Neutral Citation Number: [2009] IEHC 340

THE HIGH COURT

2008 5082 P

BETWEEN

MAURA McHUGH AND LISA McHUGH

PLAINTIFFS

AND

ALLIED IRISH BANKS PLC, MARY BRYNE, RAY DOLAN AND PAT ENRIGHT

DEFENDANTS

JUDGMENT of Ms. Justice Dunne delivered on the 7th day of July, 2009

This is an application on behalf of the first named defendant herein seeking an order dismissing the plaintiffs claim as being an abuse of process and as duplicating the cause of action already before the court in proceedings having Record No. 4057P/2005, between Maura McHugh and Lisa McHugh plaintiffs and Allied Irish Banks Plc defendant. The first named defendant also seeks an order restraining the plaintiffs from issuing further proceedings in respect of the cause of action pleaded in proceedings No. 2005/4057P until such proceedings have been determined or discontinued.

The affidavit grounding the application was sworn by Maeve McQuaid on the 1st October, 2008. In her affidavit she explains that apart from Allied Irish Banks plc, the other defendants are either employees or former employees of the first named defendant. She deposes to the fact that the proceedings herein are an abuse of process and that these proceedings represent an effort by the plaintiffs to circumvent certain orders made in the other proceedings referred to against Allied Irish Banks bearing the Record No. 2005 No. 4057P. She states that those proceedings are substantially the same if not identical to the current proceedings. It appears from her affidavit that a number of applications have been made in the course of the 2005 proceedings. In the course of those proceedings Lisa McHugh was added as a plaintiff to the proceedings. A number of amendments were made to the original plenary summons. However, the matter of most concern to the first named defendant is the application that was made on behalf of the plaintiffs to join those persons named as the second, third and fourth named defendants, as defendants in the 2005 proceedings. An order was made by the Master of the High Court on the 11th May, 2007, refusing an application to add those named individuals as co-defendants in the 2005 proceedings. The plaintiffs appealed that order and the matter came before the High Court (Edwards J.) on the 22nd October, 2007. It would be helpful to look at the notice of motion in relation to the hearing before Edwards J. on that date. It looked for an order in the first instance extending the time to appeal part four and five of the Master's order dated the 11th May, 2007. The relevant reliefs so far as this application is concerned is that contained at para. 3:-

> "Re-entry to add the following as co-defendants to the plenary summons, M/S Mary Byrne, Seville, Spain. Mr. Ray Dolan, 24 The Maples, Gort, Co. Galway. Mr. Pat Enright, C/O AIB Bank, Limerick."

An amendment to the statement of claim was permitted, an order for discovery was made and it was directed that the solicitor for the defendants notify the husband of the first named plaintiff of an application by the first named plaintiff for discovery of documents relating to a specified bank account. However, the application to add the three named parties, whilst not referred to in the order, was rejected. This is not in dispute between the parties.

Having issued and served the plenary summons herein, the solicitors for the first named defendant wrote to the first named plaintiff in order to ascertain whether the matters complained of in the new proceedings were, in effect, those ventilated in the 2005 proceedings. In order to clarify the position a letter dated the 31st July, 2008, was written to the first named plaintiff expressing the concerns of the defendant in that regard and seeking the delivery of a statement of claim in order to see if these proceedings were, in fact, a reiteration of the 2005 proceedings. In that letter it was stated as follows:-

> "We infer from the character of the claim that it is in essence a re-iteration of the claim which you have previously made in proceedings having Record No. 4057P/2005. It also seems clear that these proceedings represent an effort to circumvent the orders which were made in the High Court which have essentially refused to permit the joinder of the self same parties as defendants.
>
> The coincidence of parties and the nature of the claim set out in the writ makes clear that you are in reality attempting to pursue the same cause of action despite having initiated proceedings which are being delayed by your failure to respond to particulars."

The letter called on the first named plaintiff to deliver a statement of claim so that it could be determined definitively whether or not the new proceedings relate to the same cause of action set out in the 2005 proceedings.

A response was received by letter dated the 14th August, 2008, from the first named plaintiff. It stated as follows:-

> "I received your letter. You are correct to assume this is a replication of the claim in case 4057P/2005.

Enclosed is my statement of claim for this case 5082P/2008. More paperwork will ensue.

I will not be dictated by you or the High Court what I can and cannot put on my case against AIB Bank.

May I remind you AIB are in breach of court order, 5th November, 2007, Justice M. Clark."

Ms. McQuaid goes on to assert that there are some concerns in relation to the state of the pleadings in the 2005 proceedings by reference to the number of amendments to those proceedings; she also refers to an application for particulars in the 2005 proceedings and points out that there is some difficulty in understanding fully the nature of the plaintiffs case in those proceedings. Finally, the first named defendant seeks to have these proceedings dismissed unless and until the 2005 proceedings are discontinued, or until such time as the plaintiffs can satisfy the court that there is a separate cause of action distinct from the 2005 proceedings which would allow the matter to proceed.

A replying affidavit was received from the first named plaintiff sworn herein on the 6th March, 2009. A number of other documents were submitted to the court by the first named plaintiff. Those included a letter addressed to the court. I declined to have regard to that letter given that it had not been furnished in advance to the first named defendant. I explained to the first named plaintiff that it was inappropriate that the court would take into consideration matters which were provided to the court in that manner, namely, in circumstances where the same documentation was not provided to the first named defendant and they did not have an opportunity to see it or consider it.

In the course of her affidavit the first named plaintiff sets out her circumstances, namely that she is a mother of four children, three of whom reside with her and that she is a carer for one of her children who has a disability. That child is Lisa McHugh, the second named plaintiff herein. She also stated that she was bringing these proceedings effectively on behalf of her daughter Lisa McHugh. I think it would be helpful to refer to a number of the paragraphs of the first named plaintiff's affidavit at this point.

"3. I served the same AIB Bank at that same address a plenary summons in early October, 2006 Case No. 4057P/2005, at the time it was served I had not got a handwriting experts report done on the 'mandate' at Dunlo Street AIB, but later he furnished me with this report. I have more documents now than I had at that time in my possession. I went to court more than fourteen times to make a few changes but when different judges treated me bad I decided to serve a fresh plenary summons.

4. I am going up to this High Court since 2005, now 2009, I have no solicitor or barrister, I have to represent myself as a lay litigant in court which is against my constitutional rights as a citizen of this country. I have been treated with no respect or courtesy by some judges, one or two of them went so far as to terrorise me when they got me on my own. I am researching a book now, so everything is been taken down to use in that publication, be warned!. Name of my book will be "Fraud" at Dunlo Street.

All of the torts I have named on the writ have reference to my case, the AIB Bank, solicitor and barristers (they had two to date) are trying to get away with a criminal offence (as fraud is). I did furnish all paperwork this more "perjury" by Maeve McQuaid, solicitor, I have more than twenty five registered letter slips to date.

5. The fact is I needed to add the three people to my case this is why I have issued new plenary summons at great time and expense on my part. I asked the court date here to get me the first named defendant, Mary Byrne address in Spain, but they supplied me with an address which the Spanish Embassy said was not authentic. More "perjury" by the defendants. I have enclosed this letter from the Spanish Embassy."

The complaint made by the first named defendant herein is that it is an abuse of process for the plaintiffs to issue two sets of proceedings against them in relation to the same cause or causes of action. In particular, it was emphasised on behalf of the first named defendant that where it is clear that the motivation in issuing the second set of proceedings is effectively to go behind court orders in the first set of proceedings, that this is all the more obvious an abuse of process.

Counsel on behalf of the first named defendant opened a number of authorities to the court in support of his contention that to issue two sets of proceedings in respect of the same cause of action against the same defendant is an abuse of process. I think that that proposition is so self evidently clear that it is not necessary at this point to refer to those authorities.

Ms. McHugh in the course of her submissions to the court referred to a large number of matters concerning the two sets of proceedings and referred to a number of previous applications made to the High Court in connection with the 2005 proceedings. She expressed dissatisfaction with the order of the Master of the High Court referred to above, and with the order of the High Court on appeal from the order of the Master. She complained that whilst the first named defendant was relying on the Rules of the Superior Courts in support of this application that they had not complied with those Rules in regard to an order of the High Court made in the 2005 proceedings in respect of discovery. Having explained to the first named plaintiff herein that this Court was not concerned with the issue discovery and that it was not open to this Court to go behind the orders made in the 2005 proceedings as to the addition or non-addition of parties to the proceedings as defendants, the first named plaintiff reiterated that she had issued the second set of proceedings in order to join the three named persons as defendants in the proceedings. Her purpose in doing so was because she alleged that they were guilty of fraud and deceit. In other words, the first named plaintiff has made serious allegations against three named individuals all of whom were or are employees of the first named defendant and she is adamant that they should be parties to the proceedings. Her response to the argument that it is an abuse of process to have two sets of proceedings in existence at the one time in respect of the same cause of action was to suggest that the 2005 proceedings would be allowed to lie dormant. Not surprisingly, this was not acceptable from the point of view of the first named defendant herein. The other option open to the first named plaintiff would be to discontinue the 2005 proceedings against the first named defendant. However, the plaintiff was not enthusiastic about that course of action because as was pointed out to her in the course of the arguments in this case, upon service of a notice of discontinuance, the plaintiff would be obliged to pay the defendants costs of the action to the date of discontinuance.

Having considered the various options open to her, the first named plaintiff was adamant that she wished to continue the

present proceedings, notwithstanding the 2005 proceedings, and she accepted that she wished to do so because it was only in the 2008 proceedings that the three named parties were defendants. She did not resile from the proposition put forward by the first named defendant the only reason for issuing the second set of proceedings was, in effect, to circumvent the order refusing her permission to add those individuals as parties to the 2005 proceedings.

Decision
I have read the plenary summon and statement of claim in the 2008 proceedings. I have also read the pleadings in the 2005 proceedings. I have considered the submissions of the first named plaintiff herein and the submissions of the first named plaintiff herein. I should say that it was somewhat difficult to follow all of the submissions of the first named plaintiff, but this is not entirely surprising given that the first named plaintiff is a lay litigant and does not appear to have the benefit of any legal advice. It was somewhat difficult to persuade the first named plaintiff to engage with the actual application before the court. The first named plaintiff was minded to make more general criticisms of the first named defendant having regard to the overall matters at issue between the first named plaintiff and the first named defendant in the proceedings as a whole. The first named plaintiff also was critical of the first named defendant in the context of various issues that have arisen in the course of the 2005 proceedings. However, the first named plaintiff was adamant that she wished to pursue the 2008 proceedings rather than the 2005 proceedings because she had named the three individuals who were or are employees of the first named defendants as defendants in those proceedings and she had not been permitted to add those parties to the 2005 proceedings.

The question I have to consider is whether or not the commencement of the 2008 proceedings amounts to an abuse of process. I propose to refer to one of the cases opened to me, namely, *Royal Bank of Scotland v. Citrusdal Limited* [1971] 1 W.L.R. 1469. In that case it was held that since it was vexatious for a defendant in proceedings already instituted in another court to institute, as plaintiff, proceedings in respect of the same subject matter and raising the same issues, it would be wrong to allow two sets of proceedings to decide the issue between the parties to proceed in two different courts as the same time and that accordingly, the High Court proceedings would be stayed until the defendants application to the County Court had been finally disposed of within the meaning of s. 64(2) of the Landlord and Tenant Act 1954. In the course of his judgment he referred to a decision of Buckley J. in *Thames Launches Limited v. Trinity House Corporation (Deptford Strand)* [1961] Chan. 197. In the course of that judgment Buckley J. enunciated the following principles which are referred to by Plowman J. at p. 1473 of his judgment he said at p. 209:-

> "Mr. Naisby says that the principle is that a man should not pursue a remedy in respect of the same matter in more than one court. In my judgment, the principle is rather wider than that. I think it is that no man should be allowed to institute proceedings in any court if the circumstances are such that to do so would really be vexatious. In my judgment, it is vexatious if somebody institutes proceedings to obtain relief in respect of a particular subject matter where exactly the same issue is raised by his opponent in proceedings already instituted in another court in which he is not the plaintiff but the defendant."

Plowman J. went on to apply the principles set out by Buckley J. in the *Thames Launches Limited* case to the facts of the case before him.

This Court has been asked to dismiss the 2008 proceedings on the basis that they amount to an abuse of process. The term, abuse of process, can encompass a wide variety of matters. In Delaney and McGrath on *Civil Procedure in the Superior Courts* the authors point out at para. 14-23:

> "The term 'abuse of process' is usually applied to proceedings lacking in *bona fides* and which are frivolous, vexatious or oppressive, it can also be applied to proceedings which 'are improper form but in substance have been brought for a purpose which is ulterior and extraneous to them and to circumstances where a party has blatantly and persistently refused to comply with an order of the court."

The issue of a set of proceedings by a party in respect of a cause or causes of action against another party in circumstances where the party issuing the proceedings has already issued proceedings against the same party in respect of the same or substantially the same cause or causes of action is in my view conduct which may be viewed as oppressive and vexatious. It is conduct which requires the defendant or defendants to such proceedings to incur unnecessary costs and expenses in dealing with the further proceedings. No additional benefit or remedy can be obtained by a party in issuing a further set of proceedings in respect of the same cause or causes of action.

In this case, the plaintiff in issuing the 2008 proceedings has done so in circumstances where it is clear, by her own admission that the purpose of issuing the second set of proceedings is, in effect, to circumvent the order that was made in the 2005 proceedings whereby the plaintiff was not permitted to add additional parties to those proceedings. I am conscious of the fact that if the plaintiff herein chose to discontinue the 2005 proceedings with the consequences in terms of costs that would flow from such a step, she would be entitled to pursue the 2008 proceedings including the additional named parties. However, that is not an answer to this application. The first named plaintiff has made it clear that what she wants is to have the benefit of the second set of proceedings with the named defendants but does not want to have the burden of discontinuing the 2005 proceedings she wants both proceedings to remain in being. That, in my view, is not permissible.

It may be that there are not many circumstances in which a plaintiff dissatisfied with an order of the court in relation to a procedural matter could circumvent that order by the simple expedient of issuing a second set of proceedings. It may be the case that even if a litigant in that position formally gave notice of discontinuance of the earlier proceedings and paid the costs of the defendant in those proceedings as required could face an application for the second set of proceedings to be regarded as an abuse of process. I do not have to decide that issue. However, in the circumstances of the present case, it is the clearly stated intention of the first named plaintiff to leave the 2005 proceedings in being and to pursue the 2008 proceedings. No satisfactory explanation has been furnished to the court by the first named plaintiff as to whether in circumstances where orders have been made in the 2005 proceedings to enable those proceedings to proceed to a hearing such as the making of orders for discovery, whether in those circumstances it would be appropriate to seek such similar orders in the 2008 proceedings. There have been a large number of applications in the 2005 proceedings to amend the pleadings. Will similar applications be necessary in relation to the 2008 proceedings? The fact that those questions arise and remain to be answered is an indication of the burden imposed on the defendants by the existence of a second

set of proceedings. In all of the circumstances it seems to me that it is clear that the issue of the 2008 proceedings herein is an abuse of process by virtue of being vexatious and oppressive in requiring the defendants to embark on a defence of a second set of proceedings in relation to the same cause or causes of action. I have no option but to strike out the proceedings on that basis.