

THE HIGH COURT

[2023] IEHC 152

[2022 1653 P]

BETWEEN

EAMONN CARTHY

PLAINTIFF

AND

**IRELAND AND THE ATTORNEY GENERAL, BANK OF IRELAND MORTGAGE
BANK AND BANK OF IRELAND MORTGAGES BANK UNLIMITED COMPANY,**

AND

FIELDFISHER IRELAND SOLICITORS

AND

WHITNEY MOORE SOLICITORS

AND

BRENDAN ROBBINS

DEFENDANTS

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 24th day of March, 2023

1. In these proceedings, Mr. Carthy claims a variety of reliefs against a range of defendants. In his statement of claim, dated the 22nd of July 2022, and under the heading “Background”, Mr. Carthy sets out reasons why these reliefs are (he says) ones to which he is entitled.

2. The “Background” section reads as follows: -

“6. On the 30th day of March 2017, the bank obtained an order for Possession of the Defendants Family home and a stay of execution for a period of twelve months.

7. On 23rd November 2016 the solicitors on behalf of the bank of Ireland and the 5th named defendant misled the court, by introducing manufactured evidence, deceit, and misrepresentation knowingly.

8. By the date 30th day of March 2017 the bank and its solicitors still misled the court by non-disclosure of material facts and evidence in relation to the possession order that was obtained on the 30th day of March 2017.

9. On the date 24th day of July 2018 an order re-entering the case by plaintiff’s spouse.

10. Following on to paragraph 9 the plaintiff’s spouse coming before the circuit court 19th day of February 2019, the plaintiff’s appeal to the circuit court reference the fraud, deceit, and misrepresentation before Judge Patrick Meghen who dismissed out of hand his own order dated 30th day of March 2017 and also the plaintiff’s spouse appeal

11. On the 2nd day of March 2020 following an appeal by the plaintiff’s spouse to the High court the banks and solicitors still did not reveal the manufactured evidence, deceit, and misrepresentation to the court, this is violation of the fundamental rights of the plaintiff and his spouse and children as pleaded in paragraphs 7,8 & 10

12. Breach of duty and neglect of statutory duty on the part of the bank and solicitors to violate the family dwelling of the plaintiff and his spouse and children

13. At any stage during the proceedings were the beneficial owners my children notified or attached to any court proceedings.

14. The plaintiff seeks a declaration that the Bank, Solicitors and Agents on various dates of mala fides, manufactured evidence, and deceit on the courts”

3. As will be clear from this excerpt from the statement of claim, a number of very serious allegations are made against all defendants (without precisely distinguishing materially between each of them). These allegations include assertions of “manufactured evidence”, deceit and misrepresentation.

4. The fifth defendant, Fieldfisher Solicitors, raised a notice for further and better particulars “arising from the statement of claim dated 27th April 2022”. In fact, the plenary summons was dated 27th of April 2022. As already noted, the statement of claim was dated the 22nd of July 2022. In any event, it is clear from the body of the notice for particulars that the particulars are raised on the statement of claim, and not on the plenary summons.

5. The particulars sought were not provided by the plaintiff, and a motion was issued by the fifth defendant returnable for the 20th March 2023, seeking an order compelling replies to the notice for particulars. In his replying affidavit, Mr. Carthy gave evidence that the bank accounts held with Bank of Ireland Mortgage Bank (and relevant to these proceedings) were “claimed” as trust property and that: -

“KELLYMOUNT 1798 Trust now holds all titles to the said accounts”.

6. Mr. Carthy went on to give evidence that the current proceedings (bearing the record number 2022 / 1653 P) “are also trust matters”. Mr. Carthy says that he is the settler of this trust, that he has appointed a named solicitor (Ms. Emma Heron of the firm of Whitney Moore) as trustee in the current proceedings and he reminds Ms. Heron “of her fiduciary duties to the trust as executive trustee”. There is no evidence that Ms. Heron has accepted appointment as “executive trustee” or indeed as a trustee at all in respect of the Kellymount 1798 trust. The affidavit concludes: -

“13. I seek that all orders are struck out, and the Judge (Trustee) to decide what debt is attached to account numbers 390010484 and 39008587 and decide if

KELLYMOUNT 1798 trust is liable or the CARTHY trust 6810825 Sin 3349838J, either way I will settle on the day

If for any reason you judge are unable to adjudicate on the above I :Eamon-Patrick will require a full accounting for account numbers 390010484 and 39008587 from their inception in the year 2007, to date.

Maximums in equity:

18. Equity will not allow a statute to be used as a cloak for fraud:

19. Equity will not allow a trust a trust to fall for want of a trustee:

20. Equity regards the beneficiary as the true owner:

I will have a special trustee for the KELLYMOUNT 1798 trust present on the day.”

7. The affidavit refers to other matters (as exhibits) which are of absolutely no relevance to the current motion. The current action is one brought by Mr. Carthy in his own name.

Inasmuch as he is attempting to avoid responsibility for replying to a proper notice for particulars by saying that the action is now conducted by some trust, he is completely mistaken. It is in no way a satisfactory answer to the notice for particulars issued by Fieldfisher, or the motion brought by that firm seeking that replies to particulars be ordered, to say that these proceedings are “trust matters”. Such a response is simply unreal.

8. Despite service of the motion papers upon him, Mr. Carthy did not attend at the hearing of the motion. The motion therefore proceeded. This is my judgment on the substance of the reliefs sought.

9. As the notice for particulars is a lengthy one, running to almost ten pages, I am not going to set out the particulars word by word in this judgment. I will, however, summarise the nature of the particulars sought by reference to the individual queries in the notice.

10. Particular 1 asks Mr. Carthy to either accept or reject that he is in default of various security documents entered into between himself and Bank of Ireland Mortgage Bank. Should Mr. Carthy answer that he is not in default of these instruments, he is asked to explain how this is so. This is not a proper matter for particulars. It is, instead, interrogating a plaintiff as to the position he will adopt and arguments he will deploy at the hearing of the action. That is not a particular to which I am prepared to direct Mr. Carthy to reply.

11. Particular 2 asks if a specific Order of the Circuit Court was appealed and, if not, why it was not appealed. This strays even further from what might constitute a proper particular sought in respect of the statement of claim, and I will not order it.

12. Particular 3 asks for details of the plea at para. 7 of the statement of claim to the effect that “solicitors for the Bank of Ireland.... misled the court”. Specifically, the plaintiff is asked to identify who the solicitors are, what was the nature of the misleading of the court which occurred, and to identify the manner of the misleading of the court as well as the identity of the particular individual who participated in this activity. All of these are proper particulars to raise so that this defendant can understand the nature of the case made against it and I will direct that Particular 3 be replied to in full.

13. With regard to Particular 4, while this to some extent overlaps with Particular 3, it also addresses a specific plea in the statement of claim to the effect that the court was misled by the fifth defendant, that manufactured evidence was “knowingly” introduced in evidence before the court by the fifth defendant, and that the court was deceived. The specific queries raised under Particular 4 are all proper particulars to which the plaintiff should reply. This would be the case even if allegations of deceit were not included in the relevant portion of the

statement of claim. However, given that deceit is alleged at para. 7 of the statement of claim the requirement that such an allegation be fully and comprehensively pleaded puts beyond any doubt the need for these particulars to be provided to the defendant.

14. Particular 5 relates to para. 8 of the statement of claim and addresses the second instance in which it is alleged the Circuit Court was misled (on the 30th of March 2017). The specifics sought in respect of this allegation (both at Particular 5 and Particular 6) are queries which Mr. Carthy should answer, and I will direct that he does so.

15. Particular 7, like Particulars 1 and 2, asks the plaintiff to confirm his knowledge of certain matters and is not in my view an appropriate particular.

16. Portions of Particular 8 again ask the plaintiff to confirm factual or evidential matters (for example, whether or not the plaintiff was present at the hearing of an appeal from the Circuit Court heard before Ms. Justice Hyland on the 2nd of March 2020). In the circumstances of this case, asking the plaintiff about his awareness (or lack of awareness) of a particular fact is not a proper particular. However, the particulars sought at 8 (c), (d), (g) and (i) are queries which arise from a specific allegation made in the statement of claim (at para. 11) and are queries to which the fifth defendant is entitled to answers in order to understand the case made against it.

17. Particular 9 asks that the plaintiff particularise the precise duty and/or statutory duty owed to him, to his spouse, or to his children (all of which are asserted in the statement of claim). I will therefore direct a response to Particular 9, though noting at the same time that Particular 9 (a) and Particular 9 (b) are in fact identical and need only be answered once.

18. With regard to Particular 10, answers are sought to questions as to how, when and by what reason duties were owed by the solicitors for the Bank to the plaintiff and each of these should be answered.

19. With regard to Particular 11, the plaintiff is asked to identify certain aspects of para. 13 of the statement of claim and he should provide these details. However, he should not be ordered to require to provide the details sought at para. 11 (c), which asks about Mr. Carthy's intention with regard to the joinder of his children to the current proceedings.

20. Particular 12 asks for full particulars to be provided in respect of the "basis and/or evidence and/or information and other source of information...", supporting the plaintiff's contention that the fifth defendant had manufactured evidence, deceived courts, or issued or progressed applications on a mala fide basis. This is a request for evidence, which is not an appropriate matter for particulars, and I will not direct that it be provided. Inasmuch as specifics are sought in respect of the specific grave allegations against the fifth defendant, that has been dealt with elsewhere in the notice for particulars and in this judgment.

21. Particular 13 similarly seeks in essence to be provided with evidence or information which supports the plaintiff's allegation that the fifth defendant has violated the Constitution or (again) deliberately deceived courts in the State. For the same reason as (12), replies to this Particular will not be directed.

22. Particular 14 asks Mr. Carthy to identify on what basis the fifth defendant has caused him damage, though strangely the particulars of this damage are not specifically sought. However, I think that this defendant is entitled to be told in precise terms how it is that any action on its part has caused Mr. Carthy damage, and I will order a response to this Particular.

23. Finally, at Particular 15, the fifth defendant asks the plaintiff to furnish a copy of a contract referred to at para. 18 of the statement of claim. The request is made pursuant to O. 31, r. 15. However, the para. 18 statement of claim does not identify a written contract which it is alleged was breached by the fifth defendant. I will therefore direct Mr. Carthy to respond to Particular 15, but only inasmuch as that particular seeks that he identifies the date or dates upon which it is alleged that the fifth defendant had agreed to the alleged contract and

identify by name the alleged representative of the fifth defendant with whom it is alleged the plaintiff entered into the pleaded contract. The third question which Mr. Carthy is asked to answer under Particular 15 (to identify the particular steps or acts Mr. Carthy took on foot of entry into the alleged contract) might be appropriate were an estoppel pleaded by Mr. Carthy, but it is not. Inasmuch as the alleged contract is pleaded by Mr. Carthy to have caused him damage, that would be addressed under the response to Particular 14.

24. I will therefore direct the plaintiff to provide to the fifth defendant replies to Particulars as set out earlier in this judgment. Given the extensive nature of the particulars which I have directed are to be provided by Mr. Carthy, I will order that the replies to particulars be provided within eight weeks to the date of this judgment.