

BETWEEN

KEVIN KIELTHY

PLAINTIFF

AND

MINISTER FOR AGRICULTURE, FISHERIES AND FOOD,

IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr. Justice Tony O'Connor delivered on the 5th day of February, 2019**Introduction**

1. This is a claim for damages arising from the alleged negligent failure to issue a correct certificate of registration for a vessel and negligent misrepresentation about the potential to obtain permits for dumping at sea.

Facts

2. The outline legal submissions for the defendants rightly identify that the Court has had for its consideration conflicting version of events. However, the statement of claim (delivered in December 2011, after the issue of the proceedings three years previously) mostly converges with the historical records taken from correspondence and contemporaneous memoranda. The following chronology is largely uncontroversial. It is worth emphasising at this stage that since 2003, sea fishing boat licences are issued by the licensing authority for sea fishing boats with an independent appeals system, while different legislation applies to the registration of fishing boats which is the focus of the plaintiff's complaint in these proceedings. In 2005 the requirements for separate fishing authorisations was introduced. All of these regulatory systems are independent of each other.

1990s A Mr. Radford owned the fishing vessel known as the MFV Morgensonne (*"the vessel"*) which was 23.77 metres in length.

28.10.1998 Following the increasing capacity for scallop fishing, the plaintiff and his then two partners applied for a sea fishing boat licence (*"SFB licence"*) for the vessel, recording an engine size of 216.3 kilowatts, which later transpired to be incorrect.

07.01.1999 The plaintiff and his two partners became the owner of the vessel by way of bills of sale.

15.04.1999 A SFB licence issued for the period 29.03.1999 to 30.06.2000 to the plaintiff and his partners for the vessel.

04.05.1999 A letter was sent to the plaintiff from the Registry of Shipping with the three bills of sale duly endorsed along with an application form to register the vessel as a fishing vessel. The form was completed and sent back on the 5th May, 1999.

15.11.1999 The Registrar of Shipping (*"the Registrar"*) wrote to the plaintiff informing him that there was a discrepancy in the engine size recorded on his application and the information that was already contained on the register. The Registrar arranged for a survey of the vessel, which was carried out on the 4th April, 2000.

06.04.2000 Following the survey, the surveyor wrote to the plaintiff and his partners about the discrepancy. The plaintiff then discovered that Mr. Radford had put a new engine into the vessel in 1990.

04.05.2000 The Registrar advised the plaintiff that he had amended the register to show the correct details of the engine, endorsed the application to register the vessel and had forwarded it to the Registrar General of Fishing Boats. The plaintiff was also advised to contact the licensing section of the first named defendant's department (*"Department"*) to have the engine capacity amended in the licence due to the discrepancy arising.

11.05.2000 The application form, showing an engine power of 216.43 kilowatts but 500 horsepower, which equated to 373 kilowatts (the correct engine power), was forwarded by the Registrar to the Registrar General of Fishing Boats.

23.05.2000 An internal Department note issued in respect of the error.

25.05.2000 A handwritten internal Department note issued indicating that *"an amended licence and registration should issue in this case."*

26.05.2000 A SFB licence was issued to the plaintiff and his partners for the vessel which had the correct engine size details.

22.06.2000 An identical SFB licence was issued except that it referred to the old incorrect engine size.

10.07.2000 The Registrar issued a certificate of registration of the vessel as an Irish Fishing Boat with the incorrect engine details.

July 2000 The plaintiff and his partners stopped fishing. The plaintiff said that he and his partners did not draw down a grant approved to fund the purchase of safety equipment prior to the 30.06.2000 deadline.

09.09.2000 Another certificate of registration was issued, also with the same incorrect engine details.

2000 – 2002 It was less profitable for boats like the vessel to fish for scallops because of their limited range. Contributing to this was the depletion of resources and the dramatic increase in the number of vessels fishing for scallops.

Early 2001 The plaintiff was named by fish factories in applications for a dumping at sea permit under the Dumping at Sea Act 1996.

March 2001 The plaintiff acquired the shares of his partners in the vessel and became the sole owner.

23.11.2001 Meeting between the Minister of State at the Department of the Marine, Department officials, the plaintiff and one of the processors, discussing the dumping at sea project. It noted, *inter alia*, that the location of a dumpsite had not yet been determined.

17.12.2001 The plaintiff wrote to the Coastal Zone Management Division of the Department of the Marine and, after referring to the hard time for the scallop fishing sector, said "[t]he result is that a boat of this size [i.e. the vessel] is no longer viable" and enclosed a proposal to use the vessel for a dumping at sea project.

25.06.2002 A SFB licence was issued to the plaintiff and his partners which referred to the incorrect engine capacity.

15.07.2002 Coastal Zone Management Division of the Department wrote to the plaintiff notifying him that a location for the dumping had been agreed.

14.08.2002 A SFB licence was issued to the plaintiff and his partners which referred to the correct engine capacity.

12.11.2002 Coastal Zone Management Division wrote to the plaintiff informing him that legal advice had been sought from the Attorney General's Office due to the disparity between the Dumping at Sea Act 1996 and EU legislation which indicated that "*the disposal of fish waste at sea may not be allowed.*"

20.11.2002 The plaintiff wrote to the Department requesting a correct certificate of registration.

2002 The vessel had been fitted out for dumping at sea.

January 2003 Mr. Shine from Coastal Management Division gave evidence that he phoned the plaintiff telling him that he would not be getting a permit to dump at sea. The plaintiff claimed that he never received this phone call.

21.01.2003 Mr. Shine emailed his boss in the Department stating that he had "*advised both K. Kielthy ... that dumping at sea is no longer allowed and given them the basic details of new EU Regs.*"

2002 – 2003 The plaintiff was in receipt of invalidity pension. He remains in receipt of a social welfare type payment.

23.12.2003 A SFB licence was issued to the plaintiff with the correct engine capacity.

12.10.2004 The plaintiff claimed that he wrote a letter to Mr. Ryan of the Department requesting an update in relation to the application for dumping at sea. Mr. Ryan gave evidence that he never received this letter.

03.11.2004 Dumping at Sea (Amendment) Act 2004 was enacted. It specifically amended the 1996 Act to remove the possibility of authorising dumping at sea.

18.05.2005 SI 245 of 2005 was signed into force, providing that the Minister could restrict through individual allocation to an Irish sea fishing boat the number of days that such boat could fish for scallops.

20.06.2005 The plaintiff wrote to the Department in relation to the decommissioning scheme (see [18.10.2005]) explaining: "*as you will be aware the impact of larger vessels being introduced in the scallop fleet has had the effect of diminishing local scallop beds on which [the vessel] was clearly dependent ... a special case could be made to include [the vessel] in [the decommissioning scheme] as her lack of 75 fishing days per year in the last two years is a direct result of the delay in processing the dump at sea applications.*"

21.06.2005 The plaintiff explained in a letter to another official, also in relation to a special case being made in relation to the decommissioning scheme, that he was unable to find a buyer for the vessel. No reference was made by the plaintiff in 2005 to the main thrust of his claim in these proceedings (the incorrect registration details for the engine in the vessel).

30.06.2005 Two SFB licences were issued to the plaintiff, one with the correct engine capacity and the other with the incorrect engine capacity.

June/

July 2005 The plaintiff applied to the Department to carry out a review of his entitlement to an authorisation to fish for scallops.

08.07.2005 The Register of Fishing Boats for the vessel was corrected. A certificate of registration was issued in the names of the plaintiff and one of his previous partners.

28.07.2005 SI 464 of 2005 was introduced, revoking previous statutory instruments. The Regulations introduced a licencing regime for the scallop fishing industry and gave the Minister a discretion as to whether to issue an authorisation to a particular vessel. In January 2006 a policy directive (No. 1/2006) was issued which gave effect to a recommendation that the scallop fleet be ring-fenced to those vessels that had fished for at least 50 days in the two and a half years prior to the 30th June, 2005.

21.09.2005 The plaintiff, having contacted the Ombudsman regarding his dumping at sea permit, was informed that the Department had advised that dumping at sea was no longer permissible.

14.10.2005 The plaintiff again wrote to the Department seeking to be considered a 'hardship' case in relation to the decommissioning scheme, citing the delay in the dumping at sea project as the reason he did not have a track record under the scheme.

18.10.2005 The plaintiff applied for compensation to decommission the vessel under "*the scheme to permanently withdraw capacity from demersal and shell fish sectors of the Irish Fishing Fleet*". ("*decommissioning scheme*"). This decommissioning scheme, which was partly financed by the European Union, included a requirement that the applicant vessel had to have a minimum fishing activity of 75 days in each of two periods of 12 months from 01.10.2003 to 01.10.2005 according to Article 7 of Council Regulation (EC) No. 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector.

16.11.2005 BIM wrote to the plaintiff stating that the initial assessment of his application indicated that he has not achieved the requisite number of days for inclusion in the decommissioning scheme. However, BIM agreed to review the logbook data again.

December 2005

– July 2006 The vessel was used to fish for scallops for 51 days without an authorisation to do so.

09.06.2006 A SFB licence was issued to the plaintiff which recorded the incorrect engine capacity.

July 2006 The plaintiff's application for an authorisation to fish for scallops was refused as he had not achieved the requisite number of days. He stopped fishing and kept the vessel laid-up in Kilmore Quay Harbour.

01.09.2006 The plaintiff's application for compensation under the decommissioning scheme was refused.

26.09.2006 The plaintiff appealed the refusal of his application under the decommissioning scheme.

08.11.2006 The plaintiff appealed the refusal to grant an authorisation to fish for scallops.

20.03.2007 The Department wrote to the plaintiff informing him that his appeal from the refusal to grant an authorisation to fish for scallops had been unsuccessful.

20.06.2007 A SFB licence was issued to the plaintiff which recorded the correct engine capacity.

05.09.2007 The appeal from the refusal decision to include the plaintiff in the decommissioning scheme was successful and the plaintiff was awarded €250,000 in respect of which leave for judicial review was subsequently granted.

26.12.2007 The plaintiff wrote to the defendants' law officer requesting him to confirm that the disposal of the vessel would not compromise his position in respect of his application for the decommissioning grant. He did not receive a positive response to this letter.

23.04.2008 A SFB licence was issued to the plaintiff with the correct engine capacity recorded.

29.07.2008 These proceedings were issued.

07.11.2008 Proceedings bearing the record number 2008/9277 P were issued which referred to the refusal to grant a fishing authorisation in 2005 to the plaintiff.

12.03.2009 Hanna J., in an *ex tempore* judgment with record number 2008/236 JR, found that the appeals officer had acted *ultra vires* but refused to quash the order on the grounds *inter alia* of delay.

22.04.2009 Notice of Appeal by the Department to the Supreme Court.

19.01.2010 The vessel was removed from the fishing register and the plaintiff received something in the region of €20,000-€25,000 for his two thirds of the tonnage capacity transferred to other boat owners.

26.01.2010 A notice of discontinuance was filed in the proceedings 2008/9277 P.

14.12.2011 The statement of claim herein was delivered.

27.05.2014 The Supreme Court allowed the appeal from the order of Hanna J. Clarke J. stated in the *ex tempore* judgment that it was incorrect to determine that *certiorari* should not be ordered by reason of "*conduct and delay identified in [the] judgment*".

15.05.2015 The defence herein was delivered.

11.04.2016 The plaintiff ceased to have a solicitor on record.

26.01.2017 New solicitors came on record for the plaintiff.

06.03.2017 These proceedings were set down for trial.

Claim in these proceedings

3. The plaintiff claims losses from the alleged:-

(i) Negligent failure of the Department to issue a correct certificate of registration for the vessel between July 2000 and July 2005;

(ii) Negligent misrepresentation about the potential to obtain dumping at sea permits.

(a) CERTIFICATE OF REGISTRATION

4. The Court poses the following questions in order to place a structure on a rather unwieldy claim:-

- (i) Was the reason the plaintiff did not fish from July 2000-December 2005 because he was afraid that he would be fishing illegally without a correct certificate of registration?
- (ii) Would the plaintiff have been fishing illegally if the vessel had gone out without a correct certificate of registration?
- (iii) If yes, was the Department negligent in failing to correctly register the vessel for five years?
- (iv) If yes, what losses did the plaintiff incur?

Plaintiff's submissions

5. The plaintiff claims damages for negligence and breach of his constitutional right to earn a livelihood arising from the Department's failure to correctly register the vessel from July 2000 to July 2005. He claims that he could not fish legally while awaiting a correct certificate of registration and he tied the vessel up in fear of being arrested by the Navy if they boarded and discovered a discrepancy in the paperwork. In alleging that he would be fishing illegally due to the discrepancy in the paperwork the plaintiff relies on:-

- (i) The internal Departmental memo dated 23rd May, 2000, which stated that the plaintiff needed "*an amended licence reflecting the correct certified engine capacity.*" It further stated that the plaintiff had "*been approved for a BIM safety grant and the final draw-down date of this grant is 30 June, 2000. However, they cannot proceed until such time as they hold a correct licence and registration certificate in their names.*"
- (ii) The plaintiff's own contention in a letter to BIM dated 20th February, 2001, refusing the grant offer due to not having received the correct registration document.
- (iii) The plaintiff's own contention in a letter to the Department, dated 20th November, 2002, that he could not apply for a BIM grant until the correct certificate of registration was issued.
- (iv) A Departmental memo concerning the plaintiff's appeal regarding the refusal to grant an authorisation to fish for scallops where it stated "*[i]t is true that the Morgensonne could not fish legally if a Certificate of Registry was not held.*"
- (v) The finding of the Appeals Officer, Ms. Emile Daly, in the plaintiff's appeal from the refusal of his application for a decommissioning grant, that it was a requirement under the scheme that a vessel "*was registered on the Irish Register of Fishing Boats and was in possession of a sea fishing boat licence, in force on that date, in the name of the owner.*" The Appeals Officer noted that the plaintiff submitted "*that he never received proof, despite requesting same, that his vessel was on the licence register.*" She also stated that "*a licence did issue, dated 26 May 2000 but there is nothing on the file to show that the vessel was ever registered at this time and at the oral hearing no register of vessels at this time was produced as evidence.*" The Appeals Officer also noted that the Registrar General of Fishing Boats wrote to the plaintiff on the 22nd June, 2002, stating: "*fishing vessels must be licensed and entered on the Fishing Boat Register before being entitled to engage in commercial fishing.*" The Appeals Officer concluded that "*[i]t was not possible for the Appellant to make himself eligible for the scheme because to fish the requisite days stipulated in the scheme, he would have had to be acting illegally and in contravention of both the Council Regulation and the Scheme.*"
- (vi) The judgment of Hanna J. on the 12th March, 2009, where he stated that the Appeals Officer found that it "*was the Department's fault that the notice party couldn't legally fish, and thereby meet the criterion to receive the grant. The Department said they never got the letter from the applicant. Although there was some uncertainty on this point during the course of the hearing, it was broadly agreed that a possession of a certificate was a necessary prerequisite for legal fishing. This is scarcely surprising given that there is a letter on the papers from Mr. Aidan Hodson, Registrar General of Fishing Boats, which is a licencing Authority, stating in bold print – and this letter is dated 22nd June 2004: 'A valid certificate of registry, issued under the Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 1997 must, therefore, also be carried on board the vessel.'*" This was the view taken by the appeals officer."

6. The plaintiff claims:

- (i) Damages for loss of earnings from July 2002-July 2005, which amount to €257,000;
- (ii) Sum of €250,000 as awarded by the Appeals Officer in relation to the decommissioning scheme.

Defendants' submissions

7. The defendants strongly dispute that the incorrect certificate of registration was the reason the plaintiff stopped fishing in 2000 and 2001 and deny that there is a nexus between the clerical errors and any losses alleged by the plaintiff. In support of this the defendants rely on:-

- (i) A letter written by the plaintiff to the Department on the 17th December, 2001, where he stated that the continuation of the vessel as a scallop fishing boat was not "*viable*" due to the increasing number of vessels and declining stock. He was seeking an alternative use for the vessel and was considering applying for a dumping at sea permit. He did not mention that he was unable to fish as he did not have a correct certificate of registration.
- (ii) The plaintiff's evidence that when he went back fishing from December 2005 to July 2006 (in order to build up the number of days to qualify for a scallop fishing authorisation) he was not aware that he was fishing illegally.

8. The defendants allege that the real reason the plaintiff ceased fishing was because it was no longer commercially viable due to the relative small size of his vessel, the declining fish stocks, and the increasing number of vessels. Furthermore, the defendants claim, having produced the vessel's logbooks, that the plaintiff had in fact gone fishing on a limited basis during the relevant time period and therefore could not have been too concerned about the inconsistency with his certificate of registration.

9. The defendants claim that there was never any suggestion to the plaintiff that he would have any difficulties fishing with an error in the registration certificate. The Court heard evidence from Kevin Moriarty, Registrar General of Fishing Boats, appointed in 2013, who stated that in his view there was a valid sea fishing licence and a valid certificate at all times. The certificate of registration merely states that the vessel is on the register of fishing vessels; it is the fishing licence that allows the vessel engage in fishing activities. He disagreed with the plaintiff's position that because of the inconsistency he was unable to fish and further stated that he had never heard of anyone having trouble with the naval services due to a typographical error on either the licence or the registration.

Correct details of engine

10. Paragraph 14 of the statement of claim pleaded that the plaintiff could not have fished legally for at least 75 days in each of the two periods of 12 months from the 1st October, 2003 to 1st October, 2005 due to the incorrect certificate of registration details. In trying to do justice to the remarkably difficult task which faced the plaintiff's new legal team in 2017, the Court limits its comments about the plaintiff's inability to appreciate that compensation is not payable by the State for business and operational decisions. The plaintiff may find it difficult to understand how an appeals officer's decision to award him €250,000 and allowed by a High Court judge can be set aside by the Supreme Court. Having observed the plaintiff in giving evidence and digested the extent of the plaintiff's circumstances, it is apparent that the plaintiff's claim for losses due to the incorrect engine details for the registration of the vessel is at best a considered misunderstanding and at the other end of the scale a "try-on".

11. No matter what way one looks at the plaintiff's claim under his heading for negligent failure to issue a correct certificate of registration there is an air of unreality to same. The plaintiff did not fish or attempt to fish for scallops himself with the vessel in the relevant period. His evidence about fear of apprehension by Naval patrols due to incorrect engine details in the registration of the vessel is "*fanciful*" as submitted by the defendant.

12. The entitlement of a sea fishing boat to fish does indeed depend upon its licence and there is also an obligation to be registered. No evidence was offered on behalf of the plaintiff as to whether a naval officer could or would impound the vessel upon discovery that the certificate of registration had incorrect engine details. Mr. Keating from Bord Iascaigh Mhara gave evidence that the apparent contradiction in the documentation would not preclude the grant of funds to a vessel owner for safety equipment. The functions of those involved in sea fisheries protection relates to whether a licence and authorisation had been issued and whether the boat is registered. The defendants are correct to point out the plaintiff's answer to its own counsel on day 3 of the hearing to test the genuineness of the plaintiff under this heading:-

Q: (plaintiff's counsel to the plaintiff): when did you stop fishing?

A: In July 2006

Q: Why did you stop fishing?

A: I stopped fishing for two reasons essentially; "*one was I now had 51 days' built up and my review hadn't been determined as of yet so the requirement for a 50 day track record that I thought might have helped with the review, I had my 50 days' or 51 days' and also the navy was, I believe, starting to board vessels and arrest vessels for fishing without authorisations and the skipper of the boat at the time didn't want to risk getting himself a criminal prosecution if he was arrested or anything so he wouldn't put to sea anymore.*"

13. The somewhat rambling evidence of the plaintiff included evidence which leads the Court to find that he makes no complaint about the way the defendant Minister had excluded him from scallop fishing at that time. The plaintiff singularly fails to address a requirement imposed by EU law in order to obtain the decommissioning grant.

14. Having listened to the plaintiff in particular and the submissions, this Court concludes that the reason for the plaintiff not to go out fishing in 2003 and 2004 had nothing to do with either the failure to obtain a dumping at sea permit or with the concern about the clerical error in his certificate of registration.

15. The period from December 2005 until August 2006 when the vessel was used for fishing without an authorisation does not assist the plaintiff in his claim whatsoever. If he had fished, he required an authorisation pursuant to SI 464 of 2005 introduced on the 28th July, 2005.

16. In answer to the questions posed to put a structure on the plaintiff's claim, the Court finds:-

(i) The plaintiff's reason not to fish from July 2000 to December 2005 had nothing to do with his fear of fishing illegally due to the incorrect engine size recorded on the certificate of registration and the SFB licences.

(ii) The authorisation to fish was not dependent on the correct engine size being recorded on the certificate of registration and the SFB licences.

(iii) There was no evidence of negligence on the part of the defendants in inserting the incorrect engine size.

(iv) In any event, the plaintiff singularly failed to establish any loss incurred by the incorrect certificate of registration and the various and intermittent inaccurate SFB licences.

(b) DUMPING AT SEA

17. The plaintiff alleges that the Department, through guidelines and meetings with interested parties, led him to believe that he would obtain a permit to dump waste at sea. In reliance on these representations, the plaintiff alleges that he refitted his vessel and applied for such a permit. The plaintiff also complains that the Department did not inform him that he would not obtain a permit due to the illegality of dumping at sea under EU law. He alleges that he only discovered this when he contacted the Ombudsman in 2005.

18. The defendants disputed the plaintiff's assertion that a considerable amount of money was spent converting the vessel in anticipation of receiving a dump at sea permit.

Negligent misrepresentation

19. The plaintiff claims that he was induced into the dumping at sea process by the negligent misrepresentations of the defendants in:-

(i) Introducing the Dumping at Sea Act 1996;

(ii) Introducing 'Dumping of Certain Fish Waste at sea' Guidelines for applicants, 24th July, 2001, providing a framework for considering dumping at sea proposals and giving the Coastal Zone Administration Division the role of dealing with such applications.

20. The plaintiff also claims that the defendants owed a duty of care to him when introducing the legislation and setting up a system for the applications to be processed that the scheme was legal.

21. None of the authorities cited by counsel for the plaintiff supported the proposition that the defendants, in receiving the application to dump at sea and ultimately rejecting same on the grounds that such permits are unlawful by virtue of European Union law, breached a duty of care to the plaintiff. No matter what way one casts the plaintiff's claim, it cannot be considered fair or reasonable to impose liability from the limited engagement which occurred between the plaintiff and the relevant Department about pursuing a dumping at sea permit. It is in marked contrast to the specific advice relied upon reasonably in *Bates v. Minister for Agriculture, Fisheries and Food* [2018] IESC 5, (unreported, Supreme Court, 7th February, 2018), and which lead to the plaintiffs' boat being impounded by French authorities.

The claim for legitimate expectation

22. In relation to the dumping at sea issue the plaintiff also claims that the defendants breached his entitlement of legitimate expectation. He states that it is clear that the Department adopted a position amounting to a promise or representation in that it was accepting applications for dumping at sea permits and that he, as agent for the four fish processors and owner of the vessel intended to be used, acted on this promise or representation. This representation was conveyed to the plaintiff and it caused him to enter into a transaction or relationship with the Department in relation to the permit applications and he acted on foot of the representation. This representation created an expectation reasonably entertained that the Department would abide by the representation and proceed with the permit applications to completion to the extent that it would be unjust for the public authority to resile from it even though the Department was prohibited from completing the process. The plaintiff further submitted that where the Department was obliged to resile, there was an onus on the Department to compensate the plaintiff for their failure to be able to allow the plaintiff complete the application and be in a position to obtain permits.

23. The defendants claim:-

(i) the plaintiff does not possess *locus standi* to maintain a claim for legitimate expectation since he was never an applicant for a dumping at sea permit;

(ii) even if the plaintiff did have *locus standi*, a person cannot have a legitimate expectation to a benefit the grant of which would be unlawful. The grant of a dumping at sea permit would have been inconsistent with EU law.

24. Having regard to the Supreme Court judgments in *Cromane Seafoods Ltd v. Minister for Agriculture Fisheries and Food* [2017] 1 IR 119 ("*Cromane*"), which is the most recent authority in this relevant area, this Court does not hesitate in concluding that the plaintiff had no legitimate expectation as sought to be claimed. The defendants did not make unambiguous or unequivocal declarations that he was entitled to a permit. Furthermore, the defendants were in fact precluded by European Union law from granting that permit. There is little merit in traipsing over the law as explained in *Cromane* which the plaintiff did not even take into account when preparing submissions. The extent of the case law cited to the Court in support of the plaintiff's claim in regard to legitimate expectation was *Glencar Exploration v. Mayo County Council (No. 2)* [2002] 1 IR 84. Suffice to say this claim was made in one last desperate attempt to justify the plaintiff's inability to understand the legal process of his attempt of a try-on.

25. For the sake of completeness, I comment that Mr. Armitage's attempt at quantifying some loss incurred by the plaintiff was yet another example of lack of focus and reality. The plaintiff returned no income or profit to the Revenue Commissioners prior to any event which he wished to rely on for his multiplicity of claims. In fact, Mr. Murray, accountant called at the request of counsel for the defendants, correctly took issue with the plaintiff's concentration on cash-flow after each of the alleged events to calculate the losses sought. The Court does indeed tend to compensate a claimant by looking at what was the most likely future for the claimant if the incident causing the loss had not occurred. In short, the manner adopted to calculate the losses alleged was speculative, if not disingenuous. So even if the plaintiff had succeeded under any of the speculative causes of action pursued, the Court would not have found the plaintiff to have suffered a loss attributable to the alleged causes of action.

26. Therefore, I dismiss the plaintiff's claims.