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	ICOS Nos: 2024 No 52593
Judgment: approved by the Court for handing down (subject to editorial corrections)	*Delivered: 28/04/2025* *Ex Tempore: 31/03/2025*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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BETWEEN:

PAUL SHANE

Plaintiff

-and-

DAVID BURNS

-and-

STEPHEN MASTERSON

Defendants

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Mr Shane representing himself, accompanied by his McKenzie Friend Mr Greg Burns
Mr Ringland (instructed by Clyde & Co LLP) for the first defendant
Mr Fletcher (instructed by Carson McDowell Solicitors) for the second defendant

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MASTER HARVEY

Introduction

[1] The court delivered an ex-tempore judgment in this matter on the 31 March 2025. This is a summary of the court' decision. The background to this claim is that Mr Shane was prosecuted by Lisburn and Castlereagh City Council for failing to comply with a Planning Enforcement Notice dated 29 January 2020. This notice required him to restore lands over which he had undertaken illegal development. The first defendant is the Chief Executive of the Council. The second defendant is a solicitor in Cleaver Fulton Rankin, who acted for the Council in the prosecution. On 26 November 2023 Mr Shane was convicted by a District Judge. He appealed this

conviction, but the conviction was upheld on 23 May 2024 by a County Court judge. The conviction was pursuant to s147 of the Planning Act (Northern Ireland) 2011.

The applications before the court

[2] The plaintiff's claim commenced by way of writ of summons dated 13 June 2024. It sets out what could loosely be described as eight heads of claim, each seeking general damages for various amounts. I will summarise the plaintiff's claim shortly. The defendants have brought applications to strike out the plaintiff's claim by way of summonses dated 3 December 2024 and 29 January 2025.

[3] The plaintiff has brought unconventional applications dated 10 January 2025 and 30 January 2025. He seeks a strike out of defendant's strike out application as well as a strike out of their affidavits and seeks default judgment together with a strike out of the defendants' appearances arising from the signatures on the forms and the fact that he claims they were lodged out of time. I indicated my intention to deal with all the applications at the same time and the parties confirmed they were content with this approach.

Procedural matters at hearing

[4] Given the complexity of civil proceedings in the High Court, I enquired if the plaintiff had sought to instruct a lawyer and if he needed further time to do so, I would permit it. He indicated this was not something he was interested in. I began with a lengthy preamble addressing some housekeeping issues and recognising Mr Shane is not a trained lawyer and that legal language can be confusing and not always easily understood. As this is a court and these were serious applications which, depending on the outcome have implications for both parties, there would be reference to case law and the law itself, but I indicated I would ensure any such references were clearly explained. I indicated to the plaintiff we could take a break during the hearing and if at any point he had a question, he could simply ask me. I then explained the running order for the hearing and that each side would have a full opportunity to present and sum up its case. At the outset I pointed out that I had granted an application on 8 March 2025 appointing Mr Greg Burns as McKenzie Friend. I explained his role was to take notes, offer moral support and quietly provide advice to the plaintiff. It did not afford him speaking rights and I noted they had not been sought in any event. No curriculum vitae had been attached to his application. A further procedural matter to address was the names of the parties. I confirmed I would address the plaintiff as Mr Shane but noted the references to Mr Quinn in the papers and the defendants had raised issues in relation to this, but for the purposes of the hearing I referred to him in the manner he had indicated.

[5] I explained the defendants had brought an Order 18 rule 19 1 (a) (b) and (d) application under the Rules of the Court of Judicature (Northern Ireland) 1980 ("the Rules") and that this was a hearing of all the applications, not a full hearing of the

case. The defendants can bring such an application at any stage of the proceedings and in this instance are seeking to strike out the case as:

a. It discloses no reasonable cause of action. For this part of the application evidence is not adduced, either orally or by affidavit.
b. It is an abuse of process. The parties are entitled to adduce evidence dealing with this.
c. It is scandalous, frivolous and or vexatious. The parties are also able to adduce evidence in relation to this limb.

The plaintiff's claim

[6] I have read all the voluminous papers running to some 700 pages, including the four applications, the second defendant's skeleton argument dated 27 February 2025 and the plaintiff's written submissions.

[7] I sought to summarise the plaintiff's case based on my careful consideration of the papers. The plaintiff's action is set out in the writ of summons and references eight heads of claim:

i. Defamation.

ii. Pursuing a false claim against the plaintiff and a breach of Magistrate's court procedure.

iii. Failure to disclose a valid contract.

iv. The defendants agreed liability for the plaintiff's "fee schedule."

v. Breach of Companies Act.

vi. Abuse of position

vii. False representation.

viii. Notice of appeal arising from errors by the county court.

[8] Other issues I identified from the papers, including within the plaintiff's application of 30 January 2025, which contains reference to a "statement of claim" at paragraphs 23 to 28, were:

i. The earth mound and storage containers in question were removed years ago. The new entrance to his land is in a safer position.

ii. The plaintiff just wants to get on with growing high quality organic food.

iii. The plaintiff takes issues with the name the defendants use for him.

iv. He appears to be seeking to appeal the county court decision of 23 May 2024 in which it refused to overturn his conviction in the Magistrates Court. He feels the conviction was unsafe.

v. There have been failings by the council. The council broke the law and harmed the plaintiff.

vi. He has been subjected to victimisation and persecution by the defendants.

vii. He was subjected to a collection order in the sum of £7, 000. This has been financially crippling.

viii. He has suffered emotional hardship.

ix. He has wasted time that he will not get back on these court hearings. The defendants are trying to deny him access to justice and use technical means to strike out his case.

x. This is not a clear and obvious case for striking out. There has been fraud in the defendants' appearances as the defendant solicitors' firm has signed the appearances. This is also a breach of the Companies Act.

xi. The council will not let him inspect the complaint against him,

xii. There are differences in the defendant's signature in the various court documents.

xiii. He has been called a criminal.

xiv. The witness to the Stephen Masterson affidavit cannot be identified, it is an unintelligible signature.

xv. The appearances, summons and affidavit on behalf of the defendants must be struck out as it prejudices the plaintiff's ability to litigate fairly.

xvi. The plaintiff cites case law that the defendant's procedural irregularities are such that it is an abuse of process, fatal to the defendant's application, making it invalid, voidable and should be set aside.

Legal principles

[9] I cited the principles one draws from the relevant authorities. This included *Lonrho v Al Fayed* [1992] 1 AC 448 in which the court held that, on an application to strike out an action on the basis that it discloses no reasonable cause of action, the cause pleaded must be unarguable or almost incontestably bad.

[10] In the case of *E (a minor) v Dorset CC* [1995] 2 AC 633 at 693 -694 Sir Thomas Bingham stated that judges are uneasy about deciding legal principles when all the facts are not known, but that:

> "…applications of this kind are fought on ground of a plaintiff's choosing since he may generally be assumed to plead his best case and there should be no risk of injustice to plaintiffs if orders to strike out are indeed made only in plain and obvious cases."

[11] The expression "frivolous or vexatious" means cases which are "obviously" frivolous or vexatious per *Att. Gen of Duchy of Lancaster v. L & N W Rly* (1892) 3 Ch 274 (277). The expression includes proceedings which are an abuse of the process: *Ashmore v. British Local Corp*, (1990) (2) All ER 981 (CA).

[12] The plaintiff cited the case of *O'Dwyer and Others v Chief Constable of the Royal Ulster Constabulary* [1997] NI 403. In that case, the Court of Appeal stated that an order of the nature sought in this case was only to be used in "plain and obvious" cases. They concluded that it should be reserved for cases where the cause of action was "obviously and almost incontestably bad" and that an order striking out should not be made "unless the case is unarguable."

[13] In a strike out application in the case of *Rush v PSNI & Ors* [2011] NIQB 28 at page ten, the court stated:

> "A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered. So long as the statement of claim or the particulars disclose some cause of action or raise some question fit to be decided by a judge, the mere fact that the case is weak is no ground for striking it out."

[14] As was observed by the learned judge in *Rush*, for the purposes of the application, all the averments in the pleadings must be assumed to be true in line with the decision of the court in *O'Dwyer*. The power to strike out proceedings as an abuse of process has been held not to offend against Article 6 of the European Convention of Human Rights as a right to a fair trial does not require a plenary trial where the plaintiff clearly does not have a case to make; *McAteer v Lismore* [2000] NI 471 (Girvan J).

[15] The Court of Appeal for Northern Ireland in *Magill v Chief Constable* [2022] NICA 49 endorsed the principles to be applied in strike out applications on the basis that there was no reasonable cause of action citing the aforementioned decisions in *O'Dwyer* and *E (A Minor) v Dorset C*, stating:

> "(i) The summary procedure for striking out pleadings is to be invoked in plain and obvious cases only.
>
> (ii) The plaintiff's pleaded case must be unarguable or almost incontestably bad.
>
> (iii) In approaching such applications, the court should be cautious in any developing field of law…
>
> (iv) Where the only ground on which the application is made is that the pleading discloses no reasonable cause of action or defence no evidence is admitted.

(v) A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered.

(vi) So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out…

We would add that a strike out order is a draconian remedy as it drives the plaintiff from the seat of justice, extinguishing his claim in limine."

The writ of summons

[16] Paragraph 1 and 6 of Mr Shane's writ of summons claims in defamation but in relation to unspecified publications. His complaint is that Mr Masterson described him as a criminal but has not demonstrated Mr Masterson made a publication, that publication was not de minimis i.e. more than trivial, the publication included defamatory words or there is no defence. The only publications appear to have been to the plaintiff himself and/or the courts in the criminal proceedings as well as the legal team in communications with them as their lawyer. There is a letter dated 4 July 2023 to the plaintiff from the second defendant, upon which the plaintiff relies. This was in response to the plaintiff's query in his letter of 26 June 2023 when he asked what type of case the council's complaint related to, i.e. criminal or civil. The response to this query was "this is a criminal matter." Put bluntly, that is not defamation, it is fact.

[17] I consider that paragraphs 2, 3, 4 and 5 of the writ are unintelligible heads of claim. Paragraph 7 relates to a remedy which can only exist in criminal law as breach of the Fraud Act 2006 does not have a civil remedy unless brought in the tort of deceit. Paragraph 8 relates to an appeal from the County Court which this court has no jurisdiction to hear.

[18] I indicated to the plaintiff that the nub of this case appears to be his clear disappointment with the decision of the County Court and if that is the case, he can seek to pursue an appeal of that decision. I made clear that given the decision was in May 2024, he may well be out of time, but he would need to look into that issue and another court would have to deal with any such matters. At various points, I again encouraged him to seek legal advice as this is a complex matter and the court office would be happy to signpost him to the Law Society or charitable organisations who could perhaps provide some legal assistance.

Are the pleadings capable of improvement

[19] I considered whether the pleading could be cured by amendment. The plaintiff indicated he felt it would if he was able to do more research. My careful consideration of this issue, having heard from the parties and reviewed the papers at length is that on balance this is unlikely to happen. The core of this claim is an appeal from the County Court dressed in the guise of a civil claim in defamation and

other issues which do not form recognisable torts. On balance, I consider this claim is so deeply flawed that further time, discovery or research on the part of the plaintiff or any legal advisor he should choose to appoint would not enhance it.

The plaintiff's applications and the signature on the defendant's court documents

[20] The criticism of the signatures on the defendant's memoranda of appearance does not render them void or a nullity. The court rules provide for signatures by the defendant or their solicitor. In this case, the firm has signed them. This is common and accepted practice in this jurisdiction. The plaintiff takes issue with this but upon probing him as to what disadvantage, prejudice or harm he suffered as a result, he could not point to anything substantive other than stating the rules should be followed, the defendants have broken the law, there have been failings, breach of procedure and it was a "ridiculous position". I pointed out that even if the appearances were irregular, I consider there appears to be no discernible prejudice to the plaintiff and could not in any conceivable way have hampered his ability to progress his case fairly, which is the argument he seeks to make. I have discretion under Order 2 rule 1 of the Rules to cure such irregularities in any event and in so far as I am required to do so in this case, I deem the appearances, affidavits and therefore also the summonses, all valid given the only matter at issue is they were signed by "Carson McDowell" and not a named solicitor in that firm.

[21] The other issue the plaintiff raised was that the appearances were out of time. This arises from the plaintiff's misunderstanding of the court rules as the writs were served prior to the long vacation on 28 June 2024 and the timeframe for entering an appearance fell during this period. Both defendants respectively entered their appearances on 8 July and 2 August 2024 and were therefore both in time. The plaintiff further asserted that the affidavits to the summonses were witnessed by a person with an unintelligible signature. I have read the affidavits. The name of the solicitor who signed them and his address are both stated.

The Court's decision

[22] I have carefully considered all the papers and heard from the parties during a lengthy interlocutory hearing. I considered the overriding objective contained in Order 1 rule 1a, to ensure, among other things, that the parties are on an equal footing and cases are dealt with fairly, justly, proportionately and in a way that minimises costs, bearing in mind the need to allocate court resources effectively, recognising the need to deal with other cases.

[23] The inescapable conclusion is this case is devoid of legal merit and misconceived. To prolong the case would be a waste of resources and time. The defendants credibly contend it is clear that the claim which the plaintiff seeks to pursue amounts to nothing more than a selection of grievances pertaining to his successful prosecution by Lisburn and Castlereagh City Council for failing to

comply with an Enforcement Notice. He seems to be attempting to translate these issues into a civil claim for damages against the defendants who were involved in that process, and this could be viewed as the very definition of vexatious litigation.

[24] The defendants forcefully argue the plaintiff's claim can be properly characterised as both scandalous and embarrassing in that the pleading is effectively unintelligible and grossly ambiguous. They assert the lengthy endorsement on the writ of summons directed towards the defendants should be struck out as it constitutes an abuse of the processes of the court, whether assessed by Order 18 rule 19 (1) (a), (b), or (d).

[25] The plaintiff robustly rejected the defendant's labelling of him as what have become known as "freemen". I observe that the plaintiff's arguments and documentation largely consisted of language which was akin to the freeman approach. This was described in another case as both a delusional approach to legal issues and "a kaleidoscope of pseudo legalistic jargon, alien to law, practice and the administration of justice in any modern common law jurisdiction and in short is largely nonsense."(per Master McCorry in *The Man known as Anthony Parker v The Man known as Master Ellison and the Man known as Donnell Justin Patrick Deeny* - Unreported, 16 April 2014).

[26] I noted the plaintiff indicated he wants to dedicate himself to growing vegetables and said that he gives them out free to local families. This is commendable and it appears he genuinely cares for his local community, but this is entirely hopeless litigation that is doomed to fail. I thanked all parties for attending and commended Mr Burns for assisting the plaintiff as McKenzie Friend.

Conclusion

[27] I grant the defendants application and strike out the claim on the grounds that:

(a) The plaintiff's pleading discloses no reasonable cause of action, it is doomed to fail.

(b) I also find that to allow it to continue and put this case forward would be an abuse of process.

(c) It is vexatious and frivolous as the case is incontestably bad and obviously unsustainable.

[28] I refuse the plaintiff's applications.

Costs

[29] Costs are dealt with in Order 62 of the Rules. Both parties made submissions on costs. The plaintiff's primary argument was that he does not recognise money as in his view it does not exist, and also that he has no means. Both defendants sought

their costs on the basis of the time and money spent and also to act as a deterrent for such unmeritorious litigation. On balance, I determined it was appropriate to award costs to the successful party in this application, namely the defendants, such costs to be taxed in default of agreement and certified for counsel on behalf of both defendants. I confirmed that the time to appeal is five days from the date of this decision (31 March 2025) or such further time as may be permitted on application by the party seeking to appeal.