

THE HIGH COURT

Record Number: 2010 No. 6979P

Between:

Patrick Clohessy

Plaintiff

And

The Legal Aid Board, the County Registrar of the County of Cork, Minister for Justice and Law Reform, Ireland and the Attorney General, Valerie Coleman and Fintan Coleman, Ann Clohessy, Judge Seán O Donnabhain, and Joseph L. Ward

Defendants

Judgment of Mr Justice Michael Peart delivered on the 20th day of February 2014:

1. The plaintiff has issued proceedings against all of the above defendants and has delivered a Statement of Claim.
2. The third named defendant, being the Minister for Justice and Law Reform, and the fourth and fifth named defendants, being Ireland and the Attorney General, have issued a Notice of Motion dated 18th January 2012 in which they seek orders dismissing the plaintiff's proceedings against them because the plaintiff makes no claim seeks any relief against them; and in the alternative they seek orders striking out proceedings on the basis that they disclose no reasonable cause of action and/or on the basis that they are frivolous and/or vexatious within the meaning of Order 19, Rule 28 of the Rules of the Superior Courts.
3. The present proceedings arise against a background of protracted dispute in relation to land which was litigated between the present plaintiff's father and the present plaintiff going back to 2001. The plaintiff's father was legally represented by solicitors employed by The Legal Aid Board which issued the necessary legal aid certificate in that regard.
4. The Statement of Claim is a lengthy, detailed and carefully prepared to document and it makes a number of allegations against the Legal Aid Board arising out of what is alleged to be a failure by it to properly assess the true nature of the claims being made against the present plaintiff by his father, failure to properly take into account when assessing the means of the plaintiff's father the fact that he had deliberately reduced his assets by placing them in a joint bank account with his daughter the fifth named defendant for the purposes of obtaining a legal aid certificate. It is also pleaded that the Legal Aid Board never made any attempt to properly determine whether the plaintiff's father had previously disclosed to the Department of Social and Family Affairs that he was not the owner of any lands at Ballincurragh, Co Cork.
5. In addition to the claims against the Legal Aid Board in relation to the granting of a legal aid certificate to the plaintiff's father, the plaintiff in the present proceedings alleges that *"the litigation instituted and maintained by the first named defendant for 9 years against this plaintiff was a champertous arrangement for the ultimate benefit of its client Peter Clohessy (now deceased) and the fifth named defendant who benefited from the fact of having the State finance the costs of the litigation"*.
6. In addition, he alleges that the Legal Aid Board, through its servants and agents, between 2001 and 2010 *"concocted, instituted, and unlawfully maintained litigation for Peter Clohessy (now deceased) based upon unfounded, misleading and fraudulent facts"*. Specifically, it is pleaded that the Legal Aid Board failed in its duty of care *"by embarking on litigation against the plaintiff on or about the 31st July 2001 when it was aware that its client Peter Clohessy (now deceased) and his natural daughter Valerie Coleman, the fifth named defendant, had been previously legally advised against attacking the Deed of Patrick Clohessy ..."*. There are other parts of the Statement of Claim in which further allegations are made against the Legal Aid Board.
7. In addition to containing allegations and claims against the Legal Aid Board, there are allegations and pleas made against the sixth, seventh and eighth named defendants.
8. But nowhere in the Statement of Claim is there any allegation made against any of the third, fourth or fifth named defendants, and no reliefs are sought against any of them specifically.
9. At paragraph 10 of the Statement of Claim, it is simply pleaded in respect of the third named defendant that he is appointed by the Government of Ireland and that *"its mandated statutory functions are many and varied including the overseeing of the proper lawful functioning of the statutory bodies under its ministerial control which includes the Legal Aid Board its servants and agents, and the employees of the Court Services working within the office of the County Registrar in so far as those functions relate to an executive function of the Government performed by the Courts Services"*.
10. At paragraph 11 of the Statement of Claim, it is pleaded in respect of the fourth and fifth named defendants (Ireland and the Attorney General) that *"the Attorney General advises the Government in matters of law and legal opinion, parliamentary drafting, statute law revision, and has as part of its office and under its umbrella the office of the Chief State Solicitor whose function includes providing a solicitor service to its principal clients, which are all government departments, the Director of Public Prosecutions, and the Garda Síochána."*
11. It seems clear to me, and it has been so submitted, that the only justification for including the third, fourth and fifth defendants is on the basis of some vicarious liability for the actions of the first named defendant. The plaintiff has submitted that ultimately Legal Aid Board is responsible to and controlled by the Minister for Justice and Law Reform, and must ultimately be liable for the actions of that Board. However, it is clear from the Civil Legal Aid Act, 1995 that while the Minister may, by order, from time to time as occasion requires, issue to the Board such general directives as to policy in relation to legal aid and advice as he or she considers necessary, the Board nevertheless is independent in its functions. In fact, Section 3 (2) of the Act provides:

"(2) the Board shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or an interest in land or

rights over or in respect of land and to acquire, hold and dispose of any other property."

In addition, Section 7 (3) of the Act provides;

"Nothing in this Act shall be construed as enabling the Minister to exercise any power or control in relation to any particular case with which the Board is or may be concerned."

12. I am completely satisfied that the third, fourth and fifth named defendants, being the applicants on foot of the present Notice of Motion, should not be required to remain in these proceedings and to defend them given that no claim is made out against them and no relief is sought against them. Any claims being made in these proceedings by the plaintiff are in reality aimed at the other defendants against whom and in respect of which reliefs are sought and claims are made. It would be oppressive and unfair, and therefore unjust, that these three defendants should not be permitted to have the proceedings struck out as against them.

13. I will therefore make the order is sought, namely striking out these proceedings as against the third named defendant, being the Minister for Justice and Law Reform, the fourth named defendant, namely Ireland, and the fifth named defendant namely The Attorney General, and I do so on the basis that no reasonable cause of action is disclosed on the pleadings in respect of the defendants.