

## THE HIGH COURT

[2016 No. 4395 P]

BETWEEN

CATHERINE RYAN

PLAINTIFF

AND

BANK OF IRELAND

DEFENDANT

**JUDGMENT of Mr. Justice Paul Gilligan delivered on the 17th day of June, 2016.**

1. In essence the plaintiff's claim in these proceedings is for a declaration that the purported termination of her employment by letter of the Bank of Ireland as dated the 6th day of May, 2016, is a nullity and of no effect. *Inter alia* the plaintiff claims a number of other reliefs and effectively she seeks either a return to employment with the defendant and damages as suffered to the date of her return to employment or alternatively damages both to date and into the future. In this interlocutory application the only relief being pursued on the plaintiff's behalf is the payment of her salary pending the determination of these proceedings.

2. The salient facts appear to be that the plaintiff was employed in a very senior position at a substantial salary with a leading firm of chartered accountants in the city of Dublin. She was approached by a recruiter in January, 2015, who indicated to her that the Bank of Ireland had indicated to her that they were looking for a performance and award benefits manager at a very substantial salary, and that they were looking for someone who could move into the top role in that department within eighteen months. I have been provided with a copy e-mail in this regard but no affidavit has been proffered by either of the parties herein from the recruiter.

3. It appears that the plaintiff, despite certain misgivings, proceeded to enter an interview process with the defendant's human resources department and in line with the senior position with the defendant bank which was being discussed the plaintiff underwent a number of interviews, examinations, and tests, and on the 25th June, 2015, the plaintiff was offered a contract for the position of Deputy Head of Group Performance and Reward within the Bank of Ireland Group of companies. The offer was subject to receipt of two satisfactory references, medical assessments and verification of the plaintiff's qualifications and the information she had provided on the application form.

4. The plaintiff was advised to carefully read the documents as contained in the letter of offer and she was given ten working days to either accept the offer and if she did not the offer would no longer be open for acceptance by her.

5. The plaintiff was not advised to seek legal advice as regards the terms of her employment contract as attached to the letter and neither did she.

6. Paragraph 4 of the contract provided for a probationary period and that the plaintiff would be employed on probation for a period of six months with effect from the 5th October, 2015. It was specifically set out that the plaintiff's suitability as an employee would be assessed during the probationary period and that her employment could be terminated during the probationary period on four weeks' notice if her conduct/performance was considered unsatisfactory or if it was considered that she was otherwise unsuitable to continue in employment with the company. It was provided in the contract that the probationary period could be extended at the discretion of the Bank of Ireland.

7. At para. 17(B) of the proposed contract it was specifically set out that the Bank would be entitled to terminate the plaintiff's employment at any time by giving not less than twelve weeks' written notice of termination and likewise the plaintiff would be entitled to terminate by giving the same period of notice.

8. At para. 24 of the contract under the title "Prior Agreement" it was stated that the terms and conditions as set out in the letter supersede any prior agreements, representations and commitments between the plaintiff and the Bank of Ireland Group relating to the plaintiff's employment, "all of which are hereby terminated."

9. The plaintiff proceeded to sign the letter of contract with Bank of Ireland and then resigned her position with the leading firm of accountants, with whom she was in employment and proceeded to commence work.

10. The plaintiff's period of probation was extended but culminated in a letter of termination of her employment on the 6th May, 2016, effectively on the basis that the plaintiff had failed to satisfy the defendant that she was a suitable employee to perform the role as assigned to her.

11. From the plaintiff's perspective the situation that has arisen has the gravest of consequences particularly having regard to her personal circumstances, her age, her family commitments, her ongoing financial position and her general well being, against a background where she was effectively head-hunted out of her previous, very substantial position of employment.

12. From the defendant's perspective, they take a straightforward approach relying on the terms of the contract of employment, that the plaintiff was unsuitable for the position as Deputy Head of Group Performance and Reward within the Bank of Ireland Group of companies, that any previous discussions about any aspect of the terms and conditions of the plaintiff's proposed employment are superseded by the agreement which the plaintiff entered into and in particular at para. 24 relating to prior agreement and that they are entitled within the terms of the agreement to terminate and pay the plaintiff the equivalent of four weeks' salary.

13. Mr. Callanan on the plaintiff's behalf relies effectively on the decision of Fennelly J. in the Supreme Court in *Maha Lingam v. Health Service Executive* [2005] IESC 89 and submits that, in effect, the plaintiff makes out a "strong case" for the reliefs as sought and in the particular circumstances all she is seeking is the payment of her salary pending the determination of the proceedings.

14. Mr. Connaughton on the defendant's behalf relies on the terms and conditions of the contract as entered into between the parties and the fact that there is no known precedent either in the Irish or English authorities which would in effect in the circumstances of this case entitle the plaintiff to be paid her salary on an ongoing basis pending the determination of the proceedings. It is conceded, however, on the defendant's behalf that if the Court is satisfied that the plaintiff at this interlocutory stage makes out a strong case that is likely to succeed the Court can exercise its discretion as regards the payment of the plaintiff's salary pending the trial of the action.

15. Having read and considered the affidavits as delivered and the submissions as made particularly on behalf of the plaintiff it is quite clear that issues of trust and confidence loom large as the plaintiff alleges the Bank directed her to perform compliance duties as opposed to the intended and discussed "Group Performance and Reward" duties and the plaintiff makes the most serious of allegations as against the Bank and its senior employees which in turn are flatly contradicted. It is a central issue in the plaintiff's case that she relied on the defendant's representations as to what the proposed position would entail and she maintains the position and the manner in which she was treated turned out to be very different. Accordingly, the issues of trust and confidence relate to both parties. Notwithstanding the content of the e-mail from Mairead Griffin to the plaintiff as dated the 12th January, 2015, and which in effect started the whole process rolling the defendants deny that it was ever intended that the plaintiff was to take over the senior position in the relevant department within eighteen months. The parties on occasion agree that certain conversations did take place but come nowhere near agreeing the salient aspects of those conversations and in one instance in relation to the plaintiff's averment that a lunch took place with a named employee of the defendant at a named restaurant at a particular time, the defendant's representative avers that at a point in time but not in any way relevant there may have been a lunch but it was not in the named restaurant at the particular time as alleged by the plaintiff.

16. From the plaintiff's perspective if her averments as contained on affidavit are generally correct she would make out a strong case.

17. From the defendant's perspective if the averments as made on their behalf are generally correct then it would appear that a different situation may prevail.

18. This is a case that will be determined on the evidence adduced before the Court trying the issues between the parties and in accordance with the principles as set out in *Hay v. O'Grady* [1992] I.R. 210 the trial judge will have every opportunity to assess the veracity of the evidence adduced on behalf of both parties, will have the opportunity to assess witnesses and their demeanour and the surrounding supporting facts and documents and will come to a conclusion based on the totality of the evidence adduced before the trial court.

19. This Court is not in a position in these circumstances to come to a conclusion that the plaintiff on the current state of the contested affidavit evidence of both parties makes out a strong case that is likely to succeed and as the onus rests with the plaintiff the Court is not in a position to exercise its discretion and grant the plaintiff the relief she seeks, namely the payment of her salary on an ongoing basis pending the determination of the proceedings.

20. The Court takes the view that it has to have regard to the extremely unfortunate background circumstances that pertain in the particular circumstances of this case and accordingly directs that this is a case which has to be brought to trial at the earliest possible opportunity and I will hear the submissions of counsel as to how this process can be facilitated.