

THE HIGH COURT

[2018 No. 7766 P.]

BETWEEN

JOHN M. SEARSON

PLAINTIFF

AND

DUBLIN CITY COUNSEL & BOBBY AYLWARD, PETER BURKE, SHANE CASSELLS,
CATHERINE CONNOLLY, DAVID CULLINANE, PAT DEARING, ALAN FARRELL, SEAN
FLEMING, ALAN KELLY, MARK MACSHARRY, CATHERINE MURPHY, JONATHAN O'BRIEN
AND KATE O'CONNELL (MEMBERS OF THE COMMITTEE OF PUBLIC ACCOUNTS)

DEFENDANTS

(NO.2)

JUDGMENT of Mr. Justice Barr delivered on the 21st day of February, 2020

Introduction

1. This is an application brought by the plaintiff, who is a litigant in person, for an Order pursuant to Order 50, rule 2 of the Rules of the Superior Courts for an early trial of his action.
2. The application is resisted by counsel on behalf of the first defendant on the basis that the plaintiff made a similar application to MacGrath J. on 4th February, 2019, which was refused. It was submitted that if the plaintiff wished to revisit the matter, he could only do so by way of appealing the refusal of that application.
3. In the alternative, counsel submitted that Order 50, rule 2 was a provision which only applied where the Court was dealing with an interlocutory matter. If it thought that the circumstances so warranted, the Court on hearing the interlocutory application could direct an early trial of the matter instead. It was submitted that there was no interlocutory application made by the plaintiff in this case; so the Court had no jurisdiction to make an Order under Order 50, rule 2.
4. The second to fourteenth named defendants did not make submissions on the plaintiff's application as they had a separate motion to be let out of the proceedings on the basis that the plaintiff's claim against them should be dismissed because it was frivolous and vexatious and did not disclose any cause of action against them. This Court has found with the second to fourteenth named defendants in their application and accordingly it has dismissed the plaintiff's action against them.
5. There were a number of other reliefs sought in the plaintiff's notice of motion, but these were not pressed at the hearing of the motion and will only be referred to briefly in the course of the judgment.

Background

6. The plaintiff's complaint against the first defendant stretches back to the year 2010. The plaintiff is a tenant to the first defendant of a premises at 363 Mourne Road, Drimnagh, Dublin 12. He resides there as his family home. He alleges that in March 2010, the first defendant carried out refurbishment works to the property which were grossly defective. In particular, he complains that doors and windows were not properly fitted to the opes and in addition, he complains that there was defective work to the kitchen and bathroom

and in particular, to the floor of the kitchen. He maintains that as a result of this defective workmanship, he and his family have been caused to live in an uninhabitable house for the last 10 years.

7. It appears that some remedial works may have been carried out by the first defendant in or about August 2018. However, it is equally clear that these were not to the satisfaction of the plaintiff and effectively relations between them broke down at that time.
8. Some years prior to that, in 2014, the plaintiff had lodged a complaint about the works carried out by the first defendant with the clerk of the Public Accounts Committee. He in turn had referred the matter to the Joint Committee on Public Service Oversight and Petitions. They had written to the first defendant about the plaintiff's complaint. The first defendant responded to their enquiry by letter dated 22nd July, 2014, in which Mr. McKenna, Senior Executive Officer in the Housing Maintenance Section stated "*I have no hesitation in confirming that the current formula of fitting windows complies fully with building and disability regulations*". He went on in that letter to outline the avenues of appeal that are available to tenants who were dissatisfied with any works that may have been carried out by Dublin City Council to properties in which they reside.
9. By letter dated 10th October, 2014, Mr. Ronan Lenihan, clerk to the Joint Committee on Public Service Oversight and Petitions wrote to the plaintiff informing him of the response received by the Joint Committee from Mr. McKenna and further informing him that at its meeting on 24th September, 2014, the Joint Committee had determined that the matter raised by the plaintiff did not constitute a public service oversight issue and therefore the matter could not be progressed further by them. Mr. Lenihan further explained the joint committee's position in a letter to the plaintiff dated 31st October, 2014.
10. On 30th August, 2018, the plaintiff issued a plenary summons against the first defendant and the Public Accounts Committee claiming damages from the first defendant in respect of the loss and inconvenience suffered by the plaintiff by having to live in an uninhabitable house since the defective works were carried out in or about March 2010. In addition, he claimed damages against the Public Accounts Committee for its failure to deal with his complaint and for entering into a conspiracy with the first defendant to injure the rights enjoyed by the plaintiff under Irish and European law. These matters were set out in *extenso* in the plenary summons and also in a statement of claim delivered on 12th September, 2018.
11. On 4th February, 2019, the plaintiff brought an application before the High Court seeking to have an early trial of the issues between him and the defendants. While the perfected Order does not specifically state this fact, it appears that that application was refused, because otherwise there would be no need for the present application. On that occasion, MacGrath J. also amended the title of the proceedings, whereby the second to fourteenth named defendants were substituted as the second defendant, as members of the Public Accounts Committee of the 32nd Dáil.

The Present Application

12. The plaintiff submitted on the hearing of this application that it was appropriate for the Court to direct an early trial due to the fact that there had been a conspiracy between the legal representatives representing the defendants and involving the judge who had heard his previous application on 4th February, 2019. It was submitted that as a result of the fraudulent conspiracy between these parties, the Order made by the judge hearing that application was void.
13. In the alternative, the plaintiff submitted that he had been living in grossly substandard accommodation for 10 years, in support of that proposition he produced photographs to the Court, which showed the condition of the property as being dilapidated in the extreme. He submitted that in these circumstances, it was appropriate that the Court should direct an early trial.
14. The plaintiff has stated that he did not require the Order as sought at item 3 in the notice of motion being an Order pursuant to Order 50, rule 4 permitting his architects to examine the property. He did not make any submissions in relation to any of the other reliefs as sought in the notice of motion.
15. In response, Mr. Condon SC on behalf of the first defendant submitted by way of preliminary submission that the parties had in recent times been engaged in a mediation process with a mediator nominated by the plaintiff. That process had not ended. Counsel indicated that probably the best course to adopt would be to have the mediation continue to its conclusion, as that represented the best chance of reaching a solution to the issues between the parties.
16. The Court made a formal invitation to the plaintiff pursuant to the jurisdiction conferred on the Court by section 16 of the Mediation Act 2017 to reengage in the mediation process. However, the plaintiff declined to do so.
17. Senior counsel then continued with his submission as follows: firstly, he submitted that the Court had no jurisdiction to entertain this application, due to the fact that the same application had been made to MacGrath J. in February 2019 and had been refused. Secondly, counsel submitted that even if this Court did have jurisdiction to entertain the matter, it should not grant the reliefs sought by the plaintiff in his notice of motion because Order 50, rule 2 only applied to interlocutory applications. It was a provision whereby on the hearing of the interlocutory application the Court could, if it thought that it was the appropriate course to adopt, direct that there should be an early trial of issues between the parties. There was no application for any interlocutory relief being made by the plaintiff and accordingly the Court did not have the power to make an Order for an early trial as Order 50, rule 2 was not applicable to this application.
18. Thirdly, counsel stated that it would be inappropriate to direct an early trial because the pleadings had not closed between the parties. In particular, a defence had not been filed on behalf of the first defendant. Counsel indicated that the first defendant was out of time to file its defence under the provisions of the Rules. The first defendant's solicitor had written to the plaintiff asking whether he would consent to late filing of a defence on

behalf of the first defendant, but the plaintiff had refused to do so. In these circumstances, the first defendant would have to bring an application before the Court for an extension of time within which to file its defence.

19. Mr. Condon SC submitted that if the plaintiff really wanted an early trial of the issues, the fastest way in which that could be achieved, would be for him to consent to late filing of a defence. If that was done, the defence would be filed within seven days. Thereafter, the plaintiff could apply to the Court for an early hearing date. However, in the absence of any defence on behalf of the first defendant, it would be inappropriate for the Court to direct an early trial.
20. Finally, in relation to the remaining reliefs sought by the plaintiff in the notice of motion, counsel stated that as the plaintiff had not made any submissions in respect of these reliefs, they should not be ordered by the Court. Furthermore, he submitted that there was no basis for making any of the Orders as sought at items 4 – 7 in the notice of motion.

Conclusions

21. The works carried out to the property in which the plaintiff resides in March 2010, have clearly been a source of considerable distress and anxiety to him for a number of years. It is these works that are at the heart of the dispute between the plaintiff and the first defendant. It is a pity that the plaintiff has not elected to continue with the mediation, which I am told had progressed reasonably well in recent times. However, while the Court can make a formal invitation to parties to enter into mediation, it cannot force a party to do so against his will.
22. In relation to the first point raised by Mr. Condon SC on behalf of the first defendant, to the effect that the Court did not have jurisdiction to entertain this matter as the matter had already been ruled upon by MacGrath J. in his Order dated 4th February, 2019, I do not think that the Court is prevented from considering this application on behalf of the plaintiff at this time. I have reached that conclusion for the following reasons: firstly, the Order that was actually drawn up following the hearing on 4th February, 2019, does not refer to the application for an early hearing of the trial between the parties. While it is undoubtedly clear that the Court must have refused that application, because otherwise there would be no need for the present application, I would be wary of locking a plaintiff out of an application on the basis of an Order where it was not recorded in the perfected Order drawn up after the previous application, that the relief sought had been refused.
23. Secondly, it seems to me that where a party applies for an early hearing at a particular moment in time, and is refused that relief, that does not necessarily mean that they could not remake the application some considerable time later, if circumstances had changed. Accordingly, the fact that someone was refused an early trial in February 2019, does not *ipso facto* mean that they could never make an application in similar terms at a later time. For these reasons, I hold that the plaintiff is not precluded from making this application.

24. Turning to the substance of the application, I am of the view that the submissions made by Mr. Condon SC on behalf of the first defendant are correct. Order 50, rule 2 relates to a provision that is available to the Court on the hearing of an interlocutory matter. There was no interlocutory application made by the plaintiff to this Court on this application and therefore the Court does not have jurisdiction under the Rules to direct an early trial.
25. Furthermore, the pleadings in this case have not closed. Pleadings are only closed once a defence has been filed. That does not mean that a plaintiff has to wait for the filing of a defence to get closure of his action; he can obtain that by bringing an application for judgment in default of either appearance or defence, as may be appropriate. However, that is a judgment that is given in default of either an appearance being filed, or a defence being filed. One cannot say that the pleadings have closed until a defence is filed on behalf of a defendant.
26. In this case, it is accepted on behalf of the defendant that they are out of time for filing their defence. However, that does not mean that the defendant is without rights. The defendant still has a right to apply to Court for an extension of time within which to file its defence. Mr. Condon SC has indicated that his client intends to make such application and if granted leave, will file its defence within whatever time may be directed by the Court. In those circumstances, it would be inappropriate for this Court to direct an early trial of the issues between the parties, when the pleadings have not closed and in particular, when the defendant's side of the case has not been set out on paper and therefore the Court does not know what issues will arise for determination at the trial of the action. For both of these reasons the Court refuses to direct an early trial of the action between the plaintiff and the first defendant.
27. The plaintiff accepted that he did not require any order pursuant to Order 50, rule 4 in relation to permitting his architect have access to the property. The plaintiff did not make any submissions in relation to the other reliefs sought in the notice of motion. Some of the reliefs sought therein were quite extraordinary, including an Order for the arrest of the solicitor and counsel acting for the first and second named defendants and for the arrest of the judge who heard his earlier application. There were also various Orders sought in relation to injunctions directing various named persons to carry out their duties in a proper manner. As none of these matters were sought on the application made to this Court, it is not necessary for the Court to make any Order in respect of those reliefs.
28. For the reasons set out herein, this Court refuses the reliefs sought at paragraphs 1 and 2 of the notice of motion.
29. However, it is in the interests of both parties that this dispute be brought to a determination sooner rather than later. To that end, I direct that the first defendant is to issue its motion seeking an extension of time within which to file its defence, within a period of three weeks from today.