Neutral Citation: [2016] IEHC 252

THE HIGH COURT

[2012 No. 5808 P]

BETWEEN:

DAVID MOONEY

PLAINTIFF

AND

THE COMMISSIONER OF AN GARDA SÍOCHÁNA, IRELAND,

AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr. Justice Gilligan, delivered on the 15th day of March, 2016.

1. The plaintiff in these proceedings, which were held *in camera*, alleges that as a result of representations made to him, he entered into the Witness Security Programme giving evidence against two identified individuals who were convicted and sentenced to terms of imprisonment. He alleges that members of An Garda Siochana made a number of verbal representations to him which would have resulted, *inter alia*, in him being provided with a very substantial sum of money, with a new identity, and relocated abroad in a specified country of his choice, with all the necessary documents, to enable him to start a new life and to work in the specified country. 2. The plaintiff contends that the defendants failed to honour the representations as made to him on their behalf and as a result he has suffered loss and damage, and in particular he claims the following reliefs:-

> 1. An Order directing the defendants and each of them, their servants or agents, to take all necessary steps to place the plaintiff in the State's Witness Protection Programme and to provide him with the benefits thereof;
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> 2. A Declaration that the plaintiff and the defendants entered into a binding agreement, which is still enforceable, whereby in return for the defendants' promise to place the plaintiff in the State's Witness Protection Programme the plaintiff agreed to provide certain information to the Gardai and to give certain evidence at the trial of two individuals who, partly on foot of that evidence, were subsequently convicted;
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> 3. An Order for specific performance of the said agreement;
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> 4. A Declaration that the defendants, their servants or agents were guilty of misfeasance in Public Office and/or of abuse of the said office in pursuing a course of conduct (by making representations to the plaintiff that he would be protected by means of being admitted into the defendants' Witness Protection Programme) designed to induce the plaintiff to provide certain information to the Gardai and to give certain evidence at a criminal trial, in the knowledge that failure to follow through on those promises or to take any bona fide steps to honour same would expose the plaintiff to grave risk to his physical and mental wellbeing, bodily integrity and his ability to earn a livelihood;
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> 5. Damages for breach of contract;
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> 6. Damages for negligence, breach of duty, and misrepresentations;
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> 7. Damages for breach of legitimate expectation;
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> 8. Damages for breach of the plaintiff's constitutional rights;
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> 9. Damages for misfeasance in Public Office;
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> 10. Damages for deliberate and/or reckless infringement by the holders of Public Office of the plaintiff's constitutional rights to his psychological and bodily integrity and right to earn a livelihood;
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> 11. Exemplary, punitive and/or aggravated damages;
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> 12. Such further or other relief as this Honourable Court shall seem fit;
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> 13. Interest pursuant to the Courts Act, 1981;
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> 14. Costs."

3. The various allegations as made on the plaintiff's behalf and the reliefs as sought are all denied on the defendants' behalf and in particular, it is alleged that the Witness Security Programme is a non-statutory scheme operated by An Garda Síochána whereby witnesses to criminal offences can be protected by means of the provision of various services and facilities ranging from the provision of security advice to full relocation and identity change where appropriate. The extent of the participation of a given witness is determined by reference to the extent of the security threat against that witness. It is submitted on the defendants' behalf that the determination of An Garda Síochána as to the extent of the protection necessitated in a given case is based on an expert assessment of all of the relevant information and by its nature is not amenable to review. Moreover, the defendants' contend that the nature of the function exercised by An Garda Síochána in deciding the extent of the protection to be afforded to a witness is in the nature of a function which is incapable of giving rise to a duty of care as pleaded by the plaintiff.

4. At the commencement of the hearing, it was clarified on the plaintiff's behalf that:

• The plaintiff asked the court to note the evidence that there is still a real and ongoing risk to the plaintiff's life and to note the commitments of the defendants in that regard allowing the parties liberty to apply.

• The plaintiff seeks damages in a sum of €600,000.00 being made up of the sums of €350,000.00 and €250,000.00, which the plaintiff alleges was represented to him by a member of An Garda Siochána as being the appropriate sums for starting a business and purchasing a house.

• The plaintiff no longer seeks specific performance of the alleged agreement as entered into between himself and the Commissioner of An Garda Síochána.

Background

5. The background details of this case are that in or about May/June, 2002, the plaintiff, in association with a number of other persons, opened a nightclub in Dublin. The plaintiff was approached by two individuals who indicated to him that unless he paid protection money to them on behalf of the IRA for use to support prisoners' wives, the club premises would be destroyed and the business would never get off the ground.

6. It is not disputed but that the plaintiff paid a substantial sum of money to the two individuals, but unfortunately, in any event, a few nights after the club had opened there was a very substantial orchestrated disturbance as a result of which the plaintiff made a complaint to An Garda Siochána, and agreed to provide a written statement in which he very clearly implicated the two individuals in illegal criminal activity, and this brought the plaintiff to the attention of higher officials within An Garda Siochána who assessed the plaintiff, accepted that his life was under serious threat if he was to give evidence against the two individuals and, on the 30th August, 2002, an application was made by the Special Detective Unit of An Garda Siochána to have the plaintiff admitted to the Witness Security Programme. On the 19th December, 2002, a meeting took place within An Garda Siochána at which it was agreed to admit the plaintiff into the programme, and the plaintiff was relocated within this jurisdiction. On the 10th February, 2003, the plaintiff signed a protocol document (The "Entry Document"). Throughout 2003, there were difficulties with the plaintiff's participation in the Witness Security Programme which is best explained by the plaintiff's particular personality, the type of lifestyle he had been used to living, the fact that he appears to have been a very outward going person who enjoyed a very full social life, the fact that there was clearly a personality clash between the plaintiff and his handlers within the Witness Security Programme, the fact that the plaintiff, to a significant extent, appears to have been out and about in public, and, on at least one occasion, indicated to a person he had just met that he was part of the Witness Security Programme. He indicated further to a number of people that he was a member of An Garda Siochána, a Detective Sergeant, and a member of certain other specialist divisions of An Garda Siochána. He indicated at times that he would not give evidence at the trial of the two individuals in the Special Criminal Court, and provided information to certain persons and sections of the media, all of which led to very strained relations between the plaintiff and his handlers leading into the trial of the two individuals which commenced in the Special Criminal Court.

7. It is of some significance to state that the plaintiff was a person who had no criminal record whatsoever and was an unusual subject to be taken into the Witness Security Programme, and was one of the first Irish citizens to come forward to give evidence against members of the IRA in a court of law.

8. The plaintiff gave his evidence during the course of the trial and was highly commended by the Court and described as a truthful and reliable witness. This aspect was heavily relied on in the Court of Criminal Appeal and, subsequently, in the Supreme Court, and again in the European Court of Justice, and there is no doubt but that the plaintiff's evidence was the vital factor leading to the conviction of the two individuals who were each sentenced to four years imprisonment.

9. The plaintiff found his participation in the Witness Security Programme particularly difficult and from time to time he broke free of it and was involved in several incidents, which did result in citizens who were involved directly with the plaintiff making contact with An Garda Siochána and making a complaint about him and his behaviour.

10. Subsequent to the trial, in or around 9th December, 2003, a meeting was held with the plaintiff and a decision appears to have been taken in the background by An Garda Siochána that there should be a final agreement with him, whereby he would be paid a relatively substantial sum of money at the time bearing in mind the plaintiff's own financial circumstances, and that would be a conclusion to the matter save only that, if he had any apprehension or the relevant members of An Garda Siochána had any apprehension that he was at a continuing risk, further arrangements for his security would be made for him.

11. In any event, on the 3rd February, 2004, the plaintiff signed a memorandum of understanding (the "Exit document") with An Garda Siochána and on or about the 4th February, 2004, he received the first payment pursuant to that memorandum of understanding and a year later, in early 2005, he received the second and final payment.

12. The plaintiff's case, in essence, is that members of the Witness Security Programme had discussions with him both prior to signing the initial agreement and subsequent thereto, leading into the trial in the Special Criminal Court and subsequent thereto, to the effect that the plaintiff would be provided with sufficient funds to commence a new business abroad, the necessary funds to purchase a house, that he would be provided with a new identity and *inter alia*, the necessary documentation to enable him to reside and work in a specified country. The plaintiff contends that it was on the basis of this representation that he entered the programme, gave evidence, placed his life at risk and that having done so, those members of An Garda Siochána responsible for the Witness Security Programme failed to honour their representations to him and, effectively, in early 2004, duped him into signing an agreement, and that they have failed to honour their legal commitment to him.

13. On the contrary, the defendants maintain that the arrangement as between An Garda Siochána and the person taken into the Witness Security Programme is at the discretion of An Garda Siochána, and in the particular circumstances the plaintiff failed to adhere in a material way to the obligations that were placed upon him when admitted into the programme. It is contended on the defendants' behalf that the plaintiff, on several occasions, blew his cover, represented himself as a member of An Garda Siochána and, in general terms, brought about a situation whereby no host country could be asked to accept him, and even if asked, would not accept him, and even if they did accept him and he behaved in a like manner, he would be disowned by the authorities in the host country and returned to Ireland because they would not wish that their witness security system in any way would be exposed or compromised. There is also the difficulty as maintained on the defendants' behalf that in the particular circumstances of this case, the plaintiff has gone to the media and completely exposed his situation. The defendants, in the circumstances, took the view that the most appropriate course of action was that a final arrangement should be entered into which let the plaintiff remain in Ireland subject to certain ongoing arrangements for his security, and he was compensated for his cooperation.

Submissions on behalf of the plaintiff

14. Counsel for the plaintiff, Mr. McCullough, submits that this case involves the legal principles in relation to the duty of care and the duty to act fairly, the doctrine of legitimate expectation and its application, misrepresentation, misfeasance in public office, the right to bodily integrity, and the right to work pursuant to the Constitution.

15. In relation to the claim pursuant to a duty of care and the duty to act fairly, counsel for the plaintiff referred to the dictum of Walsh J. in *East Donegal Cooperative v. Attorney General* [1970] I.R. 317 where he stated at p. 341:

> "…the presumption of constitutionality carries with it not only the presumption that the constitutional interpretation or construction is the one intended by the Oireachtas but also that the Oireachtas intended that proceedings, procedures, discretions and adjudications which are permitted, provided for, or prescribed by an Act of the Oireachtas are to be conducted in accordance with the principles of constitutional justice. In such a case any departure from those principles would be restrained and corrected by the Courts."

16. The programme is non-statutory and, as such, does not come squarely within this *dictum*. However, counsel contends that the approach in *East Donegal* subtends a broader proposition articulated by Hardiman J. in *Dellway Investments Ltd v National Asset Management Agency* [2011] 4 I.R. 1 at 279 (albeit again against a statutory background), in which he adopted an extract from De Smith *Judicial Review of Administrative Action* (6th ed., 2009, Sweet & Maxwell) as a statement of the position in this jurisdiction:

> "The term 'natural justice' has largely been replaced by a general duty to act fairly which is a key element of procedural propriety. On occasion, the term 'due process' has been invoked. Whichever term is used, the entitlement to fair procedures no longer depends upon the adjudicative analogy, nor on whether the authority is required or empowered to decide matters analogous to a legal action between two parties. The law has moved on; not to the state where the entitlement to procedural protection can be extracted with certainty from a computer, but to where the Courts are able to insist upon some degree of participation in reaching most official decisions by those whom the decisions will affect in widely different situations, subject only to well established exceptions."

17. As Hardiman J. concluded at page 289:

> "It appears to me, therefore, that there is ample authority both in Ireland and elsewhere for the existence of a right to fair procedures in the making of a discretionary decision by a public official or officials is based on the status of the person claiming such fair procedures as a person who is or may be 'affected' or 'adversely affected' by such decision."

18. Hardiman J. also made reference to the *dictum* of McMahon J. *in Khan v. Health Service Executive* [2008] IEHC 23, where he observed, in the context of natural justice and the duty to act fairly, that:

> "… the H.S.E. must comply with rules which adhere to fair procedure/standards. The H.S.E. might like it to be otherwise. To those involved in administration, adherence to fair procedure standards may appear cumbersome, irritating and even irksome on some occasions. Undoubtedly, the necessary adherence may slow down the administrators and may not be conducive to efficiency. But that is the way it is. The battle between fair procedures and efficiency has long since been fought and fair procedures have won out. Insistence on fair procedures governs all decision makers in public administration."

Counsel for the plaintiff contends that there is no doubt but that An Garda Síochána come, in the instant context, within the ambit of decision makers in public administration, and, notwithstanding that the programme was not a statutory scheme, An Garda Siochána were administering a public scheme and, as such, were and are required to observe fair procedures. More specifically, counsel referred to the decision of Denham J. (as she then was) in *People (DPP) v Gilligan* [2006] 1 I.R. 107 where various submissions were made as to how a programme such as the Witness Security Programme should be properly operated. As was noted in her judgment:

> "Submissions were made on behalf of the accused as to the necessity for rules and a structure for the management of a Witness Protection Programme. The establishment of a Witness Protection Programme is a matter for the Executive and/or the legislature. It falls to the courts to ensure fair procedures."

19. Counsel submits that in *LM v Commissioner of An Garda Siochana* [2011] IEHC 14, it is expressly accepted by Hedigan J. that a duty of care is owed by An Garda Siochána to third parties. The judgment of Hedigan J. refers to *Gray v Minister for Justice* [2007] 2 I.R. 654. This case concerned the negligent disclosure of sensitive and confidential information by Gardaí to journalists. It was held that this could give rise to a cause of action for damages for negligence if the disclosure resulted in reasonably foreseeable loss, damage or injury to a person affected by the disclosure. It is a vexed question, both here and in England, as to whether the State owes a duty of care to the victims of crime, but counsel submits that this question has nothing to do with the present case. The question to be dealt with in the instant proceedings is whether the State owes a duty of care to persons whom it accepts into the Witness Security Programme. There is no doubt, counsel contends, but that the State must owe a duty of care to persons whom it takes into the programme. Any other suggestion would be a shocking one. It would involve, for instance, the court accepting, to use an argument by way of analogy, that if the State let somebody into the Witness Security Programme and then deliberately revealed their whereabouts the State would have no liability to that person. It was expressly accepted by Garda witnesses during the trial that they owed a duty of care to the plaintiff. While these witnesses were not talking in legal terms, they were talking in more general terms, it is still revealing, counsel contends on behalf of the plaintiff.

20. It was submitted on the plaintiff's behalf that fairness was manifestly absent in the present case for the following reasons:

- The plaintiff was not given any or any ample time to consider what has become known as the "Entry Document" and to understand its relevance, although a member of An Garda Siochána accepted that he would have been entitled to such time;

- The plaintiff never received any legal advice in relation to the Entry Document;

- The plaintiff was introduced to a psychotherapist after his admission to the Programme. He was never offered psychological or psychiatric counselling, either in relation to his ongoing situation prior to the trial or, in particular, in relation to relocating abroad;

- To say that the plaintiff was unsuitable for relocation abroad or for the programme generally, without ever having offered him such counselling or had an assessment of his suitability for relocation abroad carried out, was in itself

manifestly unfair;

• The Witness Security Programme Review Group did not conduct a meeting at which a decision was taken to purportedly exit the plaintiff from the programme (or, to be exact, no minutes exist of such a meeting and none of the defendants' witnesses could state that there was such a meeting). A member of An Garda Siochána indicated that another member had conveyed the decision to him, but that it was unclear if the decision had been discussed it with anyone else. The plaintiff was frisked prior to being brought into the meeting at which he was presented with what has become known as the "Exit Document";

• In answer to a question from the Court, a member of An Garda Siochána confirmed that the plaintiff was not specifically told that he didn't have to sign the Exit Document if he wasn't happy with it;

• Notwithstanding that the Exit Document is expressed to be not legally binding, the defendants clearly regard it as in some way constituting an acknowledgement by the plaintiff of the extent of his entitlement;

• It is abundantly clear that no one ever informed the plaintiff as to the reason for his being exited from the programme and asked to sign the Exit Document. Certainly An Garda Siochána never sat the plaintiff down and articulated matters in such terms;

• The plaintiff was never given the opportunity to respond to the allegations which were in essence being made about him, together with adverse conclusions being drawn, effectively, behind his back.

21. In relation to the plaintiff's claim pursuant to the doctrine of legitimate expectation, counsel for the plaintiff referred to the dictum of Lord Denning M.R. in *Amalgamated Property Co. v. Texas Bank* [1982] Q.B. 84, at 122:

> "When the parties to a transaction proceed on the basis of an underlying assumption - either of fact or of law - whether due to misrepresentation or mistake makes no difference - on which they have conducted the dealings between them - neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands."

Counsel for the plaintiff contends that the plaintiff entered the programme on the assumption that he would obtain certain benefits, and he was never disabused of this. It is submitted that it would be unfair or unjust to allow the defendants to go back on that assumption.

22. In *Glencar v Mayo County Council* [2002] 1 I.R. 84, Fennelly J. set out three propositions in relation to legitimate expectation (although qualified them insofar as he stated that they should not be regarded as definitive), which propositions he revisited in *McGrath v Minister for Defence* [2010] 1 I.R. 560. As he had explained in *Glencar*:

> "In order to succeed in a claim based on failure of a public authority to respect legitimate expectations, it seems to me to be necessary to establish three matters. Because of the essentially provisional nature of these remarks, I would emphasise that these propositions cannot be regarded as definitive. Firstly, the public authority must have made a statement or adopted a position amounting to a promise or representation, express or implied, as to how it will act in respect of an identifiable area of its activity. I will call this the representation. Secondly, the representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons, affected actually or potentially, in such a way that it forms part of a transaction definitively entered into or a relationship between that person or group and the public authority or that the person or group has acted on the faith of the representation. Thirdly, it must be such as to create an expectation reasonably entertained by the person or group that the public authority will abide by the representation to the extent that it would be unjust to permit the public authority to resile from it. Refinements or extensions of these propositions are obviously possible. Equally they are qualified by considerations of the public interest including the principle that freedom to exercise properly a statutory power is to be respected. However, the propositions I have endeavoured to formulate seem to me to be preconditions for the right to invoke the doctrine."

23. Putting this passage in the context of this case, counsel submits it must have been a representation that was conveyed either directly or indirectly to an identifiable person, in this case to the plaintiff, in such a way that it formed part of a transaction definitively entered into or a relationship between that person and the public authority, with the plaintiff having acted on the good faith of the representation. The touchstone of the legitimate expectation doctrine is, ultimately, whether it would be unjust to allow the public authority to resile from what Fennelly J. has described as the representation. Counsel submits that whatever else is true about this case, it is certainly the case that, with the knowledge of the defendants, the plaintiff was proceeding happily at all times on an assumption that he would be relocated to a specified country. It was submitted by counsel that the *Glencar* propositions are readily satisfied in the instant case. Counsel argued that it is manifestly clear that the plaintiff had expectations as to the benefits he was going to receive from the programme. On his case, these were explicitly made to him. Even if the Court finds that they were not explicitly made, it is submitted that they must be implied, as the plaintiff articulated these expectations and was never disabused of them. As such, he had a false impression, at a minimum. It is contended that An Garda Síochána were aware that the plaintiff was of the belief that he could relocate to the specified country and that he would receive benefits associated with this. The plaintiff argued that it is clear that, at a minimum, on 19th December, 2002, a member of An Garda Siochána knew that the plaintiff had a preference for relocating to a specified country. These expectations led to the plaintiff entering into the programme. As far as he was concerned, the plaintiff had no reason to believe that the defendants would resile from their commitments.

24. During supplemental submissions to the Court, counsel on behalf of the plaintiff stressed that the crux of this case lies in the plaintiff's legitimate expectation that he would be relocated to the specified country upon completion of the trial. It was argued that the defendants were actually aware that the plaintiff thought he would be relocated to the specified country and did nothing to disabuse him of this notion, even though they have given evidence to the fact that at all times they knew the plaintiff could never go to the specified country.

25. Counsel also referred the Court to the more recent Supreme Court decision of *Lett v Wexford Borough Council* [2012] 2 JIC 0301. The two most important points to take from that decision were that legitimate expectation can give rise to substantive rights and not just procedural rights, and secondly, that the breach of a legitimate expectation can result in damages. As O'Donnell J. held, at paragraph 23:

> "23. I recognise the reasons for caution in this regard not least because this is an issue which would benefit from more extensive argument in a future case but it seems to me in principle at least, and indeed by analogy with the position in

> estoppel in private law, that the issue for the Court is that once a legitimate expectation or estoppel has been identified, it is necessary to make good the equity so found, and that in such circumstances again in principle, the Court can make an order, whether characterised as damages or restitution, in order to make good the breach identified."

26. The Court has heard the plaintiff's direct evidence that a straightforward representation was made to him at the meeting of 26th November, 2002, that he would be relocated, that the relocation would be to the specified country, that it would involve between €350,000.00 and €450,000.00 to start a new business and €150,000.00 to buy a new house. On the other hand, a member of An Garda Siochána gave evidence to the effect that no representations were made at that meeting. Evidence submitted to the Court includes a member of An Garda Siochána's account of the meeting of 26th November, 2002, in which he wrote "[the plaintiff] is willing to relocate outside of the jurisdiction once the trial is complete but does not want to go to [a particular country]." It is thus clear that, on the written evidence before the court, there was at least a discussion at that meeting of relocation outside of the jurisdiction. In a later letter between two members of An Garda Siochána, it is stated that "in relation to a country of choice for future relocation, [the plaintiff] has indicated his preference for [a specified country], but I believe that further consultation may broaden his selection with the exception of [a particular country.]"

27. In relation to the plaintiff's claim of misrepresentation, counsel relied on the decision of this Court (McCracken J) in *Colthurst v La Touche Colthurst* [2000] IEHC 14 which stated that, to succeed, a plaintiff must show:

> "that there was a representation of a fact, that that representation was untrue and that the plaintiffs were induced to enter into the [agreement] by reason of the representation."

The plaintiff's case is based in part on the representations made to him, and that it is the making of such representations, knowing them to be false, or their being made recklessly, that has led to a claim for breach of contract, negligence, and breach of duty. It was submitted by counsel for the plaintiff that the representations were made in the knowledge that they were false, or alternatively, were reckless, in that a member of An Garda Siochána (and, as appropriate, his colleagues) did not care whether the representations were true or false. This is particularly so in relation to relocation to the specified country which, the Court has been told, would essentially not be possible for the plaintiff. As explained by a member of An Garda Siochána, other than in very limited circumstances where certain interests were affected, the specified country did not operate a programme whereby it was prepared to be a "host" country in terms of relocated witnesses.

28. Counsel for the plaintiff relied on this Court's judgment in *Carey v Independent Newspapers* [2004] 3 I.R. 52, where this Court held, at page 72, that –

> "Where a plaintiff has been induced to enter into a contract by a misrepresentation of fact on the part of a defendant or his agent, if the representation forms part of the concluded contract (whether the representation constitutes a condition or a warranty is immaterial in this context), the plaintiff may sue for breach of contract and loss of bargain, which entitles the plaintiff to be placed in the same position as he would have been in had the representation of fact been true and obligations consequent upon the representation been performed by the defendant. However, if the representation is not a term of the contract, there is, by definition, no breach of contract and the plaintiff's only remedy will lie in tort: the plaintiff will have a remedy in deceit where the misrepresentation is fraudulently made, and there will be a remedy in negligent misrepresentation where the misrepresentation was made negligently in the context of a duty of care owed by the representor to the plaintiff."

Counsel submits that the instant case is a contractual one in that a representation was made that subsequently became a term of the contract, and as such the basis of damages should be the measure of damages required to bring the plaintiff in to the position that he would have been in if the representation had been acted upon. Furthermore, while leaving somebody to labour under a misapprehension does not constitute a misrepresentation, there are exceptions which are analysed in the *Carey* decision at page 66:

> "In principle, the Irish courts have accepted that silence or non-disclosure regarding facts or changes in circumstance not known to the other party can give rise to an obligation to disclose such facts and circumstances and such failure to disclose will constitute a misrepresentation. In *Pat O'Donnell & Co. Ltd. v. Truck and Machinery Sales Ltd*. [1998] 4 I.R. 191 at p. 202, O'Flaherty J. remarked:-
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> > "In general, mere silence will not be held to constitute a misrepresentation. Thus, a person about to enter into a contract is not, in general, under a duty to disclose facts that are known to him but not to the other party. However, in certain circumstances, such a party may be under a duty to disclose such facts. A duty of disclosure will arise, for example, where silence would negate or distort a positive representation that has been made, or where material facts come to the notice of the party which falsify a representation previously made.""

As such, counsel submits, this case falls within both the contractual principle and the tort principle. A representation was made, in the simplest of possible terms, whether express or implied, that the plaintiff would be entitled to relocation. If the Court concluded that this formed part of an agreement between the plaintiff and the defendants then the plaintiff should be entitled to damages for breach of that misrepresentation, the measure of damages being the amount that it takes in order to fulfil the representation. In terms of the tort issue, there must have been a duty of care owed by the defendants to the plaintiff, and there must have been a negligent or fraudulent misrepresentation. Counsel for the plaintiff submits that both tenets of the test are met in the instant case. Counsel also referred to the case of *Stafford v Mahony* [1980] I.L.R.M. 53 where this Court (Doyle J.) summarised the relevant principles as to negligent misrepresentation as follows:

> "…in order to establish the liability for negligent or non-fraudulent misrepresentation giving rise to an action there must first of all be a person conveying the information or the representation relied upon; secondly, that there must be a person to whom that information is intended to be conveyed or to whom it might reasonably be expected that the information would be conveyed; thirdly that the person must act upon such information or representation to his detriment so as to show that he is entitled to damages."

It was submitted that the plaintiff comes squarely within such a definition.

29. The plaintiff has also brought a claim for misfeasance in public office against the defendants and/or of abuse of the said office in pursuing a course of conduct (by making representations to the plaintiff that he would be protected by means of being admitted into the defendants' Programme) designed to induce him to provide certain information to An Garda Síochána and to give certain evidence at a criminal trial, in the knowledge that failure to follow through on those promises or to take any *bona fide* steps to honour same would expose the Plaintiff to grave risk to his physical and mental wellbeing, bodily integrity, and his ability to earn a livelihood.

30. The English case of *Three Rivers District Council v Bank of England (No.3)* [2003] 2 A.C. 1 involved a claim that senior officials in the banking supervision department of the Bank of England had been guilty of misfeasance in public office in licensing a particular bank when they knew that it was unlawful to do so, and had shut their eyes to what happened thereafter. Lord Steyn set out the three ingredients of the tort of misfeasance in public office in the following terms:

> "(1) The defendant must be a public officer:
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> It is the office in a relatively wide sense on which everything depends. Thus a local authority exercising private-law functions as a landlord is potentially capable of being sued: *Jones v Swansea City Council* [1990] 1 WLR 54. In the present case it is common ground that the Bank satisfies this requirement.
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> (2) The second requirement is the exercise of power as a public officer:
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> This ingredient is also not in issue. The conduct of the named senior officials of the Banking Supervision Department of the Bank was in the exercise of public functions. Moreover, it is not disputed that the principles of vicarious liability apply as much to misfeasance in public office as to other torts involving malice, knowledge or intention: *Racz v Home Office* [1994] 2 AC 45.
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> (3) The third requirement concerns the state of mind of the defendant:
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> The case law reveals two different forms of liability for misfeasance in public office. First there is the case of targeted malice by a public officer, i.e. conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful."

It was submitted by counsel for the plaintiff that the first two requirements are readily met, in that representations were made to the plaintiff by members of An Garda Síochána acting in that capacity. Even if the Court finds that representations were made only in part, or were not explicitly made, it is submitted that the plaintiff was clearly allowed operate under the assumption that he had various expectations when members of An Garda Síochána knew that such expectations were either unrealistic or, in fact, impossible.

31. The plaintiff has also claimed damages for breach of his constitutional rights to bodily integrity and the right to work / earn a livelihood. Counsel for the plaintiff argued that the plaintiff's life is in danger. There was no necessity for the State to put him in a situation whereby that exposure continued. In fact, the purpose of putting the plaintiff into the Programme was to protect him. Counsel argued that by making representations in relation to the Programme, and by accepting the plaintiff into the Programme, but by then reneging on the representations made to him, the defendants have exposed him to personal risk; indeed, they have also, in his view, exposed his family to risk.

32. In relation to the plaintiff's claim pursuant to his constitutional right to work, the plaintiff accepted that as part of his entry into the programme, he would, inter alia, be paid certain entitlements. As he was in the programme, he could not work. He accepted this on the basis that as part of his entry to the programme, he would be given a new name, social insurance number and the necessary paper work, such that he would be able to seek employment abroad having given evidence at the trial. He has not received any of these benefits. He still cannot use his PPS number. As such, he is still unable to work. The plaintiff has argued that the defendants are thereby depriving him of the right to work and/or to earn a livelihood other than on a casual basis.

33. The plaintiff asks the Court to note the evidence that there is still a real and ongoing risk to the plaintiff's life and to note the commitments of the defendants in that regard, allowing the parties liberty to apply. In practical terms, this could be achieved by the Court expressly noting that, based on the evidence adduced by the defendant, it appears that the Commissioner of An Garda Síochána will comply with the following (based on the points set out in the Exit Document):

- An Garda Síochána will maintain a regular status update of the plaintiff's threat assessment
- An Garda Síochána will notify any adverse intelligence to the plaintiff
- Any re-evaluation of the plaintiff's security is to take place in that context.

The plaintiff also seeks damages. As to the quantum of such damages, it was submitted by counsel for the plaintiff that the amount paid to the plaintiff is not an appropriate sum. Rather, the sum of €600,000.00, being made up of the €350,000.00 + €250,000.00, is sought, as, on the plaintiff's evidence, it was represented by a member of An Garda Siochána as being the appropriate sums for, respectively, starting a new business and purchasing a house.

Submissions on behalf of the defendants

34. Counsel for the defendants, Mr. Costelloe, submits that there are many factual disputes in this case. For instance, some of the issues of fact which require to be determined by the Court are as follows: whether the Gardai made any promises of specific benefits to the plaintiff; whether the entry protocol was a ruse concocted by the Gardai for the purpose of misleading the plaintiff to give evidence in the trial before the Special Criminal Court; whether the plaintiff sought legal advice prior to the entry and exit protocols; whether and how the plaintiff signed the entry and exit protocols; whether the Gardai instructed the plaintiff to pass himself off as a Garda when dealing with others. In respect of each of these central issues of fact, the defendants argue that the position of the plaintiff is wholly uncorroborated and the plaintiff's version of events is denied on the defendants' behalf in evidence.

35. Counsel for the defendants further submitted that the plaintiff is merely seeking to engage in some form of judicial review of a decision that took place over 10 years ago without having so much as pleaded any entitlement to same in the papers. It was submitted that this is an abuse of process and should not be permitted.

36. Mr. Costelloe, on behalf of the defendants, submitted to the Court that there has been a shift in the position of the plaintiff between the commencement of the proceedings and the final submissions to the Court. The plaintiff originally pleaded, in both his statement of claim and his direct evidence to the Court, that he was explicitly promised certain matters by the defendants, in particular by two members of An Garda Siochána. These alleged promises included a new house, a new social insurance number, the necessary work documentation, an income, or the means to get an income, a new name, a car, and that he would be put into the care of the specified country's authorities while he was there and that if he had to travel back and forth he would be accommodated in so doing. However, counsel contends that the case has changed considerably and what is now being suggested is that these

promises were, in fact, only implied, a markedly different proposition to how the case commenced.

37. Furthermore, the defendants do not accept the submission of the plaintiff that a duty of care was owed to the plaintiff merely by virtue of the fact that he was placed in the Witness Security Programme.

38. Whilst one might argue that the State at large owes a duty of care to ensure the safety of witnesses who testify in criminal proceedings, this has never been determined in this jurisdiction. However, the defendants argue that should such a duty exist it is met by putting in place appropriate security measures when necessary, something that the defendants duly did in the present case. The existence of a legally binding duty is absolutely not accepted by the defendants.

39. Insofar as counsel for the plaintiff cites the passage from the judgment of Denham J in *DPP v. Gilligan* [2006] 1 IR 107 in support of the contention that it falls to the courts to ensure that fair procedures are observed in relation to the operation of the WSP, the courts referred to are the criminal courts. As such, it was argued by the defendants that the issues of fairness under consideration in *Gilligan* concerned the fairness of the criminal trial and whether the manner in which the WSP was operated could result in unfairness to the accused, not to the witness. It was further contended that the many references in Gilligan to the necessity to ensure the existence of fair procedures derive from the operation of Article 38 of the Constitution and patently have no application to the position of a participating witness.

40. The defendants argue that the decision to exit the plaintiff from the WSP was not one that determined any rights he enjoyed. The State acknowledged and continues to acknowledge an ongoing obligation to protect his person. Moreover, the decision was not one that can be considered to have been made in the context of a decision-making process or otherwise be amenable to review any more than any other operational decision in the course of a Garda investigation might be.

41. In relation to the alleged obligation on the defendants to furnish the plaintiff with legal assistance, counsel for the defendants submits that at no stage prior to signing the Entry Document did the plaintiff request a solicitor. The plaintiff gave evidence during the proceedings that he attempted to get legal advice from a solicitor but that nobody would take his case. More fundamentally, the defendants submitted, the Entry and Exit Protocols are explicitly described as not being legally binding, and thus it is difficult to understand how legal advice could impact on a decision whether or not to engage in a non-binding arrangement. Moreover, the defendants argue that the law is reasonably clear as to when there exists a right to legal advice i.e. in circumstances where a suspect is being interviewed for a certain criminal offence. The suggestion that such a right be extended (on an actionable basis) to circumstances relating to the interaction with a witness is a radical one.

42. In relation to the claim of legitimate expectation, the plaintiff contends that he was promised one thing verbally whilst accepting that he signed up for something entirely different in written form. Counsel for the defendants argues that the most the plaintiff can contend for is an illegitimate or unreasonable expectation that might well have been passionately held. Reference in this regard was made to the decision of the Supreme Court in *Minister for Justice .v Johnston* [2008] IESC 11, in which observations made by Macken J. were considered particularly apposite to the circumstances of the present case. In that case, the respondent to a European Arrest Warrant claimed that he held a legitimate expectation that he would not be prosecuted for the offence for which his surrender was sought. Macken J. quoted with approval the following passage from the decision of Barr J. in *Canon v Minister for the Marine* [1991] 1 I.R. 82:

> "The concept of legitimate expectation, being derived from an equitable doctrine, must be reviewed in the light of equitable principles. The test is whether in all the circumstances it would be unfair or unjust to allow a party to resile from a position created or adopted by him which at that time gave rise to a legitimate expectation in the mind of another that that situation would continue and might be acted upon by him to his advantage."

43. In response to allegations made on behalf of the plaintiff of misfeasance and misrepresentation on the part of the defendants, the defendants contend that the overwhelming evidence is that no such representations were ever made to the plaintiff. He was told, in the content of the Entry Document, what he would receive. Subsequently, because he could not abide by the terms of that document and thereby stay in the WSP, the terms of what he was to receive were altered and this is reflected in the terms of the Exit Document.

44. It was submitted on the defendants' behalf that the Gardai have done all that they could do to vindicate the plaintiff's right to life and personal safety. The plaintiff's principle complaint is that he was not relocated to another jurisdiction. The evidence in the present case, counsel contends, showed that the plaintiff was manifestly unsuitable for relocation of the sort he expected, as the State owes an obvious duty of candour to any cooperating state in relation to the suitability of any relocated witness and the plaintiff proved himself to be incapable of maintaining 'cover' and seemingly intent on drawing attention to himself.

45. Counsel for the defendants concluded by stating that the evidence clearly established that relocation as a protected witness to the specified country was simply never an option. For reasons that were dealt with in some detail in the evidence, the plaintiff was deemed to be unsuitable for relocation as a protected witness, due to the many instances of bizarre behaviour and occasions when the plaintiff blew his cover. Moreover, the fact that the plaintiff was not informed that a particular country was not an option for relocation is of somewhat academic interest when it transpired that he was not suitable at all for relocation. Furthermore, there is evidence to the effect that no other country would ever accept the plaintiff as a relocated witness given his admitted deliberate actions in ensuring that those who were previously engaged with him as witness protection officers were 'outed' in the media. The effect of his conduct has been to render him wholly unsuitable to be relocated as a protected witness. If the threat level were to change from 'low,' Gardai could assist him with relocation, but not on an anonymised basis as a protected witness.

46. While it is accepted between the parties that the Entry and Exit Protocols are not legally binding as they explicitly express themselves in such terms, it is contended on the defendants' behalf that this is not to say that they are to be regarded as in any sense evidentially neutral. They represent the understanding of the respective parties and they reflect an explicit record of what was promised at the relevant times. This, it was argued, is of considerable significance in the context of the case made by the plaintiff in relation to misrepresentation and legitimate expectation.

47. In relation to the plaintiff's expulsion from the programme, counsel for the defendant brought the Court's attention to the so-called 'Entry Document' which he signed. All parties agree that this document was not legally binding, however, it is useful in that in its preamble, it sets out a number of matters, for example:

> "Any failure by you to abide by the conditions set out in this protocol may render your participation in the Witness Security Programme void and An Garda Siochána would be entitled to withdraw and/or review any measures or arrangement agreed with you."

Counsel submits the plaintiff failed to comply with the expectations as set out in the Entry Document.

48. In relation to the reliefs sought by the plaintiff in these proceedings, specifically damages, it was submitted on the defendants' behalf that the money being sought by the plaintiff in order to rebuild his life abroad completely ignores the fact that he was paid a large sum of money to aid him in relocating outside the jurisdiction. Although he declined to do so for a considerable period of time, and rather appears to have lived openly in Ireland after the trial, he did, on his own account, ultimately re-locate to another country. That effort was abbreviated due to some difficulty he encountered with the person he was working for (unrelated to the matters before the Court). He then, according to his evidence, moved with his family to a different country where he stayed for almost three years. The plaintiff told the Court that he returned from that country not because of his inability to work but because he could not afford to pay for two households – one here in Ireland and one in the other country. It was contended on the defendants' behalf that there is nothing precluding the plaintiff from now relocating out of the jurisdiction where he can again obtain work or work within the jurisdiction. The defendants are in no way inhibiting him from doing this and as such a breach of his constitutional right to work does not arise.

49. Furthermore, the plaintiff also signed the so-called "Exit Document," albeit he alleges that he signed it under duress. He was told by the defendants that he was not going to be relocated and that he would get a sum of money in two tranches over two years. Counsel for the defendants points to the fact that he raised no objections in that intervening year regarding any grievances he felt he had with signing the document or the deal he got out of it. Counsel submits that during the intervening years since the plaintiff had accepted the compensation from An Garda Siochána he had no difficulty relocating himself to another jurisdiction for three years. Counsel also queries the damages that the plaintiff is now seeking. Just because the plaintiff could not go to the specified country does not mean that he has a loss that is quantifiable so as to lead to an award of damages.

50. It was further submitted on the defendants' behalf that it is noteworthy that there is not one reference anywhere, in any material disclosed, nor in any of the correspondence available to the Court between the parties or in any of the pleadings, to the figure of €600,000.00. This figure is flatly refuted by the defendants, specifically the two members of An Garda Siochána who were responsible for negotiating the terms of the Exit Document.

Conclusion

51. I am satisfied to find, on the balance of probabilities, that the plaintiff cooperated with the Garda authorities in their investigation of the allegation of extortion as against the two individuals, members of the I.R.A, provided a statement to be used in evidence against them, attended at an identity parade where he identified both of them, agreed to give evidence on behalf of the Director of Public Prosecutions against them and that he was accepted into the Witness Security Programme. I am satisfied, on the balance of probabilities, that there was no meaningful assessment carried out by the Garda authorities in accordance with the provisions of the Witness Security Programme, and that such assessment as there was, was only carried out after the plaintiff's admission. I am further satisfied that it was a significant feature in the fight against organised crime and subversive organisations that the plaintiff made a statement, attended the ID parade, and agreed to give evidence at the trial of the action of the two accused men. I am satisfied that the plaintiff was unique at the time of his admission into the Witness Security Programme by reason of the fact that he was an ordinary citizen and a member of society with no previous criminal convictions. I am satisfied that there was unfortunately a very serious breakdown in the inter-personal relationship as between certain members of An Garda Siochána, and the plaintiff, which is fuelled by allegations and counter allegations and that this in turn led to tension as between the Garda investigation team and the Witness Security Programme team, which culminated in the plaintiff advising a member of An Garda Siochána that he would not give evidence at the trial, but subsequently agreeing with another member of An Garda Siochána that he would give evidence.

52. I am satisfied, on the balance of probabilities, that this inter-personal breakdown between the plaintiff and the Witness Security Programme team came about as a result of the plaintiff's failure to comprehend that, in simple terms, he had to have regard to the terms of the entry protocol and greatly change his lifestyle and lie low while remaining within Ireland, pending the criminal trial. The plaintiff's position was clearly set out in the entry document as signed and he, as the person maintaining these proceedings, failed to comply with the terms in accordance with the understanding as set out in the document, and this is the position notwithstanding that the Entry Document was not intended to create legal relations.

53. I am not satisfied, on the balance of probabilities, that the defendants made a statement or maintained a position amounting to a promise or representation, express or implied, that following the trial the plaintiff would be going to a specified country with all the necessary paperwork and a very substantial sum of money running to several hundred thousand euro. Any conversations that took place before the trial could not be construed on any reasonable interpretation as being a basis for a transaction definitively entered into and could not, in the view of this Court, on the balance of probabilities, be found to be such that would constitute a representation, express or implied, to be relied on. I do not accept that the plaintiff was allowed operate under any assumption as a result of conversations he had with members of An Garda Siochána. The Entry Document adequately summarises the position and it is clear that there were ongoing discussions about a specified country, not going to a particular country, and the possibility of other countries. Insofar as the plaintiff alleges that he understood and was never disabused of the notion of going to a specified country, he never had a representation that he was going, either express or implied, and the Entry Document and continuing discussions could not have given rise to any form of a representation that he was going.

54. I do not accept that the entry protocol was a ruse concocted by An Garda Siochána for the purpose of misleading the plaintiff as regards the trial before the Special Criminal Court and I am satisfied on the evidence that if the plaintiff wanted legal advice prior to signing the entry and exit protocols, he was a capable adult male and could have indicated, which I do not accept that he did, that he wished to obtain legal advice and he could have declined to sign both the entry and exit protocols until he obtained independent legal advice.

55. I find on the evidence, on the balance of probabilities, that the plaintiff divulged details of his situation to persons contrary to the agreed provisions of the entry protocol, that the plaintiff made contact with members of An Garda Siochána other than the members of the Witness Security Programme, that the plaintiff gave interviews and passed information to the media, and further, that it was necessary for the plaintiff to be spoken to by members of An Garda Siochána about a number of incidents, that the plaintiff failed to pay back a credit card bill which he agreed to do, and further that the plaintiff represented himself to members of the public as being a Garda. I do not accept that any member of An Garda Siochána told the plaintiff to say he was a member of An Garda Siochána.

56. The plaintiff was introduced to a psychotherapist, and it is accepted that he was not offered or provided with psychological or psychiatric counselling in relation to his ongoing situation prior to the trial. By the time of the trial and having regard to the events which followed, it is quite clear to this Court that the plaintiff simply was totally unsuitable for relocation to any host country and the fact that he was not given any assistance other than by the psychotherapist, does not in itself render the procedure that was adopted unfair as claimed on the plaintiff's behalf.

57. The decision as regards the plaintiff's exit from the Witness Security Programme was on the evidence on the balance of probabilities taken by a member of An Garda Siochána and that decision was conveyed to the relevant member of An Garda Siochána. The final meeting in respect of the plaintiff's exit did come about in unusual circumstances and the frisking of the plaintiff prior to entry to the final meeting serves to demonstrate the complete breakdown in the relationship as between the plaintiff and certain members of An Garda Siochána. The events surrounding the Exit Document are clouded by the plaintiff's allegation that he signed the document in a different manner to that as presented to the Court and this Court is of the view that, on the balance of probabilities, the plaintiff's recollection in this regard is not correct and it was always open to him to walk away from signing the Exit Document on the day in question and to obtain legal advice and this Court does not accept that he was placed under duress although quite clearly there was a significant amount of money on offer to him in two tranches and he agreed to the proposition as put forward at that point in time. In many ways, most tellingly, is the fact that the plaintiff had a year to consider his position and obtain legal advice or raise many of the contentions which he has raised in these proceedings after accepting the first instalment of money which he did not do and then proceeded to accept the second instalment without demur. His explanation that he had to accept the money because of his financial standing does not find favour with this Court having regard to the case he now makes out. Insofar as an allegation is raised that the plaintiff was never given the opportunity to respond to the allegations which were in essence being made about him, together with adverse conclusions being drawn allegedly behind his back, there is no dispute by the plaintiff as regards a variety of the incidents that occurred. It is only necessary in this regard to refer to the content of the entry agreement as signed by the plaintiff which set out a reasoned description of the understanding that lay ahead for the plaintiff on his entry into the scheme and which simply does not correspond to the plaintiff's ongoing behaviour.

58. Mr. McCullough, on behalf of the plaintiff, contends that the defendants owe the plaintiff a duty of care to act fairly as decision makers within the context of public administration notwithstanding that the Witness Security Programme is a non-statutory scheme. Mr. McCullough relied specifically on the decision of the Supreme Court (Denham J.) in *DPP v. Gilligan* [2006] 1 I.R. 107 wherein it was stated that it was a matter for the Courts to ensure fair procedures in situations involving the Witness Security Programme but, as contended for by counsel for the defendants, that decision was made in the context of the fairness of a criminal trial and not civil proceedings such as are presently before this Court. It is contended on the plaintiff's behalf that the defendants have conceded that they owed a duty of care to the plaintiff but this is categorically rejected on the defendants' behalf. The issue of a duty of care arose in the context of fairness in the decision making process in the context of public administration.

59. The decisions of the High Court in *L.M. v. The Commissioner of An Garda Síochána & others* [2012] 1 ILRM 132 and *Belinda Lockwood v. Ireland and the Attorney General & others* [2011] 1 I.R. 374 are referred to by Mr. Costello on the defendants' behalf which judgments in the High Court respectively held that no duty of care existed to a victim of a crime by a member of An Garda Síochána in the investigation and prosecution of a crime. Both of these decisions have recently been revisited and are the subject matter of a judgment of the Supreme Court as delivered on the 3rd November, 2015, under Supreme Court reference 143/2011. In essence, the Court (O'Donnell J.) carried out a very extensive review on the very issue of the potential of a duty of care being owed by members of An Garda Síochána to victims of crime arising from the investigation and prosecution or non-prosecution of the alleged perpetrators of a crime and the Court took the view that it would be inappropriate to address important issues of law that arise in the context of the limited information and material that was placed before the High Court in both cases which were dealing with issues that arose by way of the trial of a preliminary issue.

60. The position in relation to an alleged duty of care to act fairly in the particular instance has to take into account that the Witness Security Programme is a non-statutory scheme. What is involved here is a Garda operational decision in the course of a Garda investigation arising from a complaint made by the plaintiff which resulted in the successful prosecution and conviction of two accused persons. Clearly the negligent disclosure of sensitive or confidential information by Gardai to journalists may give rise to a cause of action for damages for negligence if the disclosure resulted in reasonably foreseeable loss, damage or injury to a person affected by the disclosure. Likewise, if a person acted mala fides or with a view to gain in a case involving the disclosure of the identity of a person within the Witness Security Programme then it may be that the person affected by the disclosure would be entitled to damages for reasonably foreseeable loss, damage or injury caused by the disclosure. As Mr. McCullough submitted to the Court it is a vexed question both in this jurisdiction and in England as to whether the State owes a duty of care to victims of crime but, as submitted by Mr. McCullough, this question has nothing to do with the present case.

61. Taking an overview of the evidence and the findings as set out herein, I do not accept that the plaintiff was dealt with unfairly.

62. Insofar as the plaintiff raises the doctrine of legitimate expectation, I am satisfied to come to a conclusion that the expectation of the plaintiff, in general terms, was that he would be given a new identity and paid a sufficient amount of money to enable him to carry on a life and work outside of Ireland, subject to the understanding as set out in the Entry Document, but this expectation is completely undermined by the plaintiff's own behaviour and, in this regard, I accept that the plaintiff could not be relocated to any destination because, on the full facts being disclosed by An Garda Siochána to the operatives of a similar receiving scheme in a host country, they would not have accepted the plaintiff because he would run the risk of undermining and exposing their system, and quite clearly the potential risk that at any stage the plaintiff might behave in a way similar to his propensity in this regard as demonstrated in Ireland would, as a probability, have resulted in his relocation being terminated in a foreign host country and he would, as a probability, have been returned to Ireland.

63. In this instance, the discussions concerning being removed to a host country with a new identity and with sufficient financial resources were always in general terms and not on any specific basis. Any discussion was always on the premise that the plaintiff was going to be a suitable candidate and as already indicated this Court is of the view that he was totally unsuitable for relocation to a host country.

64. I am satisfied in any event, on the evidence, that there was no specific or agreed terms arrived at with the plaintiff prior to the giving of his evidence at the trial and in the particular circumstances this would be a clear case where it would not be unjust to allow An Garda Siochána to resile in general terms from what was proposed in general terms as regards the plaintiff being relocated abroad with a new identity and sufficient financial resources. The plaintiff was not proceeding happily at all times on an assumption that he would be relocated to a specified country. He knew the basis of the understanding as regards the conditions of his entry and on reading the entry conditions it is quite clear that he was in complete disregard of the conditions that were expected of him. Insofar as it is alleged that the plaintiff had no reason to believe that the defendants would resile from their commitments, insofar as any commitments arise, the plaintiff also had commitments from which he resiled. In respect of the plaintiff being relocated, I do accept that he was not actually disabused of the notion that he at least had a chance of going to the specified country, but the reality of the situation was that neither was it ever confirmed to him on the general thrust of the evidence and it had to be clear to the plaintiff that if relocation was to take place it may have been to the specified country or to an alternative destination apart from one destination which the plaintiff specifically asked not to be sent to. I do not find that the plaintiff was entitled to a legitimate expectation that he would be relocated to the specified country with all the necessary documentation, with a new identity, and with sufficient financial resources in the manner that he alleges were indicated to him, and that his actions and behaviour were in some

way irrelevant.

65. I further take the view that there is no basis for a claim in misrepresentation because there was no actual representation of a fact or a situation where any representation was untrue or that the plaintiff was induced to enter into any arrangements by reason of a representation. As previously indicated, there was an entry into the Witness Security Programme, there was an understanding set out which the plaintiff should have adhered to, there was a general discussion which did indicate that the plaintiff may well be relocated to a host country, but any aspect of the discussion on the defendants' part was not false, or made recklessly, or contained the necessary ingredients for the plaintiff to set up a claim for alleged breach of contract or negligence or breach of duty or of a duty of care. I do not accept that any representation was made by any member of An Garda Siochána that was false or reckless or was made by a member of An Garda Siochána not caring whether the representations were true or false and I do not find that any member of An Garda Siochána acted with mala fides.

66. I do not find that the plaintiff was induced to enter into any contract by a misrepresentation of fact on the part of the defendants or any of their servants or agents. Further, I do not find that there was any concluded contract between the plaintiff and the first named defendant or any of her servants or agents. I do not find that there was such a silence on the part of the defendants, their servants or agents, or that this alleged silence can be held to constitute some form of a misrepresentation.

67. It follows that I do not consider that there is any basis for a claim for misfeasance in public office against the defendants and/or abuse of that office or that they, or either of their servants or agents, pursued a course of conduct by making representations to the plaintiff that he would be protected by means of being admitted to the Witness Security Programme. It has to be borne in mind that the plaintiff himself had made the complaint to An Garda Siochána and had provided a statement to An Garda Siochána before he was approached with regard to the Witness Security Programme and he, at all material times, knew from the entry protocol what was expected of him and he failed to comply with those expectations.

64. As regards the aspect of the ongoing threat to the life of the plaintiff, I note in particular the views of a member of An Garda Siochána that it would be irresponsible of him to say other than that the threat was still there. He believes that it is not an imaginary threat. He takes the view that the IRA view people who collaborate with law enforcement agencies as informers who are to be executed. I accept that leading into the trial and following the trial and for a number of years thereafter, on the balance of probabilities, the threat to the plaintiff's life was probably high but with the passage of time and having regard to the plaintiff's attitude to an open lifestyle both before and after the trial I take the view that, in conjunction with the evidence of a member of An Garda Siochána, the threat may potentially always be there, and I am satisfied on the evidence adduced that An Garda Siochána will maintain a regular status update of the plaintiff's threat assessment and will notify the plaintiff of any adverse intelligence which would threaten him in any regard and furthermore, that if necessary, a re-evaluation of the plaintiff's security will take place in that context and all of this is against a background where even though there have been many references throughout the evidence to the plaintiff exiting the Witness Security Programme, in fact a person such as the plaintiff never exits entirely from the programme and is always subject to An Garda Siochána maintaining a regular status update as regards the plaintiff's threat assessment. The state defendants acknowledge an ongoing obligation to protect the plaintiff and, in my view, there is nothing unfair or unjust in the circumstances pertaining. As such, I find no basis for the proposition that the plaintiff's constitutional right to bodily integrity has been infringed. It follows, therefore, that there is no reasonable basis why the plaintiff could not continue to use his PPS number and collect social welfare, search for a job or start another business, whatever the case may be.

65. Mr. Costello contends that there exist very substantial grounds for the underlying principal that these proceedings are not justiciable on the grounds of public policy and that there are compelling reasons why the operation of the Witness Security Programme could not be subject to a broad review as contended for on the plaintiff's behalf. I do not consider that it is necessary in the light of my findings of fact to decide this issue on this occasion.

66. Accordingly, having regard to the reasons as outlined herein I do not find favour with the plaintiff in the case he makes out against the defendants and I will hear the submissions of counsel as to the form of the order to be drawn up.