

THE HIGH COURT

[2018 No. 11111 P]

BETWEEN

**MICHELLE SHEEHAN
AND
EAMON J. O'NEILL**

PLAINTIFFS

**AND
LINK ASSET SERVICES
AND
MASON HAYES AND CURRAN**

DEFENDANTS

JUDGMENT of Mr. Justice Meenan delivered on the 6th day of March, 2020

Background

1. For reasons which will become apparent in the course of this judgment, it is important to set out, in some detail, the background to the above entitled proceedings. In or about August, 2007, ACC Bank Plc (as it then was) (the Bank) advanced the sum of approximately €1.2m to the first named plaintiff, Michelle Sheehan, and her mother, Margaret Hanrahan, on a joint and several basis in order to finance the purchase of some 34 hectares of land.
2. The first named plaintiff and her mother defaulted on repayment and, so, the bank issued summary proceedings on 28 October 2011 wherein judgment was sought for an amount in excess of €1.5m (the bank proceedings).
3. The bank proceedings were remitted to plenary hearing by Order of the High Court (Barr J.) on 6 March 2014.
4. The first named plaintiff was represented in the bank proceedings by the firm of Heffernan Foskin Solicitors, who delivered a Defence on 23 February 2015. In the Defence, the first named defendant denied liability for the sums sought on the basis of an allegation to the effect that Nash McDermott and Co., being the Solicitors who advised and represented her and her mother for the purposes of the transaction comprising the advancing of the loan and the purchase of the lands, also acted as servants or agents of the bank in the said transaction. The first named plaintiff claimed that the said firm of Solicitors had advised her negligently in respect of the transaction and that the bank was vicariously liable in respect of any loss occasioned as a result of the said advice.
5. The bank delivered a Reply to the Defence on 16 April 2015 wherein it was denied, *inter alia*, that Nash McDermott and Co. had acted as a servant or agent of the bank in relation to the transaction. It was pleaded that Nash McDermott and Co. had acted solely on behalf of the first named plaintiff and her mother.
6. Following the closure of the pleadings in the bank proceedings, the bank, through its Solicitors, who are the second named defendant in these proceedings, and its service providers and/or agents, who are the first named defendant in these proceedings, sought

to engage with the first named plaintiff with a view to reaching a settlement. There were a number of "*without prejudice*" communications in 2017, but without success.

7. Following the failure to compromise the bank proceedings, the bank obtained an Order for discovery against the first named plaintiff. This Order was granted in the absence of the first named plaintiff on 22 January 2018, the court having been satisfied that the first named plaintiff had been properly served through her Solicitors. The first named plaintiff did not comply with the Order for discovery and so the bank issued an application to strike out her Defence for failure to make discovery.
8. The firm of Heffernan Foskin Solicitors, the Solicitors on record for the first named plaintiff in the bank proceedings, came off record on 5 July 2018. Since then, the first named plaintiff has represented herself, but with the assistance of the second named plaintiff, Mr. Eamon J. O'Neill. I will deal with the involvement and role of Mr. O'Neill later in this judgment.
9. On 5 July 2018, the first named plaintiff issued an application in the bank proceedings, which application included, *inter alia*: an Order striking Mr. John Bollard, Solicitor of the second named defendant, off the role of practising Solicitors and the imposition of a fine and censure on the second named defendant for deceiving the High Court in January, 2018. A second application in similar terms was issued by the first named plaintiff in the bank proceedings in October, 2018.
10. The bank's application to strike out the first named defendant's Defence in the bank proceedings for failure to make discovery (which had previously been refused by the Master of the High Court), together with the first named plaintiff's two applications referred to in the previous paragraph, came on for hearing on 28 January 2018 before Binchy J.
11. In an *ex tempore* judgment, Binchy J. directed the first named plaintiff to file an affidavit of discovery within seven days, failing which her Defence would be struck out. In respect of the applications brought by the first named plaintiff, the Court observed that many of the reliefs listed in these motions were not known to the law. The Court gave an opportunity to the first named plaintiff to withdraw allegations that she had made against Mason Hayes & Curran. The first named plaintiff subsequently confirmed to the Court that she was withdrawing each and every one of the allegations made against Mason Hayes & Curran, which formed part of her applications before the Court.

Second named plaintiff – Eamon J. O'Neill

12. Following Heffernan Foskin Solicitors coming off record for the first named plaintiff in the bank proceedings, the first named plaintiff has represented herself with the assistance of Mr. Eamon J. O'Neill, the above second named plaintiff. Mr. O'Neill refers to himself as being a "*business consultant*" and appeared with the first named plaintiff in the capacity of a "*McKenzie friend*" in the bank proceedings. It should be stated immediately that there is no basis whatsoever for Mr. O'Neill to be named as a plaintiff in these proceedings.

Other than "*advising*" the first named plaintiff, he has no involvement in the issues raised by the first named plaintiff.

13. Mr. O'Neill, the second named plaintiff, has appeared in the High Court in other unrelated proceedings. I refer to proceedings entitled *Ken Fennell v. Patrick Early, Paul Kearney, Eamon O'Neill and CMD Early Dunmore East Limited* the High Court Record No. 2019/2192P. In the course of those proceedings, Reynolds J. made an Order, on 9 May 2019, which provided, *inter alia*, as follows: -

"2. *That Eamon O'Neill is prohibited from this day forth from acting as a McKenzie Friend or advisor or in any capacity advising litigants in any proceedings that come before this Court.*"

It is clear that given his role in the course of these proceedings before this Court, Mr. O'Neill is in breach of that Court Order.

Proceedings before this Court

14. The General Endorsement of Claim on the plenary summons is lengthy and sets out the various matters which were referred to in the bank proceedings. It refers to the loan from the bank, the role of Nash McDermott & Co. Solicitors, the involvement of the above named defendants and certain "*without prejudice*" meetings. Despite having withdrawn allegations against the second named defendant in open court on 28 January 2019 before Binchy J., these allegations are, once again, repeated. There is reference to the defendants causing distress and anxiety to the first named plaintiff. No particular cause of action is identified by the plaintiffs, though a remedy of some €450,000 in damages is sought. The General Endorsement of Claim consists, for the most part, of a narrative of events.
15. A Statement of Claim was delivered, dated 21 January 2019. This document follows the same lines as the contents of the General Endorsement of Claim. Once again, apart from a claim for €450,000, no cause of action is identified by the plaintiffs. Further, the Statement of Claim confirms the second named plaintiff as having no status or role in these proceedings, other than as an "*advisor*" to the first named plaintiff.

Application by the defendants

16. The defendants, by Notice of Motion, seek the following reliefs, *inter alia*, from the Court:
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- (i) An order pursuant to the inherent jurisdiction of the court dismissing the plaintiff's proceedings on the ground that they are an abuse of the process of the court;
- (ii) An order pursuant to the inherent jurisdiction of the court dismissing the plaintiff's proceedings on the ground that they are frivolous and vexatious; and
- (iii) An order restraining the plaintiffs from issuing further proceedings against either of the defendants, or any director, employee or legal representative of either of the defendants, save with the prior permission of the President of the High Court.

Principles to be applied

17. Each citizen enjoys a Constitutional right of access to the courts. Access to the courts is for the purposes of vindicating a person's rights, not for the purposes of harassing and intimidating others. I refer to the following passage from MacMenamin J. in *Tracey t/a Engineering Design & Management v. Burton* [2016] IESC 16, where he stated: -

"[A] court is entitled to generally have regard to the manner in which the proceedings are conducted. While the jurisdiction to strike out proceedings for abuse of process, in one form or another, is to be exercised sparingly, it is a sanction which cannot be ignored. Similarly, while parties have a right to defend proceedings, it may be necessary to identify the manner in which defendants' rights are best vindicated. A court may, under the Constitution, take whatever proportionate steps are necessary to protect the integrity of its own processes and procedures, and the inherent right of courts, themselves, to manage their own procedures in a manner which balances the rights of litigants with the rights of the public, and other litigants."

18. The jurisdiction of a court to dismiss proceedings on the grounds that they are frivolous and/or vexatious or have no reasonable prospect of success has been considered by the Superior Courts on several occasions. It is a jurisdiction that must be used sparingly given that proceedings may be brought to an end at an interlocutory stage before a full hearing. I refer to the following passage from the judgment of Clarke J. (as he then was) in the Supreme Court decision in *Lopes v. the Minister for Justice, Equality & Law Reform* [2014] 2 I.R. 301, where he stated: -

"The distinction between the two types of application is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out at p. 308 of his judgment in *Barry v. Buckley* [1981] I.R. 306, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though the facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the Court to prevent abuse can be invoked."

Application of principles

19. As referred to already, the role of the second named plaintiff was as an "advisor" to the first named plaintiff. He has no cause of action against the defendants and has no role in the proceedings. There is no basis for him being named as plaintiff and his action must be dismissed as against the defendants.

20. I have set out in detail the background to these proceedings. It is clear that the issues raised in the General Endorsement of Claim and the Statement of Claim already arise in other proceedings, which have been ongoing for some years. Further, at least some of those issues have already been decided against the first named plaintiff in those other proceedings. Of particular concern, however, is that the various allegations made against the second named plaintiff replicate those which were withdrawn in court in the bank proceedings. Repeating the allegations in these proceedings cannot be considered as anything other than an abuse of process, which cannot be tolerated.
21. Having considered the contents of the General Endorsement of Claim and Statement of Claim, I cannot identify any stated cause of action against the defendants. The closest which the first named plaintiff seems to come for a cause of action is a claim for damages for mental distress and/or worry as a result of the bank proceedings and/or that these proceedings were not settled. I am satisfied that there is no such cause of action. Where a bank lends money which is not repaid in accordance with the terms, the bank is entitled to issue proceedings. No person is under a duty to settle the proceedings. The first named plaintiff would not be entitled to damages for mental distress in the circumstances claimed (see *Murray v. Budds* [2017] IESC 4 Denham C.J.).
22. By reason of the foregoing, I am entirely satisfied to grant an Order dismissing these proceedings on the grounds that they are an abuse of process and/or are frivolous and vexatious and bound to fail.

Orders against the plaintiffs

23. The defendants seek an order restraining the plaintiffs from issuing further proceedings against either of the defendants, or any director, employee or legal representative of either the defendants, save with the prior permission of the President of the High Court.
24. I have already referred to an earlier Order of Reynolds J. prohibiting the second named plaintiff from acting as a McKenzie friend or advisor or in any capacity advising litigants in any proceedings that come before this Court. When this motion came on for hearing before this Court on 18 November 2019, the second named plaintiff was present and advising the first named plaintiff. This is in clear breach of the Order of Reynolds J.
25. It is also the case that these proceedings repeat matters which were already referred to in the bank proceedings and, more importantly, repeat allegations against the second named plaintiff which had been withdrawn in court on 28 January 2018. This is entirely unacceptable.
26. I am mindful that an Order of Court has already been made restricting the activities of the second named plaintiff, which does not appear to have altered his conduct. Further, given the findings which I have made against the first named plaintiff, I would welcome submissions from the defendants, to which both the first named plaintiff and Mr. Eamon J. O'Neill will have an opportunity to respond to, as to how to deal with the situation that arises. Meanwhile, I will grant an Order dismissing these proceedings.