Neutral Citation No. [2015] NIMaster 14

Ref:

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered: **04/12/2015**

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

Greg Foster, A Man and One of the People

Plaintiff;

and

John McPeake – Former CEO, Northern Ireland Housing Executive

John Wilkinson – CEO Land and Property Services

Mervyn Adair – Land and Property Services

Brian McCann – Land and Property Services

: Four Men and Four of the People

Defendants.

Master Bell

Introduction

[1] I have before me a number of applications to strike out or stay the plaintiff's action.

[2] On behalf of the first defendant there is an application, firstly, to strike out the plaintiff's action for failure to serve a statement of claim and, secondly, to strike out

the plaintiff's action for (a) a failure to disclose a reasonable cause of action; or (b) on the basis that it is scandalous, frivolous or vexatious; or (c) that it is otherwise an abuse of process.

[3] On behalf of the second, third and fourth defendants there is an application, firstly, that I strike out the writ on the basis that the plaintiff's action (a) discloses no reasonable cause of action or (b) is scandalous, frivolous and vexatious or (c) is otherwise an abuse of process of the court; or, secondly, that I stay the action on the grounds that the action is an abuse of process and/or is bound to fail.

[4] The plaintiff represented himself, assisted by his brother in the role of a McKenzie Friend. The first defendant was represented by Mr Elliott. The second, third and fourth defendants were represented by Mr Cush. I had the benefit of oral submissions from the plaintiff, Mr Elliott and Mr Cush and of a skeleton argument from Mr Elliott.

[5] The context of the application falls into two parts. The first aspect concerns the vesting of a property at 99 Soudan Street, Belfast. This property was jointly owned by the plaintiff, his brother and his cousin. As part of a redevelopment programme in South Belfast, Land and Property Services were instructed by the Northern Ireland Housing Executive to open negotiations with a view to reaching agreement on purchase prices for properties. After a survey, 99 Soudan Street was valued. The offer made by Land and Property Services was rejected. (The defendants say that the plaintiff and his relatives were offered £100,000 but wanted £140,000. The plaintiff says that they were offered £75,000 but would have accepted £150,000. These are not material differences for the purpose of this application.) The problem was that, due to the national fall in property prices, the house was in negative equity and the offer price would have left the owners in debt. The three owners regarded this as "an unfair offer, morally wrong and … private property theft." No agreement could be reached and the property was vested on 19 April 2010. The value of the property was the subject of proceedings before the Lands Tribunal which arrived at a valuation of £74,000. I was informed by Mr Elliott that this sum was paid direct to the mortgage company.

[6] The second part of the context relates to another property, 1 The Boulevard, Belfast. In respect of this property the plaintiff stopped paying rates bills. He was taken to court for non-payment of rates and the case eventually came to the Enforcement of Judgments Office. As a result of the plaintiff's behaviour before Master Wells, the Master referred the matter to Mr Justice Stephens to deal with the plaintiff's contempt of court. The plaintiff subsequently apologised to Mr Justice Stephens. In respect this saga the plaintiff sues various of the second, third and fourth defendants for :

> (i) Exceeding jurisdiction, misconduct in public office, and defamation of the plaintiff's name without providing and proof of jurisdiction or a cause of action;

(ii) Non-payment of bills, forcing the plaintiff to perform without his consent;

(iii) Malicious prosecution; and

(iv) Fraud.

Application by the 1st Defendant

[7] The plaintiff has served a document which he has entitled ""Affidavit and Statement of Claim of greg of the family foster". It is clearly an attempt, albeit inadequate, to comply with the Rules and serve a Statement of Claim. I shall not treat it as an affidavit (because under Order 18 Rule 19 I am not entitled to consider any affidavit on an application to strike out for no reasonable cause of action.) Rather I shall treat it as a Statement of Claim and attempt to interpret it in a way which is favourable to the plaintiff if I am in doubt as to its meaning. In an attempt to be fair to the plaintiff I also include as being part of the Statement of Claim an additional document set in his "case file", namely a two page document (paginated as pages 21 and 22) which sets out the seven torts he alleges have been committed by the defendants.

[8] In the changed legal landscape of recent years that sees a much greater number of personal litigants coming before the courts, particulars of claim may be such as were described by Butterfield J in *Mehta v. Mayer Brown Rowe and Maw (a firm) and another* [2002] EWHC 1689 (QB), namely "diffuse, opaque and on occasion wholly incoherent, and in large measure very difficult to penetrate". However, as he stated, that fact on its own does not drive the claimant from the judgment seat. The general approach therefore adopted by courts is that personal litigants should be given the benefit of any lack of clarity in a pleaded case and, as Tugendhat J said in *Merelie v. Newcastle Primary Care Trust* [2006] EWHC 150 (Q.B.) pleadings should be interpreted with appropriate latitude. Lay litigants should not be held to the same standard of accuracy, skill and precision in the presentation of their case as that required of lawyers. As Judge Serota said in an Employment Appeals Tribunal context, where pleadings are prepared by self-represented parties, courts should not therefore be too legalistic in their approach, providing that the opposing party knows the case it has to meet and has a proper opportunity to do so. (*Pousson v. British Telecommunications plc* [2005] All E.R. (D) 34 (Aug)).

[9] It follows therefore that, although the plaintiff's Statement of Claim is unlike the vast majority of Statements of Claim filed in High Court litigation, I do not grant the first defendant's application to strike out the action for failure to serve a Statement of Claim.

[10] For convenience I shall at this point set out the law in relation to Order 18 Rule 19 of the Rules of the Court of Judicature. It provides :

"(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence, as the case may be; or
(b) it is scandalous, frivolous or vexatious; or
(c) it may prejudice, embarrass or delay the fair trial of the action; or
(d) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a)."

[11] The law in this area is clear. An application by a defendant under this Rule requires to be considered in two parts. Firstly, I must consider whether the plaintiff's claim ought to be struck out on the ground that it discloses no reasonable cause of action. In considering this part of the application, the effect of Order 18 Rule 19(2) is that the parties are not entitled to offer any evidence, whether oral or on affidavit. I must assume that all the averments in the statement of claim are true. As Gillen J (as he then was) observed in *Rush v Police Service of Northern Ireland and the Secretary of State* [2011] NIQB 28 a reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered and, 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. Secondly, I must consider whether the plaintiff's claim ought to be struck out on the ground that it is frivolous and vexatious. In considering this part of the application, the parties are entitled to offer evidence on affidavit.

[12] The purpose of the striking out provisions is essentially to protect defendants from hopeless litigation. But it may not be invoked to deprive plaintiffs of their right to bring an arguable matter before the courts. In *Lonrho v Al Fayed* [1992] 1 AC 448 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.

[13] In *O'Dwyer and Others v Chief Constable of the Royal Ulster Constabulary* [1997] NI 403 the Court of Appeal for Northern Ireland reviewed the authorities on the test to be applied in such applications. It held that the summary procedure for striking out pleadings was only to be used in "plain and obvious" cases; it should be confined to 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".

[14] The Court of Appeal in *O'Dwyer* quoted Sir Thomas Bingham in *E (A Minor) v Dorset CC* [1995] 2 AC 633 at 693-694, a passage approved by the House of Lords:

> "I share the unease many judges have expressed at deciding questions of legal principle without knowing the full facts but 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. This must mean that where the legal viability of a cause of action is unclear (perhaps because the law is in a state of transition) or in any way sensitive to the facts, an order to strike out should not be made. But if after argument the court can be properly persuaded that no matter what (within the reasonable bounds of the pleading) the actual facts the claim is bound to fail for want of a cause of action, I can see no reason why the parties should be required to prolong the proceedings before that decision is reached."

[15] In the action before me the plaintiff alleges that, in relation to the property at 99 Soudan Street, Mr McPeake, formerly the Chief Executive of the Northern Ireland Housing Executive, committed trespass, theft and demolition of the property.

[16] There is an important underlying legal issue involved in these proceedings. That issue is what legal recourse does a member of the public have if a civil servant or other public official makes a decision which the member of the public believes to be wrong and injurious. Mr Elliott submitted that it was a matter of settled law that an individual public servant does not owe a duty of care to the plaintiff. The plaintiff conversely submitted that he could sue a civil servant if their conduct caused him injury. He stated that all men and women were under law. He drew an analogy with company law, stating that where an action was carried out on behalf of a limited company, company directors could be held to account for the actions of the company.

[17] I consider that the plaintiff's argument is entirely misconceived. Civil servants and public officials can only rarely be held individually accountable for actions which are performed on behalf of government departments and public agencies. The principal mechanism for doing so is the tort of misconduct in public office. The plaintiff has not alleged that tort against Mr McPeake (although he has alleged it against the other defendants). The plaintiff was quite frank in his submissions. He stated that he and his co-owners of the property were not aware of what their rights were in 2010 when a vesting order was proposed. They did not seek to bring judicial review proceedings in respect of the redevelopment plans, nor did they use any other appropriate mechanism to challenge the proposed order.

[18] Although a lack of style and clarity which may exist in a personal litigant's pleadings can be treated with a degree of latitude, the lack of a reasonable cause of action cannot. On my analysis of the plaintiff's Statement of Claim, it contains no allegation of facts which, when one assumes them to be true, would give rise to a reasonable cause of action against Mr McPeake. On this basis alone I consider that it is appropriate to grant the application and strike out the action on the basis that there is no reasonable cause of action against Mr McPeake.

[19] Mr Elliott also argues that that the action against Mr McPeake should also be struck out because it is scandalous, frivolous or vexatious and that it is otherwise an abuse of process. In *Attorney General of Duchy of Lancaster v L&NW Railways* [1892] 3 Ch. 274 at 277 Lindley L.J. held that the words frivolous or vexatious are meant cases which are "obviously unsustainable". The pleading must be "so clearly frivolous that to put it forward would be an abuse of the process of the court" (per Jeune P in *Young v Holloway* (1895) P 87 at 90). The case brought by the plaintiff against Mr McPeake clearly falls into this category. The plaintiff is not aggrieved by anything done personally by Mr McPeake. He is aggrieved by the vesting order made by the acquiring authority in respect of 99 Soudan Street and this litigation is simply an attempt to litigate matters in connection with that compulsory purchase. In that regard, I also consider that bringing these proceedings against Mr McPeake is frivolous or vexatious and it is otherwise an abuse of process and that a decision to strike out the proceedings against him on this basis is also justified.

[20] It is necessary to observe that the application before me possesses a number of features which I referred to in my judgment in *The Man Known as Anthony : Parker v The Man Known as Ian McKenna And The Enforcement of Judgments Office* [2015] NIMaster1. In that judgment I referred to a decision by Chief Justice Rooke judgment in the Canadian case of *Meads v Meads* [2012] ABQB 571. In his extensive and detailed written judgment the Chief Justice explains that that court has developed a new awareness and understanding of a particular category of vexatious litigant. They describe themselves in a variety of ways, sometimes, for example, as "Freemen" or "Freemen-on-the-Land". The Chief Justice, in the absence of what he considers to be a better description, terms them "Organized Pseudolegal Commercial Argument litigants" or "OPCA litigants". He explains that these persons employ a collection of techniques and arguments promoted and sold by others to disrupt court operations and to attempt to frustrate the legal rights of governments, corporations, and individuals. He notes that in Canada over a decade of reported cases have proven that the individual concepts advanced by such litigants are invalid. In his judgment he then goes on to categorise these schemes and concepts, identify defects to simplify future response to variations of identified and invalid OPCA themes, and develop court procedures and sanctions for persons who adopt and advance these vexatious litigation strategies.

[21] The application in the case before me has a number of these features. Firstly, the plaintiff uses an odd mode of identification. His Statement of Claim states "I, greg of the family foster (as commonly called), being the undersigned, do solemnly

swear, declare and depose that I am not the all capitalised name 'GREG FOSTER' defined to take advantage of by diminishing my status to Roman civil officer subject to Roman civil codes." I put it to him that he presumably did not introduce himself socially as "Greg Foster, a man and one of the people" and that the reason he asked me to refer to him as "Greg" in court was that he believed he obtained some sort of legal benefit thereby. He agreed.

[22] Secondly, the plaintiff stated that he was not bound by statute law passed by Parliament unless either he consented to it or an act contrary to a statute caused hurt or injury to another person. His affidavit states, *inter alia*, "the law of statutes is the law of contract"; "a statute is a legislative rule of society given the force of law by the consent of the governed. (I am not legally qualified to interpret statute and do not give my consent either tacitly or otherwise)"; "enforcing statute on a man without his consent, when he has caused no harm or broken no contract is slavery"; and "presuming millions of statute liabilities are attached to a man from birth, without his knowledge or consent is morally wrong and classed as slavery."

[23] Thirdly, although he did not go as far in his submissions as to say that he believed that the court had no jurisdiction over him, his statement that he was sovereign amounts to a similar position. His Statement of Claim states : "as one of the people I do not yield my sovereignty to the agencies of government that serve the people."

[24] In Master McCorry's decision in the case of *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) Master McCorry concluded that the plaintiff's arguments largely consisted of :

> "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."

That assessment is apposite to the arguments made by the plaintiff in this case. The Freeman approach has been considered in legal literature in recent years and been described as a "delusional approach to legal issues" ("Land of the Free, Home of the Deluded", Rooney, K., Irish Law Society Gazette, April 2012, p 12.) which arises from a "murky pseudo-legal world" ("Freeman on the Land and Other Organised Lay Litigant Groups – Part 2", Keys, T., [2014] Commercial Law Practitioner). It has proved difficult to discover any case in which any court in any jurisdiction has found the arguments to be meritorious.

[25] To borrow the conclusion of Chief Justice Rooke in the Canadian case of *Meads v Meads*, the arguments the plaintiff has advanced have no effect or meaning in Northern Ireland law. However I have been careful to examine the Statement of Claim and the plaintiff's submissions to ensure that beneath the sometimes meaningless "Freemen on the Land" language there does not lie an

argument which has some merit. Nevertheless I have been unable to detect any meritorious legal argument which requires to be answered by Mr McPeake.

Application by the 2nd, 3rd and 4th Defendants

[26] I shall deal with this application by reference to the specific torts which the plaintiff alleges against these defendants. Not all of the torts are alleged against all of the defendants.

[27] The second defendant, Mr Wilkinson, according to the affidavit of Mike Dawson, was the Chief Executive Officer of Land and Property Services at the time of the vesting of 99 Soudan Street. Mr Wilkinson played no role in any of the valuation issues which took place in relation to this property or in relation to its vesting. As with Mr McPeake, the plaintiff alleges that Mr Wilkinson has committed what he describes as the torts of trespass, theft, demolition against the plaintiff's property at 99 Soudan Street. For the same reasons that I have struck out the action against Mr McPeake, namely that there is no reasonable cause of action and that it is frivolous or vexatious and it is otherwise an abuse of process. I strike out what the plaintiff describes as "Tort 1" against Mr Wilkinson.

[28] What the plaintiff describes as "Torts 2, 3 and 4" namely "Exceeding Jurisdiction, Misconduct in Public Office, Defamation of aggrieved party's good name without providing and proof of jurisdiction or a Cause of Action as required by Law" are alleged against Mr Wilkinson, Mr Adair and Mr McCann. The third defendant Mr Adair works in Land and Property Services and his role in the matters which are the subject of these proceedings was that he signed two documents which were posted to the plaintiff. The first document, dated 23 October 2013, and entitled "Process in Debt Proceedings", required the plaintiff to appear at the Magistrates Court on 11 November 2013 in relation to a claim for outstanding rates. The second document, dated 18 August 2014, required the plaintiff to appear at Laganside Courts on 8 September 2014 in respect of the amended claim for outstanding rates. The fourth defendant, Mr McCann, also works for Land and Property Services. His only apparent connection with the subject matter of this action is that he attended the hearing before Master Wells and confirmed, at the request of the Master, that he was content for the matter to be referred to the High Court. He then attended the hearing before Mr Justice Stephens but took no part in the hearing.

[29] An analysis of this part of the action must begin by observing that there is no such tort as "Exceeding Jurisdiction" and it follows that this must be struck from the Statement of Claim on the basis that there is therefore no reasonable cause of action.

[30] Misconduct in Public Office is a tort known to the law and was considered by the House of Lords in *Watkins v Secretary of State for the Home Department and Others* [2006] UKHL 17. Following their Lordships decision, the tort of misconduct in public office has three ingredients. Firstly, the defendant must be a public officer. Secondly, there must have been an exercise of power as a public officer. Thirdly, the state of

mind of the defendant must have been such that the defendant's conduct was either specifically intended to injure the plaintiff or that the defendant must have acted knowing that he had no power to do the act complained of and knowing that the act would probably cause injury. The Statement of Claim provides no allegation of fact from which a court could reach a conclusion that the third ingredient of the tort was present in respect of any of the defendants. Accordingly, I must strike out this element of the Statement of Claim in respect of each of the defendants on the basis that there is no reasonable cause of action.

[31] Defamation is obviously a tort known to the law of Northern Ireland although much of the remainder of the description of the tort would not be recognised by practitioners in the field. The Statement of Claim provides no allegations of fact as regards the publication of any words by the defendants which were defamatory of the plaintiff. Therefore I must also strike out this element of the Statement of Claim on the basis that there is no reasonable cause of action.

[32] Even if I had not found that there was no reasonable cause of action, I would have struck out the plaintiff's action in regard to "Torts 2, 3 and 4"on the ground that it was frivolous or vexatious. This part of the litigation is simply an attempt to litigate matters in connection with the plaintiff's unpaid rates bill. The defendants are civil servants. There is no allegation of any action that goes beyond the dispassionate fulfilment of their employment responsibilities. In that regard, bringing proceedings against Mr Wilkinson, Mr Adair and Mr McCann in respect of acts done by their organisation is frivolous or vexatious and it is otherwise an abuse of process.

[33] What the plaintiff describes as "Tort 5" is "Non-payment of Bills, forcing the aggrieved party to perform without his consent". This "tort" is alleged against Mr Wilkinson and Mr Adair. Again, there is no such tort as "Non-payment of Bills" and it follows that this must be struck from the Statement of Claim on the basis that there is no reasonable cause of action. It is also frivolous or vexatious and otherwise an abuse of process.

[34] What the plaintiff describes as "Tort 6" is "Malicious Prosecution" alleged against Brian McCann. His allegation seems to concern the occasion when he was referred by Master Wells to Mr Justice Stephens for contempt of court. A claim for malicious prosecution may be brought in respect of civil as well as criminal proceedings. In *Crawford Adjusters and others v Sagicor General Insurance (Cayman) Ltd and another* [2013] UKPC 17 the Privy Council concluded that a claim for malicious prosecution may lie where a claimant can establish that he has suffered damage as a result of a civil claim which was brought against him maliciously and without reasonable cause, and which was determined in his favour. What I do not consider possible is to bring an action against Mr McCann in respect of a judicial decision made by Master Wells. Accordingly, it follows that this must be struck from the Statement of Claim on the basis that there is therefore no reasonable cause of action. It is also frivolous or vexatious and otherwise an abuse of process.

[35] What the plaintiff describes as "Tort 7" is "Fraud" alleged against Mr Adair. The plaintiff alleges that a document sent to him by Land and Property Services and signed by Mr Adair entitled "Process in Debt Proceedings", was misrepresenting itself as a court summons when it was no such thing. Accordingly he alleges that this amounts to impersonation of a court officer and fraud. I assess this argument as having no chance of success and therefore strike out this element of the Statement of Claim on the basis of no reasonable cause of action. Even if a court were to view the wording on the document as somewhat misleading (and I am not suggesting that this is so) it does not provide the plaintiff with a basis for bringing civil proceedings for fraud against an individual civil servant responsible for processing the documents as part of his or her daily responsibilities. It is therefore also appropriate to strike out this element of the plaintiff's Statement of Claim as frivolous or vexatious and otherwise an abuse of process.

Conclusion

[36] Although everyone will sympathise with someone in the situation where a compulsory purchase order is made in respect of property in negative equity, I must, for the reasons set out above, grant both applications and strike out the plaintiff's hopeless action before any more public money is wasted defending it. I mark judgment to the defendants and award them the costs of both the applications and the action, such costs to be taxed in default of agreement. I also certify for counsel.