

BETWEEN

DAVID DULLY

PLAINTIFF

AND

ATHLONE TOWN STADIUM LIMITED

DEFENDANT

(No. 4)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 16th day of July, 2018

1. In *Dully v. Athlone Town Stadium Ltd (No. 1)* [2018] IEHC 309 [2018] 4 JIC 1203 (Unreported, High Court, 12th April, 2018) I removed the defendant as a trustee of the trust in issue in these proceedings and directed the conveyance of the legal interest in the property concerned to a newly-appointed trustee. In *Dully v. Athlone Town Stadium Ltd (No. 2)* [2018] IEHC 225 [2018] 4 JIC 1603 (Unreported, High Court, 14th April, 2018) I declined to order a stay on the conveyance of the legal title. In *Dully v. Athlone Town Stadium Ltd (No. 3)* [2018] IEHC 366 (Unreported, High Court, 30th May, 2018) I made a formal order pursuant to O. 3(22) of the Rules of the Superior Courts to allow the plaintiff to deal with the remaining reliefs sought, including damages, by way of special summons, and gave consequential directions.

2. I now deal with a motion for discovery and particulars brought by the defendant, dated 20th June, 2018. I have received helpful submissions from Mr. Michael Forde S.C. (with Mr. Laurence Masterson B.L.) for the defendant and moving party and from Mr. Martin G. Durack B.L. (with Mr. John Paul Shortt S.C.) for the plaintiff.

Discovery

3. Mr. Forde helpfully says that there is no issue under sub-paras. 1, 2, 4 and 5 of the request for discovery. As regards para. 3, sub-para. (a) relates to documents regarding the discharge of an alleged indebtedness of €25,978 regarding a proposed astroturf pitch. The plaintiff says that all documents have been furnished while Mr. Forde submits that that is implausible. Paragraph 3 of the affidavit of discovery of the plaintiff is incorrect in that it avers that there are no documents other than the ones disclosed that are relevant to the matters in issue in the suit. That is inaccurate because that is language appropriate for a general order of discovery and it is likely that the plaintiff does have other documents relevant to the action overall, but the affidavit is dealing in fact only with the categories of documents sought. Thus the averment at para. 3 of the affidavit should read that there are no documents other than those relevant to the discovery now being sought by the defendant.

4. Having heard counsel on the issue, it is also not entirely clear whether comprehensive steps were taken by the plaintiff regarding sourcing documents from all other members of the management committee, which Mr. Forde was concerned about, so the appropriate order is to direct that the plaintiff should swear a further affidavit (a) confirming that he has contacted all members of the management committee of the club seeking the documents specified in the request for discovery by the defendant, subject to any assessment by the plaintiff of their relevance to that request or of privilege relating to those documents and (b) correcting para. 3 of the affidavit of discovery by changing "*relating to the matters in question in the suit*" to "*coming within the request for discovery made by the defendant*".

5. Paragraph 3(b) of the discovery request relates to contributions by third parties. The plaintiff has contended in the replies to particulars that costs were met from the club's own resources. That can be challenged in cross-examination at the hearing of the damages issue but in the circumstances where the plaintiff has committed himself to such a position it is not a matter where the defendant is entitled to discovery at this stage.

6. Paragraph 3(c) of the request relates to documents regarding consideration being given to notifying the defendant of the likely cost to the club in not complying with the club's requests. That sub-paragraph does not entirely make sense as phrased but in any event it is self-evident that a potential cost to the club for which the defendant could be liable would be likely if the defendant as trustee failed to comply with the club's requests on any particular issue. Discovery is unnecessary and inappropriate here.

Particulars

7. Paragraph 1 of the request for particulars relates to the plaintiff's authority to prosecute a claim for damages. That is not a matter for particulars in the circumstances, and in any event I determined this issue contrary to the defendant's submissions in the *Dully (No. 1)* judgment. Mr. Forde says that that judgment did not deal with this issue because the proceedings were not properly proceedings for damages until an order under O. 3 (22) had been formally made. That is something of a formality because damages were expressly claimed at all stages. The previous ruling applies here. In any event, the plaintiff's authority is a matter of indoor management and the defendant does not have standing to make an issue of it.

8. Paragraph 2 of the particulars sought seeks details of any agreement as to how damages awarded to the plaintiff should be disbursed by him. Again, that is not a matter for the defendant and therefore not a matter for particulars. The plaintiff's entitlement to seek damages is based on the position as set out in my judgment in *Dully (No. 1)*, namely that he is suing on behalf of the club members.

9. Paragraph 3 sub-paras. 1 and 2 have already been replied to insofar as they are relevant to the damages claimed. Sub-para. 3 asks what "*consideration as was given by the club's management committee to notifying the defendant of a likely loss to the club in the defendant not complying with the request to facilitate the club (in its attempt to) acquire the requisite grant*". Again, the possible loss involved is quite obvious and particulars are not necessary or appropriate.

10. Mr. Forde helpfully says there is no issue in relation to the replies to points 4 and 5.

Order

11. The order therefore will be that the plaintiff swear a further affidavit within a time to be specified:

(a) confirming that he has contacted all members of the management committee of the club seeking the documents requested by the

defendant, subject to any assessment by the plaintiff as to relevance of any documents in the possession of such committee members to the categories of documents sought, and as to privilege; and

(b) correcting para. 3 of the affidavit of discovery by changing "*relating to the matters in question in the suit*" to "*coming within the request for discovery made by the defendant*".