

Judicial Communications Office

11 April 2024

COURT ISSUES JUDGMENT IN APPLICATIONS IN CIVIL CLAIMS ARISING FROM THE DUBLIN AND MONAGHAN BOMBINGS

Summary of Judgments

Master Harvey today delivered judgment in four applications in respect of three civil claims arising from the Dublin and Monaghan bombings carried out in May 1974.

The court considered the four applications and issued separate judgments in respect of each application. The defendants' applications essentially sought a strikeout of the plaintiffs' claims or alternatively a direction that limitation should be tried as a preliminary issue and a ruling on the law governing limitation applicable to the civil claims.

The plaintiffs brought applications to consolidate the three claims into one action meaning they would be heard together and also sought to join the Attorney General for Northern Ireland as an additional defendant to the claims.

Background

The court noted that it was difficult to contemplate a graver subject matter than that forming the basis of the current claims. At about 5.30pm on Friday 17 May 1974, three car bombs exploded in Dublin city centre at Parnell Street, Talbot Street and South Leinster Street. Ninety minutes later, another car bomb exploded in Monaghan Town on the North Road. Thirty-three people died as a result of the explosions; the highest number of people killed in a single day of the Troubles. The bombings were assumed to be the work of one or more loyalist paramilitary groups. An investigation into all four bombings was carried out by Garda Síochána detectives but no successful prosecutions were ever brought. The three civil cases relate to the alleged activities of a loyalist terrorist gang – known as the “Glenanne Gang” – which allegedly included serving or former members of the police, army and informers acting under state sanction. The plaintiffs claim the gang was responsible for the mass murder and maiming of dozens of people in the Dublin and Monaghan bombings.

The plaintiffs' case is that the explosions were the result of planning and preparation by the Gang who were based in Northern Ireland and who travelled, with the necessary weapons and explosives, to the Republic of Ireland to carry out the bombings. The background and the particulars of the individual claims can be found at paras [5] – [8] of the strikeout judgment.

The court heard from counsel for plaintiffs and defendants in respect of the four applications over a two-day hearing and was also provided with detailed and comprehensive written submissions on several further legal issues following the hearing.

The defendants' application to strikeout

The defendants sought a strikeout of the plaintiffs' statement of claim on the basis they did not disclose key facts essential to enable the claims to proceed, nor did they contain sufficient detail to enable the defendants to know and understand the case which they are required to meet. While

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revisions to the statements of claim have been made over time, the defendants contend that they remain inadequate to the extent that to allow the claims to proceed would be an abuse of process.

The defendants submitted that the statements of claim name some individuals who are alleged to have participated in the bombings, however the plaintiffs have not joined these individuals as defendants. The defendants contended that they are entitled to know the identity of the individuals for whose actions it is claimed they are responsible and the facts which it is intended to prove to establish their role or the existence of a relationship which could give rise to vicarious liability. Even discovery could not, as the claims stand, lead to clarity on these matters and the defendants argued that it was not appropriate to use civil procedures as a form of inquiry and that adequate facts to establish the claims must be pleaded in the case.

The plaintiffs argued that the statements of claim need only contain a summary of the material facts and do not require the evidence that will be relied upon for the trial of the civil claims. The object is to ensure that the opposing party is aware of the case which they have to meet. The plaintiffs have identified, as far as possible, the central facts and allegations that support the claims by piecing together information that is in the public domain. They contended that after discovery is complete the statements of claim can be amended in due course. The plaintiffs asserted that they cannot be criticised for pleading a vague case when they are not in possession of relevant material which is held by the defendants. Striking out the claim would leave no way for the plaintiffs to bring this case before a court and have it properly argued out. The plaintiffs are keen to ensure the tragic context of these cases is not overlooked. This is all the more important when the defendants make submissions regarding the cost implications and the onerous task of going through voluminous documentation.

The court in considering the strikeout application set out clearly that it is not the role of the court in this instance to hold a public or independent inquiry to provide the victims with answers in their search for truth nor to identify or hold accountable those responsible for the bombings. These are applications in respect of civil claims for damages against the defendants, seeking compensation for the deaths and injuries occasioned to the plaintiffs.

The defendants pointed to the burdensome and expensive nature of the disclosure obligations if this case should progress, and that it would change the commercial dynamic of the case. The court considered this an unattractive argument and did not amount to grounds to strike out the claim at an interlocutory stage. The court stated there is no evidence the plaintiffs are seeking to invoke a discovery process to use it as leverage which will force the defendants to compensate them. While discovery may be a complicated process and there will be expense involved, the difficulty of the task is lessened by the fact there are parallel investigations ongoing reviewing similar documentation which may assist the defendants in this case. The court did not consider resource issues to be fatal to the further progress of this claim. The plaintiffs find themselves in a situation not of their making and cannot be blamed for the volume and complexity of the facts that require investigation. The court considered that they should be given the chance to present their case at trial so the merits can be assessed in light of all the evidence.

The court concluded this is not a case which is unarguable or uncontestably bad nor that the plaintiffs stand no chance of success. It is only in exceptional cases where it is clear and obvious, that cases should be struck out. In the present action, the court considered that the pleadings are on balance at least capable of improvement once discovery has been completed and, weighing up the interests of justice between the parties, this is a case in which the court should be slow to grant a draconian remedy striking out the claim in the absence of documentation being disclosed by the defendants and the testing of the evidence in court including hearing from witnesses and experts.

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There are clearly issues which need to be tried and reasonable grounds to conclude that evidence to support the allegations is at least capable of being made available, therefore the court refused the defendants application for a strikeout.

Although not argued at the oral hearing of the applications, the court invited the parties to provide written submissions on the Article 2 Human Rights element of the strikeout application lodged by the defendants. Having considered the submissions provided, the court determined that the Article 2 breach alleged in the plaintiff's statement of claim is based upon the failure to properly investigate the Dublin and Monaghan bombings. That procedural failing is specifically referenced in the statement of claim as being actionable as a result of the "Convention values" test under the European Convention on Human Rights, having been met.

The court concluded that the question of whether the Convention values test is met can only be determined after hearing all the evidence at trial. The claims involve alleged acts of a heinous nature with the defendants allegedly intentionally directing bombing attacks against the civilian population. It is therefore plainly arguable that the Convention values test can be satisfied in the present case. Whether the cause of action ultimately succeeds is dependent upon the evidence at trial. The court concluded that in all the circumstances of these cases, there is no basis to strike out the human rights claim under Article 2 and refused the defendants application on this ground also.

The defendants' application as to limitation

The defendants argue the claims are out of time (outside the limitation period) and therefore sought an order that this be tried as a preliminary issue before the trial judge. They further sought an order determining which jurisdictional law, that of Northern Ireland or the Republic of Ireland, applies when determining the limitation period.

The defendants submitted that the information relied on in the plaintiffs' statements of claim rendered them out of time, with some of the material relied on having been available over 20 years before the proceedings were commenced. The defendants also argued that the jurisdiction law question was a key consideration which would impact on the limitation period applicable and should therefore be dealt with at this stage of the proceedings. They contended that since the events occurred in the Republic of Ireland the limitation period should be that which would be applicable in that jurisdiction, which is a shorter period than that applying in Northern Ireland.

The plaintiffs argued that the claims were not out of time as they could not have been aware at an earlier time of the information that was now available to them; time could not be said to have begun to run from the date of the explosions. The plaintiffs also submitted that the issue should not be dealt with at this preliminary stage of the proceedings as discovery remained outstanding and that it requires a hearing on all the legal issues and the facts of the case.

The court was satisfied that while the question of jurisdictional law could be dealt with at the interlocutory stage of proceedings, that in all the circumstances of the present case the question of which jurisdictional law is applicable is inextricably bound up with the limitation issue involving mixed issues of law and fact, and therefore they must be dealt with together by the trial judge.

The court therefore granted the defendant's application and directed that limitation should be tried as a preliminary issue.

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The plaintiffs' application to consolidate

The plaintiffs assert that the three claims are inextricably linked and that while the bombings took place in different locations, they formed part of a co-ordinated but single terrorist plan. The plaintiffs contend the three claims should therefore be consolidated so that liability can be determined at the same hearing.

The court considered that if the claims proceed, the most efficient means of doing so is by consolidation for the purposes of liability, allowing common questions of law and fact to be case managed and determined at the same time. It will also aid the coordination of the discovery process and communications between the parties and the court. If the claims succeed on liability, they could then proceed individually in relation to quantum.

The court granted the plaintiff's application and ordered that the actions be consolidated.

The plaintiffs' application to join the Attorney General for Northern Ireland ("AGNI")

The plaintiffs argued that the AGNI should be added as a fourth defendant as there was some uncertainty, or reasonable doubt, as to which government department was liable on behalf of the Crown in these matters; the Secretary of State having indicated that he was not responsible for the events which are the subject of the litigation. The plaintiffs contended that to protect the public interest and ensure the plaintiffs are not left without a UK government department to sue, the AGNI should be joined to the claims.

The court was not persuaded that the joinder of the AGNI at this stage was necessary as the plaintiffs had not been left without a UK government department against which to bring their claims; the Secretary of State for Northern Ireland and Ministry of Defence already being named defendants in the proceedings. The court also considered that, given the independent role of the AGNI, it would not be appropriate to join her as a party where the issue is one of determining which UK department is potentially liable.

The court therefore refused the plaintiffs application to join the AGNI as a fourth defendant.

NOTES TO EDITORS

1. This summary should be read together with the judgments and should not be read in isolation. Nothing said in this summary adds to or amends the judgments. The full judgments will be available on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

If you have any further enquiries about this or other court related matters please contact:

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