

THE HIGH COURT

[2018 No. 2482 P]

BETWEEN

KEVIN O'REGAN

PLAINTIFF

AND

RYANAIR DAC

DEFENDANT

EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 10th day of December, 2018

1. The plaintiff alleges that he was assaulted by the proposed third party on the flight from Bari in Italy to Dublin Airport on 7th July, 2017 operated by the defendant. The defence delivered in October 2018, pleads, *inter alia*, that the plaintiff's claim does not come within the provisions of Article 17 of the Montreal Convention 1999.
2. The plaintiff, in the alternative, pleads negligence and breach of duty on the part of the defendant airline. The plaintiff submits that the proceedings are not required to be authorised by the Personal Injury Assessment Board by virtue of s. 3A of the Personal Injury Assessment Board Act 2003, as inserted by s. 56 of the Civil Law (Miscellaneous Provisions) Act 2011.
3. The defendant denies that the incident was caused or contributed to by any act, default or omission on its part. The defendant airline now seeks liberty to join the alleged assailant as a third party. Order 16, rule 2 of the Rules of the Superior Courts provides that the application seeking to join a third party shall be made on notice to the plaintiff and "*[u]nless the plaintiff wishes to add the third party as a defendant, his attendance at the hearing of the motion shall not be necessary*".
4. The plaintiff through counsel not only does not wish to join the third party as a defendant but objects to the application by the defendant on the grounds that the defendant and the third party could not be concurrent wrongdoers. Effectively the plaintiff resists the application for leave to issue a third party notice.
5. Counsel for the plaintiff glosses over the alternative plea in the personal injury summons relating to negligence when submitting that liability under Article 17 of the Montreal Convention cannot be "off loaded" onto the third party. Counsel cites the Court of Appeal judgment in *Bell v. Dublin Airport Authority Plc* [2016] IECA 384 (unreported, Court of Appeal, 15th December, 2016) of the then President of the Court of Appeal.
6. Mr. Walker, for the defendant, draws the Court's attention to para. 47 of that judgment which reads:-

"In my judgment, Ms. Bell was restricted to proceeding against Aer Lingus irrespective of any claim that the carrier might have against the third party, including the Dublin Airport Authority, if it considered that appropriate. That did not mean that Ms. Bell was entitled to sue the Authority. This point would be

available to that party in the event that Aer Lingus issued third party proceedings and the plaintiff applied to join the Authority as an additional defendant."

7. The resistance of the plaintiff to the defendant's application is ill-founded by virtue of:-
 - (i) Order 16, rule 2, Rules of the Superior Courts;
 - (ii) The unexplained overlooking of the alternative plea in the personal injury summons issued on 21st March, 2018, which the plaintiff has not withdrawn;
 - (iii) the defence delivered in October 2018; and
 - (iv) the implication arising from *Bell v. Dublin Airport Authority plc* and particularly para. 47 thereof.

8. I, therefore, give liberty to the defendant to issue a third party notice in the form exhibited as PL1 in the affidavit sworn by Peter Lennon on 3rd October, 2018. I direct that the third party issue be heard as the trial judge may direct when the plaintiff's claim comes to trial. I also make an order giving liberty to the third party to file a defence to the third party notice within 28 days from the entry of an appearance on the part of the third party.