

THE HIGH COURT

[2022] IEHC 297
[2019 / 6522 P]

BETWEEN

**BRAY BOXING CLUB LIMITED
AND
PETER TAYLOR**

PLAINTIFFS

**AND
WICKLOW COUNTY COUNCIL**

DEFENDANT

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

1. In these proceedings, the plaintiffs seek a wide range of reliefs including injunctive relief, declaratory relief, and damages (including aggravated and exemplary damages) in respect of a range of causes of action including, but not confined to, negligence, replevin and trover.
2. Very briefly, the claim arises from the decision of the defendant, Wicklow County Council, to change the locks on premises at the seafront in Bray, Co. Wicklow; these premises had, it is claimed, been used for some considerable time as a boxing club. I refer in greater detail to the pleadings during the course of this judgment.
3. The controversial change of the locks took place on the 9th June 2018, the proceedings issued on the 16th August 2019, and the statement of claim was delivered on the 20th February 2020. An extensive notice for particulars was raised by Wicklow County Council on the 6th July 2020, and these were replied to on the 9th August 2021. On the 12th November 2020 a defence was delivered on behalf of Wicklow County Council. On the 28th September 2021, the county council raised a notice for further and better particulars, which has not been replied to by the solicitors for the plaintiffs. The county council has therefore brought a motion seeking an order directing that the plaintiffs reply to the notice for particulars to which I have just referred.
4. The position taken at the hearing of the motion by counsel for the plaintiffs was that no order should be made requiring a response to any of the particulars posed by the county council. He said this for two main reasons. Firstly, it was submitted that the county council has (in its defence) been able to make a positive plea about the precise arrangement in place in respect of the boxing club. In particular, it was argued that if the local authority was able to plead in some detail what it said the position was with regard to the leases and licenses granted in respect of the boxing club premises, there was no need for further particulars of the plaintiff's claim to be provided to Wicklow County Council.
5. Para. 3 of the defence reads as follows: -

"The defendant admits that by a lease made on the 20th of February 2007 (hereinafter the '2007 lease') Bray Town Council, Dromkane, Albert Morris and the second named defendant [Mr. Taylor] being the trustees of St. Fergal's Boxing Club

by way of a temporary convenience letting the premises known as the Harbour Shed situated at the west of Bray Harbour, Bray in the County of Wicklow, for a period of four years and nine months on the 20th of February 2007 at an annual rent of €200. The said 2007 lease expired on the 19th of November 2011. I say that the defendant takes issue with the reference to 'a number of licenses have issued', the defendant admits that St. Fergal's Boxing Club though permitted by the leave and license of Bray Town Council to continue the use of the said premises until it was shut for redevelopment in or about August 2013".

6. I do not accept this submission. The fact that the county council is able to make a positive plea as to what it says the correct situation is with regard to the right to occupy the boxing club premises does not in itself mean that, as defendant in these proceedings, it is thereby not entitled to seek particulars of the precise case that the plaintiffs make in grounding their claim. As it happens, the positive pleading on the part of the local authorities is itself caveated by the rejection of the contention that "a number of licenses have issued", which is contained at para. 5 of the statement of claim. However, even if that reservation were not in the portion of the defence on which counsel for the plaintiffs rely, I would nonetheless have found that (in accordance with the established case law on the provision of particulars) the plaintiffs are obliged to provide the particulars currently sought.
7. Reference to authorities brings me to the second of the two main submissions made by counsel for the plaintiffs. He argued that Wicklow County Council is sufficiently aware of the case being made by the plaintiffs without the particulars sought being provided, and that therefore no order should be made directing the plaintiffs to reply to the notice for further and better particulars. The solicitors for the plaintiffs, in providing the reply to the original notice for particulars, referred to para. 20 of the judgment of O'Donnell J. (as he was at the time) in *Quinn Insurance Ltd. (Under Administration) v. Pricewaterhouse Coopers (a Firm)* [2019] IESC 13. I agree that this paragraph in the judgment of O'Donnell J. concisely states the relevant principles which I should consider and apply in deciding this motion. Presumably relying upon these principles, it is submitted on behalf of the plaintiffs that I should not direct replies to these particulars.
8. I will now consider the individual particulars sought. There are six of these.
9. At para. 5 of the statement of claim, and having referred to the 2017 lease later mentioned at para. 3 of the defence, the plaintiffs plead: -

"The said lease was for a period of four years and nine months and thereafter, a number of licenses have issued".
10. The licenses to which reference is made could be extremely significant for the purposes of the case mounted by the plaintiffs. These licenses are not identified with any level of precision, nor are the details now sought by Wicklow County Council provided. Particular 1 therefore asks whether the alleged licenses were written or agreed orally, that (if written) the documents are identified by the dates and parties thereto and (if oral) when,

where and by whom the said license was agreed and what words were used in agreeing the license.

11. Faced with such a fuzzy but potentially significant plea, I believe that these particulars should be provided. Even to understand the "broad outline" of what is alleged at para. 5 of the statement of claim, these particulars are necessary. While the case is not an especially complex one, the nature of the rights asserted by the plaintiff (by reference to licenses) make it desirable these further details be provided.
12. Paragraph 2 refers to para. 22 of the statement of claim, which asserts that the changing of the locks "was carried out without informing the tenant or licensee, the First and Second Named Plaintiffs". Given that the lease pleaded at para. 5 (in its own terms) was for a period of four years and nine months from "early 2007", it is essential that the plaintiffs identify why it is that Bray Boxing Club Ltd. is asserted as of 2018 to be a tenant in respect of the premises and why it is Mr. Taylor is said to be a licensee of the premises at the heart of these proceedings.
13. Paragraph 3 refers to para. 32 (c) of the statement of claim which relies upon "various lease/license agreement in existence between the parties from 2007 to date". Given the nature of the case being made, this is far too vague an assertion to be meaningful or to give Wicklow County Council any real idea about the case being made against it in this regard. It is plain that lease or license arrangements are relied upon, but that is simply too wolly to allow Wicklow County Council to meet the case. The particulars sought in respect of the alleged leases and licenses (their dates, the names of the parties thereto, which were in existence since 2007 and what obligations under these instruments are alleged to have been breached) should now be provided by the plaintiff.
14. Another aspect of the claim relates to a Sports Grant. It is pleaded (at paras. 8 to 10 of the statement of claim) that in October 2012 Mr. Peter Taylor made a direct request to the Taoiseach (Enda Kenny TD) and the Minister for Transport Tourism and Sport (Michael Ring TD) "to improve the facility at Bray Boxing Club . . .". It is then pleaded that a Sports Grant was approved in the sum of €190,000, and that this was to be applied for the purpose of improving "the facility at Bray Boxing Club . . .". The claim is then made (at para. 32 C) that Wicklow County Council acted contrary to the terms and conditions of this Grant. No specifics are provided, and while there is a reference elsewhere in the statement of claim to "the spirit in which the Sports Grant was awarded . . ." Wicklow County Council is given no precise details as to exactly what the assertion at para. 32 C of the statement of claim involves. The plaintiff should therefore provide particulars of exactly the manner in which Wicklow County Council is alleged to have contravened the terms and conditions of the Grant.
15. Finally, particulars 5 and 6 can be taken together. Both of these involve assertions (again at para. 32 C of the statement of claim) that Wicklow County Council has acted ultra vires. This is a serious allegation. However (as counsel for Wicklow County Council submitted) one cannot tell with any level of precision what is alleged against Wicklow

County Council in this regard. I would therefore direct the plaintiffs to give particulars of:

-

- (a) The facts relied upon in support of the allegation that Wicklow County Council acted ultra vires and contrary to the terms and conditions of this Sports Grant;
- (b) The facts relied upon in support of the allegation that Wicklow County Council acted ultra vires and contrary to the spirit of previous agreements with the plaintiffs;
- (c) The previous agreements relied upon by the plaintiffs, identifying the date (if necessary approximate) of the relevant agreement, the parties to the relevant agreement, and the nature of the agreement allegedly made.

16. I will list the matter for a brief hearing on the 20th June 2022 at 10 a.m. in order to fix the length of time within which these particulars are to be provided by the plaintiffs to the defendant, to decide upon the costs of the motion, and to deal with any other matter which the parties may wish me to address.