it was stated that, as regards the third item, it was impossible for the plaintiff to offer an explanation in relation to the allegation until he knew precisely what instructions it was contended by the second defendant that he had countermanded or failed to implement. It was suggested that the second defendant should be asked to clarify the issue so that the plaintiff could complete his response to the allegations and could comply with the Investigator's request to meet the Investigator.

12. The response of the Investigator, in a letter of 27th March, 2012 to the plaintiff's solicitors, was to the effect that the plaintiff's solicitors had been furnished with all materials which had been furnished by the Company to him. He stated that he had noted the position of the plaintiff in relation to the third item in the allegations but made the point that he could only act on the materials and information furnished to him and he would have to make his findings based upon that material and information. He suggested a

meeting with the plaintiff on 30th March, 2012. Contemporaneously, the Investigator wrote to the defendants' solicitors stating that it was his "intention to conclude the first stage of the investigation by the end of next week".

13. The plaintiff's meeting with the Investigator took place on 30th March, 2012. In the grounding affidavit on the application before the Court, the plaintiff averred that he was satisfied with the manner in which the Investigator conducted that meeting.

14. The Investigator did not conclude the first stage of the investigation by the end of the following week, as he had promised the defendants' solicitors. The defendants' solicitors understandably complained about the delay in a letter of 8th May, 2012 to the Investigator. Notwithstanding that, nothing happened. By letter dated 6th June, 2012 to the Investigator, which was sent without any prior consultation with the plaintiff or his solicitors, the defendants' solicitors informed the Investigator that his appointment as independent investigator in the matter was terminated forthwith and with immediate effect and that he was no longer required to have any role in the matter and his instructions were formally withdrawn in all respects. By letter of the same date, 6th June, 2012, the defendants' solicitors informed the plaintiff's solicitors that the Investigator's engagement had been terminated. It was indicated that the Company intended appointing a new investigator to deal with the matter and the names of three senior counsel were suggested. It was made clear that, in addition to investigating the three allegations which had been before the Investigator, further matters required to be investigated, one being the plaintiff's attendance at the "Trade Show" in Paris in November 2011 and the other being the plaintiff's involvement with a named company involved in food production. Once again, the plaintiff denies any wrongdoing.

15. The immediate reaction of the plaintiff's solicitors to the termination of the appointment of the Investigator was to express astonishment and grave concern in a letter of 8th June, 2012. It was contended that the termination of the investigation would give rise to an "inequitable delay and duplication of effort". The defendants were called upon to reinstate the Investigator so that the investigation could be concluded by him. However, it was made clear that any attempt to expand the investigation would be strenuously resisted. The defendants' solicitors read that response as not indicating whether or not the plaintiff would participate in the new investigation which they would "organise shortly". That was the end of the *inter partes* correspondence at that stage. The next step was the initiation by the plaintiff of the application with which the Court is concerned in this judgment.

The application

16. As I understand, and as, perhaps, I should recall, the plaintiff's application for an interlocutory injunction was appearing from time to time in the Chancery List. An affidavit was filed on behalf of the defendants by their solicitor, Joseph Murphy, which was sworn on 20th June, 2012, which outlined what had happened in the proceedings from the defendants' perspective between October 2011 and June 2012. I have drawn on that affidavit in outlining the background above.

17. The plaintiff's application was made on foot of a notice of motion dated 10th July, 2012, which was returnable on 17th July, 2012. The primary relief sought was an order "directing the reinstatement of the Independent Investigation by [the Investigator]". I have already outlined most of the factual matters contained in the grounding affidavit of the plaintiff, which was sworn on 27th June, 2012. The only other evidence before the Court which I consider that it is necessary to record is that, in an affidavit sworn on 9th July, 2012, Theresa O'Donoghue, the plaintiff's solicitor, averred that she had contacted the Investigator by telephone, and he informed her that he had to obtain certain information from the second defendant in order to clarify one issue, which he had not already sought, but that when he had that information he would be able to write his report, which he estimated would take two to three days. The final affidavit filed on the application was sworn on the 12th July, 2012 by Mr. Murphy on behalf of the defendants. This largely contained complaints about the delay in completing the original investigation. It was also averred that one of the three senior counsel who had been named in the letter of 6th June, 2012 had intimated that he was agreeable to carrying out the investigation and expected that it should take no longer than approximately six weeks.

Legal submissions

18. The Court has been referred to three authorities in each of which the issue was whether the Court should intervene in relation to a disciplinary process which was being conducted in the context of an employer/employee contractual relationship outside the Court.

19. The earliest in time was the decision of the High Court (Budd J.) in *Cassidy v. Shannon Castle Banquets* [2000] ELR 248. In that case, a declaration was granted that a purported dismissal, following an investigation was in breach of natural and constitutional justice and that it was without efficacy and invalid. However, an aspect of the decision on which counsel for the defendants relied was that it was made clear that the declaration granted did not "coerce a reinstatement" and that the defendant employer was entitled to proceed, if it wished, in accordance with law to conduct a further inquiry and to afford the plaintiff employee an opportunity to vindicate his name.

20. The second authority is also a decision of the High Court (Clarke J.) in *Minnock v. Irish Casing Company Ltd.* [2007] 18 ELR 229. In that case, at the suit of the plaintiff employee, Clarke J. granted an interlocutory injunction restraining the continuance of an investigation being conducted on behalf of the first defendant employer by the second defendant. The underlying rationale of the decision was that the process in question, which was not a "pure investigation", was being conducted in a flawed manner. In a passage in his judgment on which counsel for the defendants relied in this case, Clarke J. stated as follows:

> "I do not agree with the submission made on behalf of the plaintiff and repeated in much of the pre-litigation correspondence to the effect that there is an obligation on the defendants to agree with a person in the position such as the plaintiff as to what the procedure is and to the extent that the replying correspondence resisted that suggestion, I think the defendants are correct. The plaintiff is not entitled to be able to prevent an inquiry going ahead without his agreement on the procedures. That is not to say that the defendants do not have an obligation to set out the process that they intend to embark on and, in particular, when asked to do so to set out that in advance. It was only after the proceedings had commenced that the defendants set out in clear terms what the process was and stated that what was intended was that [the second defendant] would complete his inquiry and if it warranted formal disciplinary process, a separate de novo disciplinary process would take place."

The point made on behalf of the defendants in this case was that the Company appointed the Investigator without any prior consultation with the plaintiff and such appointment was not contested. The Company remunerated the Investigator. The procedure to be followed was unilaterally a matter for the Company and the termination of the appointment was a matter for the Company. It was submitted that the Court would be intervening in the employment relationship between the plaintiff and the Company to an unacceptable extent if the Court were to grant the relief sought by the plaintiff. Counsel for the defendants also pointed to the fact that, although an interlocutory injunction had been granted in the *Minnock* case, it was made clear by Clarke J. that, if the first defendant, the employer, wished to have a separate pure fact finding inquiry conducted by some person other than the second defendant, it should be free to do so.

21. The third authority relied on by counsel for the defendants was the decision of the High Court (Laffoy J.) in *McLoughlin v. Setanta*

Insurance Services Ltd. [2012] ELR 57, in which the decision in *Minnock v. Irish Casing Company Ltd*. was followed and an interlocutory injunction was granted restraining the continuance of an investigation being carried out in relation to the plaintiff employee on behalf of the defendant employer. Once again, counsel for the defendants pointed to the fact that it was made clear in that judgment (at para. 30) that it was open to the defendant employer to initiate an alternative investigation in accordance with the plaintiff's contract.

22. It was submitted on behalf of the plaintiff that the three authorities relied on by the defendants are distinguishable from this case because, on the facts of each of them, the investigative or disciplinary process was halted because the process had been found to be flawed, although it was made clear that the employer was free to start again and have a proper investigation conducted. In this case, it was submitted that the approach which the Investigator indicated he intended adopting in his correspondence with the plaintiff's solicitors was the proper approach, in that he was going to act independently. It was submitted that, barring grave circumstances, he must be allowed to complete the process and to prevent him doing so would constitute unjustified interference.

Conclusion
23. I have encountered considerable difficulty on this application in determining how to apply the principles which the Supreme Court laid down in *Campus Oil v. Minister for Industry* (No. 2) [1983] I.R. 88 by reference to which this Court determines whether to grant or refuse an application for interlocutory injunctive relief. To go back to basics, the nature of interlocutory relief was explained as follows in the judgment of O'Higgins C.J. (at p. 105):

> "Interlocutory relief is granted to an applicant where what he complains of is continuing and is causing him harm or injury which may be irreparable in the sense that it may not be possible to compensate him fairly or properly by an award of damages. Such relief is given because a period must necessarily elapse before the action can come for trial and for the purpose of keeping matters *in statu quo* until the hearing."

24. The first difficulty I have encountered is in relating the relief sought on this application to what the hearing of the substantive action will be about if the action ever comes to hearing. As will be clear from the outline of the reliefs sought in the plenary summons which I have set out earlier, the plenary action will be primarily concerned with whether or not the suspension of the plaintiff was proper. The appointment of the Investigator was a diversion on the route to the determination of that primary issue by the Court. It would have been a prudent and sensible diversion if it had produced an outcome which obviated the substantive action having to go to a hearing. However, the difficulty is in determining on what legal basis the Court, at this juncture, can compel the defendants to continue with the diversion to its terminus.

25. The absence of evidence of the content of Clause 2.1 of the Company's Handbook is not fatal, because, as I have recorded, I have interpreted the submissions made on behalf of the defendants as recognising that it is reflected in the letter of 2nd November, 2011 from the plaintiff's solicitors to the defendants' solicitors. Nor is the absence of documentary confirmation by the defendants and the plaintiff as to their respective acceptance of the role and function of the Investigator, as set out by him in his letter of 16th December, 2011, fatal. While the plaintiff's solicitors in their letter of 2nd November, 2011 did not accept the process proposed in the defendants' solicitors' letter of 27th October, 2011, which they contended was at variance with the provisions of Clause 2.1, nonetheless they participated in the process which the Investigator outlined when setting out his terms of reference in his letter of 16th December, 2011 and setting out the allegations which he had been charged with investigating, albeit there was a quibble as to the third item of the allegations, which the plaintiff seems to have abandoned. Notwithstanding the absence of any written confirmation by the defendants' solicitors, it must be assumed for present purposes that the process as described by the Investigator in his letter dated 16th December, 2011 is consistent with the role and function conferred on him by the Company. While the principals, that is to say, the Company and the plaintiff, did not expressly agree to the process being conducted by the Investigator as set out in the letter of 16th December, 2011, I think the Court must proceed on the assumption that they implicitly agreed to that course. Therefore, in broad terms, it must be concluded that there was a contractual basis for participation in the process as between the Company and the plaintiff.

26. At the risk of straying into territory which the Court should not stray into on an interlocutory application, I would make the following general observations. I would not accept the proposition that, the plaintiff having participated in the process, it was open to the Company to unilaterally "pull the plug" on the process without good reason. As counsel for the plaintiff put it, the authorities do not sanction the Company "willy-nilly" interfering with a good investigative process. On the other hand, the Company had a genuine complaint that the investigation had not been concluded within the time it reasonably expected it to be concluded. Accordingly, if the submission made by counsel for the defendants that, having regard to the decision of the Supreme Court in *Maha Lingham v. Health Service Executive* [2006] 17 ELR 137, as the plaintiff is seeking mandatory injunctive relief, he has to show at least that he has a strong case that he is likely to succeed at the hearing of the action, is correct, applying that principle as meaning that the plaintiff must show that he has a strong case that the Company acted wrongfully in terminating the appointment of the Investigator, it is not possible to conclude that the plaintiff has crossed that threshold.

27. Even accepting that the plaintiff's position is correct and that all the plaintiff has to show is that there is a fair issue to be tried that the Company acted wrongfully in unilaterally terminating the appointment of the Investigator, one is left with the question as to how making an order in the terms sought by the plaintiff would maintain the status quo pending the trial of the action. In seeking an order directing the reinstatement of the Investigator to complete the investigation, the plaintiff is seeking an outcome the objective of which is to bring finality to the issues as to whether the allegations of misconduct against him by the second defendant are established. I cannot see how the Court could properly make an order which would have that effect in the circumstances of this case on an interlocutory application. I consider that the Court would be fundamentally departing from its equitable jurisdiction to grant interlocutory injunctive relief if it were to make such an order.

28. Apart from that, the evidence before the Court strongly suggests that, whatever the Investigator's determination might be, finality would not be brought to the matter. In setting out his terms of reference in his letter of 16th December, 2011, the Investigator has stated that a finding on his part that there has not been any misconduct would conclude his investigation. As I have stated, I am assuming that that represents the basis on which the Company appointed the Investigator. However, it is clear from the letter of 6th June, 2012 that, even if the Investigator were to find that there was no misconduct on the part of the plaintiff, the Company wishes to pursue further allegations of misconduct against the plaintiff, as outlined at para. 14 above. If the Investigator was reinstated and if, having completed the investigation, he were to make a finding of misconduct against the plaintiff and recommend a sanction, the Company would not be bound by his recommendation as has been emphasised in the letter of 16th December, 2011. Apart from that, the issue of the right of the plaintiff to have recourse to a disciplinary hearing or an appeal in accordance with Clause 2.1 of the Company's Handbook, which was raised by the plaintiff's solicitors in their letter dated 2nd November, 2011, may not have been resolved by the plaintiff participating in the investigation process in accordance with the terms of reference set out in the Investigator's letter of 16th December, 2011. To put it another way, having regard to the foregoing factors, it is impossible to conclude that the balance of convenience would be served by making an order in the terms sought.

29. Taking an overview of the matter, having regard to the fact that in the application for interlocutory relief on foot of the notice of motion dated 13th July, 2011 the plaintiff raised the issue of propriety of the second defendant conducting or participating in a disciplinary investigation or disciplinary hearing in relation to any complaint against the plaintiff other than as a complainant or witness, the decision by the defendants to appoint a person to conduct an independent investigation was sensible. However, even allowing for the fact that the evidence before the Court may not tell the whole story, from the perspective of both the Company and the plaintiff it would have been desirable that the manner in which the investigation was to be conducted, its outcome and what would follow on from its outcome should have been defined with much more clarity and precision by reference to the entitlements of the parties under Clause 2.1 of the Handbook. However, the real problem is that the relief which the plaintiff is seeking on this application, in the overall context of the proceedings, is not of the type which would be appropriate to grant on an interlocutory application. Accordingly, I have come to the conclusion that the application is misconceived.

30. There will be an order dismissing the application.