Neutral Citation No. [2013] NIMaster 7 | *Ref:* **2013NIMAster7**

Judgment: approved by the Court for handing down | *Delivered:* **15/04/2013**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

William John Morrow

Plaintiff;

And

Matt Baggott, Chief Constable, and Judith Gillespie, Deputy Chief Constable of the Police Service of Northern Ireland

Defendants.

Master Bell

Introduction

[1] The Plaintiff, who appears as a litigant in person, has initiated civil proceedings against the defendants in which he pursues an award of £1 billion and £40 million in connection with the recruitment processes applied by the Police Service of Northern Ireland.

[2] There are two applications before me. Firstly, the plaintiff has issued a summons dated 19 February 2013 seeking default judgment against the defendants. Secondly, the defendants have issued a summons dated 19 April 2013 for an order striking out the writ or the indorsement on the writ on the grounds that the writ disclosed no reasonable cause of action or that it is otherwise scandalous, frivolous or vexatious contrary to Order 18 Rule 19 of the Rules of the Court of Judicature ("the Rules") and or the inherent jurisdiction of the court.

[3] At the hearing before me today I heard submissions from the plaintiff and from Mr McAteer on behalf of the defendants. I reserved my decision to compile this

brief written judgment which sets out the reasons for my decision. Given that the plaintiff is a personal litigant I shall set out these as simply as possible.

Application for Default Judgment

[4] On 6 December 2012 the plaintiff issued his writ. The plaintiff asserts that he served the defendants with a true copy of the writ by posting it by first class recorded delivery on 11 December 2012. He appears to have posted it to the defendants' work address. The defendant's affidavit avers that due to an administrative error no appearance was filed within the appropriate time limit. An appearance was subsequently filed however on 20 March 2013. The defendant's submissions were, firstly, that Order 10 of the Rules sets out the way in which a writ must be served; that the plaintiff has not complied with Order 10 and hence the writ has not been properly served; that any failure to enter an appearance to a writ which has not been properly served does not entitle the plaintiff to a default judgment; and, secondly, that as a late appearance has now been filed as provided for in Order 12 Rule 6, the plaintiff is now prevented under from obtaining a default judgment against the defendant.

[5] In the light of an appearance having been filed, I agree that an application for default judgment cannot now succeed. All that the plaintiff could hope for is to be successful in terms of an application for costs. However, given that he is a personal litigant who has had fees waived by the court due to his personal circumstances, he has not incurred costs which can be recovered. I therefore dismiss his application without further order.

Application to Strike out the Writ

[6] The plaintiff's writ is a handwritten document which in some instances is difficult to read. The Crown Solicitor's office has kindly transcribed it as best as they can. It is in many respects ungrammatical. Essentially, however, the claim appears to be that:

(i) The Chief Constable has recruited "verified criminals" into the Police Service of Northern Ireland.
(ii) The Chief Constable has recruited officers from Strathclyde Police into the Police Service of Northern Ireland.
(iii) It is "scandalous, frivolous, insulting and defamation to replace honest, decent, vastly experienced Royal Ulster Constabulary George Cross Medal officers with verified criminals".

On one reading of the writ it is somewhat unclear whether the plaintiff considers the verified criminals and the officers recruited from the Strathclyde Police to be one and the same. I queried this with the plaintiff and he confirmed that this is a correct understanding of what he has drafted.

[7] Order 18 Rule 19 of the Rules 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)."

[8] 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.

[9] Mr McAteer referred me to *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 *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".

[11] 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."

[12] In reaching a determination as to whether the test for striking out on the ground that there is no reasonable cause of action is satisfied, the court is confined to consideration of the pleadings alone. The facts alleged in the indorsement are assumed, for the purpose of the application, to be correct. Order 18 Rule 19(2) prohibits the court from consideration of evidence offered by a party to supplement the averred facts.

[13] Pleadings may suffer from various degrees of defectiveness. Paragraph 18/19/13 of "The Supreme Court Practice 1999" ("The White Book") states that where a pleading is defective only in not containing particulars to which the other side is entitled, an application should be made for particulars and not for an order to strike out the pleading. It notes that even a serious want of particularity in a pleading may not justify striking out if the defect can be remedied and that defect is not the result of a blatant disregard of court orders and cites *British Airways Pension Trustees Limited (Formerly Airways Pension Fund Trustees Limited) v Sir Robert McAlpine & Sons Limited & ORS* 72 B.L.R. 26 (CA) as authority for the proposition. That decision also emphasises that the basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it and that pleadings are not a game to be played at the expense of the litigants, nor an end in themselves, but a means to the end, and that end is to give each party a fair hearing.

[14] In this case, assuming (as I must) for the purposes of this application that the facts in relation to the recruitment process alleged in the indorsement on the writ are true, there is nothing in the writ to indicate that the plaintiff has suffered any loss or damage by the recruitment process. The defendant also argues that the claim is unintelligible and I cannot disagree. Accordingly, I have no alternative but to strike out the indorsement on the writ on the basis that it discloses no reasonable cause of action. I therefore do so.

Vexatious Litigation

[15] The right to bring a legal action where the civil law has been breached is a precious and important right. Every citizen deserves his day in court where he has a claim that genuinely requires determination. However, where completely unmeritorious litigation is brought, a plaintiff takes someone else's day in court.

[16] This is the third action by the plaintiff which I have struck out in recent times. Two have been against police forces and one against the Housing Executive. Though

the plaintiff has been unfailingly polite and courteous to both his legal opponents and to the court, each legal action has, in my view, been entirely without legal merit. Apart from the court fee in respect of his writ in the action against the Chief Constable of Strathclyde, in each case the plaintiff has qualified to have court fees waived in respect of the issuing of a writ. Each set of proceedings has caused a considerable waste of public money in defending them, despite the fact that they have been struck out at an early stage. In one action the plaintiff unsuccessfully appealed the order striking out his action firstly to a High Court judge and then to the Court of Appeal for Northern Ireland. Although costs have been awarded against him they remain outstanding and he informs me that he has no means to pay them. Costs orders against him therefore serve no deterrent function.

[17] I asked the defendant's counsel whether there were any authorities in this jurisdiction as to what number and type of proceedings had to be initiated by a plaintiff before action was taken against him to have him declared a vexatious litigant. Mr McAteer was unable to refer me to any cases on the subject in this jurisdiction. In addition, there is no provision in the Rules dealing with vexatious litigants unlike the position in England and Wales where Rule 3.11 of the Civil Procedure Rules together with Practice Direction 3C provide for three types of civil restraint order to be made by the court.

[18] I strongly urge the Crown Solicitor to draw the legal proceedings taken by this plaintiff to the attention of the Attorney General for Northern Ireland so that he may consider whether the circumstances in respect of this plaintiff are such that he should make an application to have the plaintiff declared a vexatious litigant or, alternatively, whether the Attorney General for Northern Ireland might consider writing to the Court of Judicature Rules Committee asking the Committee to consider the introduction of provisions similar in effect to Rule 3.11 and Practice Direction 3C of the Civil Procedure Rules.