

THE HIGH COURT

[2022] IEHC 296
[2021/3764 P.]

BETWEEN

ANTHONY MULLINS

PLAINTIFF

AND

**IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND EQUALITY, KEN
TYRELL AND EVERYDAY FINANCE DAC**

DEFENDANTS

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 20th day of May, 2022

1. On 9th May, 2022, I heard three motions in this action. Two of these motions were brought by the plaintiff, Mr. Mullins. The third motion was brought by the fourth and fifth defendants ("Mr. Tyrell and Everyday"). The motions brought by Mr. Mullins are unusual. The first of them asked me to find Everyday and Mr. Tyrell (and their solicitors) in contempt of court, or, alternatively, asked me to refer to An Garda Síochána correspondence from the solicitors for these defendants. In the further alternative, I am asked to refer this case to the European Court of Human Rights. The second motion brought by Mr. Mullins seeks an order that I direct the Gardaí to investigate perjury which, it is alleged, has been committed by a solicitor for Everyday and Mr. Tyrell.
2. The application brought by Mr. Tyrell and Everyday is more mundane, though, in itself, very far reaching and by no means usual. By their motion, Mr. Tyrell and Everyday seek an order striking out the claim made by Mr. Mullins as against them.
3. Out of each of the three applications before me, are, for different reasons, very serious ones I have prepared a written judgment, which is organised in the following sections: -
 - (1) Background to these proceeding.
 - (2) The nature of these proceedings.
 - (3) Mr. Mullins' first motion.
 - (4) Mr. Mullins' second motion
 - (5) The motion of Everyday and Mr. Tyrell.

(1) The Background to these Proceedings.

4. The background to the current proceedings is set out by Richard O'Sullivan, solicitor for Everyday and Mr. Tyrell, in an affidavit sworn on 7th December, 2021. It is not, in any material way, contradicted by Mr. Mullins or by the State defendants.
5. Mr. O'Sullivan swears that Mr. Mullins obtained "a number of loan facilities" from Allied Irish Banks plc and that the rights, title, interest and benefit under these facilities and security were transferred and assigned to Everyday on 14th June, 2019. Mr. O'Sullivan swears that Mr. Mullins defaulted on the repayment of the monies secured by the mortgage/charge granted to AIB (and transferred to Everyday) which secured the monies advanced to him. As a result, on 26th August, 2020, Mr. Tyrell was appointed as receiver

over the properties of Mr. Mullins by Everyday. Mr. O'Sullivan goes on to swear that Mr. Mullins refused to cooperate with Mr. Tyrell in carrying out his functions as receiver, and that Mr. Mullins has "engaged in acts of interference". Proceedings were, therefore, instituted against Mr. Mullins by plenary summons dated 28th January, 2021. These proceedings are important, and are identified by the Record Number 2020/547 P. By notice of motion in the 547 P proceedings, Mr. Tyrell sought injunctions against Mr. Mullins "requiring him to *inter alia*, put [Mr. Tyrell] in possession of [the secured properties] and to refrain from interfering with receivership". This motion was ultimately refused by Allen J. after a hearing of 13th October, 2021. However, after the institution of the 547 P proceedings (but before the decision of Allen J. in late 2021), the current proceedings were issued. I will now set out what they involve.

(2) The Nature of these Proceedings

6. The plenary summons in the current proceedings reads as follows:-

"The Plaintiffs seek a Declaration from the Honourable Court that the Constitutional Rights have been denied due to the fact that the Plaintiff is aware of High Court Case Law 2018/9410 P where the Minister for Justice, Charlie Flanagan, and the Attorney General, Seamus Woulfe, failed to enter an appearance and that case was Struck Out. High Court Case Law 2018/9410 P along with Article 40.1 means that like the Justice Minister and the Attorney General, the Plaintiff is immune to Court Summons and the case in Court against the Plaintiff must be Struck Out.

The Plaintiff is aware that there is an investigation by the Justice Department under three Reference Numbers: DJE-MO-00516-2019, DJE-MO-04404-2019 and DJE-MO-00889-2019, also a Pulse number HQCSO.1-348140/16 from the Garda Commissioner in relation to this Constitutional Crisis.

I have been the Victim of a Court Summon number 2021/547 P and as happened with the Justice Minister and the Attorney General, the case against me must be struck out.

The Plaintiff reserves the right to provide additional evidence as it becomes known.

The Plaintiff's claim for damages is €5 million euros."

7. The statement of claim is dated 18th May, 2021. These solicitors for Everyday and Mr. Tyrell entered an appearance on 13th October, 2021. The statement of claim was delivered in the current case, though it is undated. Again, it is important to set out the statement of claim in full.

"The Plaintiff, Anthony Mullins is a race horse trainer who resides at Wateree Stud, Gowran, Co. Kilkenny.

The Plaintiff seeks a declaration from the Honourable Court that his constitutional right under Article 40.1 of the Constitution has been denied due to the fact that the plaintiff has been the victim of court order No. 2021/547P. The plaintiff is aware of

the Supreme Court case law No. 334/2007 where the Supreme Court validated the fact that the DPP failed to comply with the High Court order No. 2006/114P. That case law was not published on Courts.ie, denying the plaintiff's right to access that case law.

The Plaintiff seeks a declaration from the Honourable Court that the plaintiff is a victim of court summons No. 2021/547P which is confirmed by high court constitutional case law No. 2018/9410P along with Article 40.1 of the Constitution. Like the ex-Justice Minister Charlie Flanagan and the ex-Attorney General, Seamus Woulfe, the plaintiff is immune to court summons. That equality is guaranteed under Article 40.1 of the Constitution and the summons against the plaintiff should have been struck out.

All of the defendants are aware that there is a pending high court constitutional case No. 2019/6501P which challenges all court summons and court orders as being repugnant to the constitution under Article 40.1.

Due to the above constitutional crisis the defendants are aware that all action in relation to court orders against the plaintiff should have been suspended and that there can not be any interference with the plaintiff's property.

The defendants are aware that since September 2019, the Chief State Solicitor has failed to provide a defence in high court constitutional case No. 2019/6501P, which confirms that the defendants are involved in unconstitutional activities against the plaintiff.

The defendants are aware that the Justice Department issued 3 reference numbers in relation to the investigation of this escalating constitutional crisis. DJE-MO-00516-2019, DJE-MO-04404-2019 and DJE-MO-00889-2019. The defendants are aware that the Garda Commissioner has issued Pulse No. HQCSO.1-348140/16 in relation to the failure by the government to comply with Article 35.4.1 of the Constitution which compels the government to impeach judges who fail to comply with their oath to the constitution.

The defendants are aware that the Chief State Solicitor is under investigation by the Gardai as they are unlawfully acting as legal counsel for judges who committed treason when they ignored Article 40.1 of the Constitution and the Chief State Solicitor is not entitled to address the Court.

The defendants are aware that the denial of the plaintiff's constitutional right under Article 40.1 has also denied the plaintiff's rights under Article 6 and 13 of the European Convention on Human Rights.

The Plaintiff reserves the right to provide additional evidence in relation to the escalating constitutional crisis.

The Plaintiff claims damages for €5 million euros."

8. When I come to consider the application by Everyday and Mr. Tyrell to have this claim against them struck out, I will (as jurisprudence obliges me) consider the pleaded case at its height. This involves me accepting, for the purpose of the motion brought by Everyday and Mr. Tyrell, that the Chief State Solicitor is being investigated by An Garda Síochána, as that solicitor is “unlawfully acting as Legal Counsel for Judges who committed Treason...”. It may well be that, in a different case, this Court will have to decide an application to strike out a claim without necessarily accepting that such exotic allegations are, in fact, to be treated as sustainable. In this case, it is possible to decide the motion taken by Everyday and Mr. Tyrell without doubting the ability of Mr. Mullins to establish every aspect of the claim he makes in his pleaded case.

(3) Mr. Mullins’ First Motion

9. In response to the case made by Mr. Mullins in these proceedings., the solicitors for Everyday and Mr. Tyrell wrote a letter to Mr. Mullins on 22nd November, 2021. I will set out that letter in its entirety. It reads:-

"Dear Mr. Mullins,

We refer to the above and the Plenary Summons and Statement of Claim which you have delivered in these proceedings.

Having reviewed the matters pleaded in the said documents, we are satisfied that it disclosed no reasonable cause of action against our clients, the Fourth and Fifth named Defendants. In view of this, it is our view that the proceedings you have issued against our clients are bound to fail and are frivolous and vexatious and an abuse of process.

In the circumstances, we call upon you to confirm in writing within seven days from the date hereof that you will within that time period file a Notice of Discontinuance in respect of the Fourth and Fifth named Defendants and that you furnish this office with a copy of same. In the event that you refuse to do so or, do not hear from you within the time period specified, we are instructed to immediately issue a motion in the High Court seeking an order dismissing the proceedings against the Fourth and Fifth named Defendants. In the event that such action is necessary, we shall rely upon this letter to have you affixed with the costs of such motion and the proceedings.

We await hearing from you."

10. This correspondence was moderate and balanced. The response of Mr. Mullins was, on the contrary, rather extreme. He issued a motion (which I have already summarised) which seeks the following orders against Mr. Tyrell, Everyday and OSM Partners (the solicitors for these defendants):-

"(a) An order for contempt of court by Ken Tyrell, Everyday Finance DAC and OSM Partners, their solicitors, who have threatened the plaintiff that they will lodge a motion to strike out the plaintiff's constitutional case.

(b) *In the alternative common orders sending the threatening letter by the named defendants to the plaintiff for a criminal investigation by the Gardaí as the plaintiff's constitutional rights are untouchable confirmed in Supreme Court case law, Denis O'Brien v. Members of the Oireachtas.*

(c) *In the alternative, an order referring the plaintiff's case to the ECHR in Strasbourg as the above named defendants are infringing on the plaintiff's rights under Article 40.1 of the Constitution, the right to a hearing in court and right under Article 2 of the Treaty of Europe."*

11. This motion can be easily dealt with. The letter which I have set out in full from OSM Partners does not constitute a contempt of court. Instead, in restrained terms, it informed Mr. Mullins that these defendants had come to a view that the proceedings against them taken by Mr. Mullins were unsustainable, it gave Mr. Mullins an opportunity to withdraw the proceedings by serving a notice of discontinuance, and it further stated that in the event that they did not do so, a motion would be brought that have the proceedings struck out as against Everyday and Mr. Tyrell. No basis is advanced by Mr. Mullins as to how this letter constituted a contempt. Equally, the letter did not involve any denial of Mr. Mullins' entitlement to a hearing in court. On the contrary, it stated that there would be a hearing of the application by these defendants to have the case against them dismissed, a hearing which would necessarily take place in court and a hearing in which Mr. Mullins was entirely free to participate (as ultimately he did). The letter of 22nd November, 2021 cannot properly be described as "threatening". It informed Mr. Mullins, entirely accurately, of the procedural steps that would follow in the event that he did not withdraw these proceedings against Everyday and Mr. Tyrell. The issuing of that letter involves no criminal events and reporting the letter to An Garda Síochána for a criminal investigation by that force would be quite inappropriate.

12. Mr. Mullins has, therefore, made out no entitlement to the reliefs claimed in his first motion, and I will refuse that motion in its entirety.

(4) Mr. Mullins' Second Motion

13. As Mr. Mullins did not withdraw these proceedings against Mr. Tyrell and Everyday, those defendants caused their solicitors to issue a motion on 7th December, 2021. This is one of the motions listed for hearing before me on 9th May, 2022. The affidavit grounding this motion unsurprisingly contains averments to the effect that these proceedings (at least as far as Mr. Tyrell and Everyday are concerned) "have no reasonable prospect of success and [the] action is bound to fail" (para. 16 of the affidavit of Richard O'Sullivan grounding the Everyday/Tyrell motion). Mr. O'Sullivan also swore that the proceedings brought by the plaintiff "are improper, vexatious and an abuse of process" (para. 21 of the same affidavit) and that the letter of 22nd November, 2021 set out the view that the pleadings "did not disclose a reasonable cause of action against [Everyday and Mr. Tyrell] and that in the circumstances, the proceedings were bound to fail and as such were frivolous, vexatious and an abuse of process". (para. 22 of the grounding affidavit of Mr. O'Sullivan).

14. In response to this affidavit, Mr. Mullins issued a further motion (on 12th March, 2022) seeking the following orders:-

"(a) An order for the Gardaí to investigate perjury by solicitor Richard O'Sullivan, solicitor for the defendants, in a sworn affidavit dated December 7 2021 of which Richard O'Sullivan commits perjury in an attempt to have the plaintiff's constitutional case struck out, denying the plaintiff's constitutional rights and rights under Article 2 of the Treaty of Europe, while knowing that the plaintiff's constitutional rights are untouchable."

15. Mr. Mullins' second motion was grounded on an affidavit which he swore on 14th March, 2022, and which identifies the perjury alleged against Mr. O'Sullivan. He refers to paras. 16, 21 and 22 of the affidavit of Mr. O'Sullivan of 7th December, 2021. Mr. Mullins goes on to say that Mr. Tyrell and Everyday have "no legal standing which allows them to defend in this constitutional case or to lodge a motion for a strikeout of the plaintiff's constitutional case". He further says that the issuing of the motion seeking a strikeout of Mr. Mullins' claim against these defendants is, in itself, an "additional contempt of court...", that the motion to strike out these proceedings against these defendants implicates "the Judge in Treason as known to interfere with the plaintiff's constitutional rights to a hearing in court...", that Mr. O'Sullivan is "in further contempt" by referring to banking issues when the plaintiff's case is "constitutional", that Mr. O'Sullivan has further perjured himself in that "he is swearing based on hearsay as he is not an employee of [Everyday] and under GDPR he could not have any access to the plaintiff's account with [Everyday]". Mr. Mullins also advances the view that his motion should succeed as there was no reply to the grounding affidavit of the plaintiff (presumably in the original motion brought by him).

16. There are two further affidavits of relevance. One is Mr. O'Sullivan's second affidavit dated 12th April, 2022, and the second is a final affidavit of Mr. Mullins sworn on 21st April, 2022. I have read these affidavits (and all the other affidavits filed in all three motions) with great care. It is worth noting that, in this last affidavit of Mr. Mullins (which he opened in full before me in presenting his applications to the court), He alleges further perjury against Mr. O'Sullivan, asserts that court summonses and court orders are unconstitutional and an infringement of "Article 2 of the Treaty of Europe", and expresses the following view:-

"I say and believe that solicitor Richard O'Sullivan is aware of the High Court judgment number 2017/210 CA was removed from courts.ie as the courts and the government fear that citizens will become aware that citizens are, like DPP in High Court case number 2006/1114 P immune to court orders and like Charlie Flanagan and Seamus Woulfe in High Court case number 2018/9410 P immune to court summons."

17. I will return to certain of these averments in the next section of the judgment. However, for the purpose of considering the second motion brought by Mr. Mullins, once again there is simply no perjury established against Mr. O'Sullivan, or indeed against Everyday or Mr.

Tyrell or anyone acting on their behalf. The specific allegations against Mr. O'Sullivan (referring to paras. 16, 21 and 22 of his affidavit of 7th December, 2021) are utterly misconceived. Regardless of my decision on the application by Everyday and Mr. Tyrell to strike out the claim made against them in these proceedings, the averments by Mr. O'Sullivan are nothing more than an honest statement of his view about the merits of the case taken by Mr. Mullins against these defendants. As it happens, I believe that Mr. O'Sullivan's views in this regard are quite correct and I have decided to make an order striking out the claim made by Mr. Mullins against these defendants. However, it is important to stress that even if I had not come to that view (and had allowed Mr. Mullins' claim to proceed against these defendants), the greatest criticism that could be leveled against the relevant statements under oath by Mr. O'Sullivan is that they were ones with which I did not agree. That would not, and does not mean that these statements (or any other statements) by Mr. O'Sullivan constitute perjury or anything close to it.

18. I will, therefore, refuse the relief sought by Mr. Mullins in his second motion.
19. I should also say that, with regard to the two motions brought by Mr. Mullins, there are other freestanding and weighty reasons why either should not or cannot direct the relief sought. As counsel for the State submitted on first of Mr. Mullins' motions, there is simply no procedure which allows me to refer the complaint made by Mr. Mullins in this action to the European Court of Human Rights. With regard to the second motion, I would not think it proper to make an order directing the Gardaí to do something without the Gardaí being on notice of such an order being sought. The two motions brought by Mr. Mullins are procedurally deeply flawed, without any merit whatsoever, and involve the making of unpleasant and potentially damaging allegations against a solicitor who is simply trying to do his job. I would like to think that the allegations of contempt and perjury made against Mr. O'Sullivan were the cause of no harm, simply because they are so wildly made and so plainly without merit. While Mr. Mullins was poised, polite and concise in the application that he made before me, it nonetheless remains the case that these were allegations which were wholly without substance, and which quite simply should not have been made.

(5) The Motion of Everyday and Mr. Tyrell

20. I have already set out, in full, the pleaded case made by Mr. Mullins against Everyday and Mr. Tyrell. Counsel for those defendants, quite properly, reminded me (and by extension informed Mr. Mullins) of the need to consider the possibility that a claim may be amended so as to save it from the fate of being struck out. Notwithstanding that, Mr. Mullins at no time sought to amend his pleaded case. Even if he had, I struggle to imagine the sort of amendment which could have made the statement of claim meaningful, at least as far as the fourth and fifth defendants are concerned. As counsel for these defendants put it, the claim as pleaded is "so far from a valid claim that it could not be saved by amendment...". I agree with that submission.
21. The claim currently made is incoherent and without any legal validity. Inasmuch as I understand it, the claim made by Mr. Mullins in the current proceedings is one which asserts that, in the 547 P proceedings (which I have described earlier), Mr. Mullins has

been unlawfully treated. It is stated, as set out earlier, that Mr. Mullins "is a Victim of Court Summons number 2021/547 P...". Nowhere has Mr. Mullins explained how he is a victim of proceedings which, so far at least, have been unsuccessfully taken against him by Mr. Tyrell. If there is any impropriety, illegality or unconstitutionality attaching to the 547 P proceedings, then the proper place to ventilate this is in those proceedings, and not by bringing a fresh claim. However, even if I am wrong in this, the fresh claim brought by Mr. Mullins is one which simply does not hang together. He asserts that, because of a range of other investigations and proceedings, "all Court Summons and Court Orders [are] repugnant to the Constitution under Article 40.1". This phenomenally far ranging proposition is one which Mr. Mullins has not even attempted to establish as a stateable one.

22. I have not referred to any of the other proceedings mentioned in the statement of claim but even if they are as Mr. Mullins describes them in his pleadings, even if there are three reference numbers issued by the Department of Justice in relation to what is described as the "Escalating Constitutional Crisis and even if the Gardai are investigating the Chief State Solicitor..." none of this establishes that the case made by Mr. Mullins is anything other than frivolous and vexatious and/or bound to fail. In response to submissions made by counsel for Everyday and Mr. Tyrell, Mr. Mullins told me that, on several occasions, he had tried to engage with Everyday in respect of the underlying debt. I do not, however, think that that is an argument which assists Mr. Mullins on the fundamental issue before me in respect of this third motion, namely, whether or not these proceedings are frivolous and vexatious and/or are bound to fail as against the relevant two defendants.
23. Neither counsel for Everyday and Mr. Tyrell, nor Mr. Mullins, addressed me on the relevant legal tests to be applied in this motion. However, the law is well settled, and summarised by me in *Wang v. Ladywell* [2021] IEHC 468.
24. Applying these principles to the facts of this case, I would make an order in favor of Everyday and Mr. Tyrell striking out the proceedings against them. The claims made against those defendants are bound to fail. They do not disclose any cause of action against those defendants. They are therefore also properly described as frivolous and vexatious.
25. I will, list the matter for mention on 20th June, 2022 in order to give each of the parties an opportunity to address me on the question of costs and any other outstanding issues.