

BETWEEN

KEVIN O'REGAN

PLAINTIFF

AND

RYANAIR DAC

DEFENDANT

**EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 10th day of December, 2018**

1. In these proceedings the plaintiff alleges that he was assaulted by the proposed third party on the flight from Bari in Italy to Dublin Airport operated by the defendant on 7th July, 2017.

2. The plaintiff in the personal injuries summons issued on the 21st March, 2018 pleads that the "*unexpected act of another passenger constituted 'an accident' for the purposes of Article 17.1 of the Montreal Convention 1999...*" which "*was given legal effect in Ireland by virtue of the Air Navigation and Transport (International Conventions) Act 2004.*" Today, Counsel for the plaintiff urged the Court to find at this stage that the proposed third party and the defendant could not be "*concurrent wrongdoers*" within the meaning of the Civil Liability Act 1961 (as amended) because the Montreal Convention provides an exclusive cause of action for the Plaintiff. The Personal Injuries Summons pleads that these proceedings do not require authorisation from the Personal Injury Assessment Board on account of s. 3A of the Personal Injury Assessment Board Act 2003, (as inserted by s. 56 of the Civil Law (Miscellaneous Provisions) Act 2011) which exempts claims made under the Montreal Convention.

3. Notwithstanding, the personal injuries summons pleads "*Further, or in the alternative the defendant*" was negligent in failing inter alia to take "*appropriate care*".

4. Following delivery of replies (verified by affidavit sworn on the 25th July, 2018) to a notice seeking particulars, a defence was delivered on 3rd October, 2018, which pleads, *inter alia*, that the plaintiff's claim does not come within the provisions of Article 17 of the Montreal Convention 1999. At the same time the motion seeking liberty to join the proposed third party was issued which was heard this morning. The defendant also pleads that the incident was not caused or contributed to by any act, default or omission on its part.

5. Despite Order 16, rule 2 of the Rules of the Superior Courts ("RSC") which provides that the application seeking to join a third party shall be made on notice to the plaintiff and that "*unless the plaintiff wishes to add the third party as a defendant, his attendance at the hearing of the motion shall not be necessary*", the Plaintiff objects to the order sought.

6. Mr. Lennon, Counsel for the plaintiff, does not seek to join the proposed third party as a defendant and objects to the application by the defendant on the grounds that the defendant and the third party are not "*concurrent wrongdoers*" within the meaning of the Civil Liability Act 1961 ("*the 1961 Act*"). Thus, the third party should not be joined pursuant to s. 27 of the 1961 Act.

7. Mr. Lennon glosses over the alternative plea in the personal injury summons when submitting that liability under Article 17 of the Montreal Convention cannot be off loaded, for want of a better description, onto the third party. He cites the judgment in *Bell v. Dublin Airport Authority plc* [2016] IECA 384, (Unreported, Court of Appeal 15th December, 2016) of the then President of the Court of Appeal in support of the proposition that the application should be refused. The contention appears to be grounded on the phrase at para. 7 of the judgment "*... the system of international air carriage is complete, closed and exhaustive*" which reflects Article 29 of the Montreal Convention:-

*"In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable."*

8. Mr. Walker for the defendant draws the court's attention to para. 47 of that judgment which reads:-

*"In my judgment, Ms. Bell was restricted to proceeding against Aer Lingus irrespective of any claim that the carrier might have against the third party, including the Dublin Airport Authority if it considered that appropriate. That did not mean that Ms. Bell was entitled to sue the authority. This point would be available to that party in the event that Aer Lingus issued third party proceedings and the plaintiff applied to join the authority as an additional named defendant."*

9. In short, the resistance of the plaintiff to the defendant's application is not well founded in view of:-

(i) O. 16, r. 2 of the RSC which does not facilitate the plaintiff to make his argument now about whether a wrongdoer who caused an assault can be concurrent with a wrongdoer under the Montreal Convention;

(ii) the overlooking of the alternative plea relying on negligence in the personal injury summons which the plaintiff has not withdrawn to date;

(iii) the defence delivered on 3rd October, 2018, which put causation and negligence in issue while asserting that the claim does not come within the provisions of Article 17 of the Montreal Convention; and

(iv) the implication arising from *Bell v. Dublin Airport Authority plc* and particularly para. 47 which envisages the joinder of a third party by a defendant airline even though a claimant may not be able to pursue the third party as an additional named defendant.

10. The defendant has satisfied this Court that it can claim entitlement to one or more of the remedies set out in O. 16(1) of the RSC

from the proposed third party and that there is an issue connected with substantially the same subject matter of the plaintiff's claim.

11. Therefore, I grant liberty to the defendant to issue a third party notice in the form exhibited as "PL1" to the affidavit sworn by Peter Lennon on 3rd October, 2018. I direct that the issues between the parties be heard as the trial judge may so direct when the plaintiff's claim comes to trial. I also give liberty to the third party to file a defence to the third party notice within 28 days from the entry of an appearance on the part of the third party. At the request of Counsel for the defendant in view of anticipated difficulties with service I extend the time for service of the third party notice pursuant to O. 16 r. 2(2) of the RSC to 35 days from the date of issue of the Third Party Notice.