

THE HIGH COURT

[2022] IEHC 412

[Record No. 2019/1444 P]

BETWEEN

TOMASZ PYSZ

PLAINTIFF

AND

IRELAND, DEPARTMENT OF FOREIGN AFFAIRS, DEPARTMENT OF LABOUR

DEFENDANTS

DECISION of Ms. Justice Bolger delivered on the 5th day of July, 2022

1. This is the defendants' application pursuant to O. 19, r. 28 of the Rules of the Superior Courts to strike out the plaintiff's claim on the basis that it discloses no reasonable cause of action and/or that it is frivolous and vexatious and/or bound to fail. The defendants also seek such further or other reliefs as this Court may deem appropriate and claims that this entitles the court to rely on its inherent jurisdiction to strike out the proceedings should that be considered appropriate. For the reasons set out below I am allowing this application to strike out the plaintiff's proceedings.

Background

2. The plaintiff is a lay litigant. On 20 February 2019, he issued a plenary summons in which he identified his claim as "negligence, failure of duty of care, violations of civil liberties, Freedom of Information Act, prohibition of Incitement to Hatred Act, the Lisbon Treaty, the Amsterdam Treaty and the European Constitution. Accomplice to modern day slavery and human exploitation". On 12 March 2019, he filed an affidavit averring to certain matters but eventually, having been advised by the defendants of the need to do so, he filed a statement of claim in which he set out his case in somewhat narrative form.
3. The defendants' application to this court pursuant to O. 19, r. 28 requires the court to consider the case solely on the plaintiff's pleadings. I have therefore had careful regard to what the plaintiff states in his plenary summons and statement of claim. Given the plaintiff's status as a lay litigant and in order to ensure that he does not lose out on identifying anything which might assist him in making his case, I have also had regard to the entire contents of his affidavit.
4. The plaintiff brought a claim to the WRC pursuant the Unfair Dismissals Act against the US Embassy arising from his alleged dismissal by the US Embassy on 7 July 2016. He also brought a claim pursuant to the Payment of Wages Act for unpaid wages during a period of sick leave from February to July 2016. The Workplace Adjudication Officer issued a decision of 24 January 2018 that she did not have jurisdiction to hear the complaint as she found the respondent embassy was covered by 'the doctrine of restrictive state immunity'. The plaintiff advised this Court that he sought to appeal that decision outside of the statutory time limit for doing so, and the Labour Court refused to allow his appeal. He advised the court that he has appealed that determination of the Labour Court to the High Court and is currently awaiting a hearing date.

5. The plaintiff sought leave to furnish additional evidence to the court during the hearing of the motion. The defendant refused to consent on the basis that the plaintiff had been asked previously to furnish the defendants with the evidence he had referred to in correspondence and that the plaintiff had declined on the basis that he would bring the evidence to court. I refused the plaintiff's application. The motion was issued on 9 March 2020 and was before the court on a number of occasions since then, and the plaintiff had never availed of the opportunity to put whatever evidence he wished to put before the court by way of a replying affidavit.

The defendants' submissions

6. The defendants submit that the plaintiff's pleadings disclose no reasonable cause of action and/or are frivolous and/or vexatious and/or are bound to fail. They categorise frivolous/vexatious as having no chance of success and would, therefore, represent a hardship on the defendants and a waste of limited court resources for them to have to defend them. In the alternative, they submit that the court could exercise its inherent jurisdiction to strike out the proceedings and, in so doing, could have regard to the wider evidence in the case including matters averred to by their deponent, Mary Lee Wall, who swore an affidavit on 6 March 2020, setting out some of the defendants' dealings and correspondence with the plaintiff. The defendants rely, insofar as is necessary, on the doctrine of state immunity which can deprive an embassy employee, as the plaintiff was, of the benefit of national protective employment legislation and submits that the State is bound to allow another sovereign state to rely on this doctrine in resisting an employment claim brought by an embassy employee, as part of the Irish State's international law obligations pursuant to the 2004 UN Convention on State Immunity and the Vienna Convention on Diplomatic Relations, 1961 given force of law in Ireland by the Diplomatic Relations and Immunities Act, 1967. The defendants also claim that the plaintiff has engaged in an abuse of process by bringing multiple claims relating to the issues and subject matter of these proceedings.

The plaintiff's submissions

7. The plaintiff disputed that he had engaged in multiple claims and clarified the current status of his claim against the US Embassy pursuant to the Unfair Dismissals Act and the Payment of Wages Act (as set out at paragraph 4 above). The plaintiff claimed that he had contacted the Department of Foreign Affairs and the Department of Labour (and also mentioned in his oral submissions that he had contacted the Attorney General though there was no mention made of that in his pleadings) and provided evidence to them of violations of international law. The plaintiff sought to refer in his oral submissions to what he claimed was the more favourable treatment of an employee of a different embassy and therefore asserted a claim of racism and discrimination, but there is no mention of the treatment of that other employee in his pleadings.
8. The plaintiff confirmed his claims of negligence and breach of duty and his reliance on what he has pleaded were violations of the Lisbon and Amsterdam Treaties and the European Constitution. When asked by the court to identify the "European Constitution" and to furnish a copy of whatever document he sought to rely on, the plaintiff was unable to do so. Neither was he in a position to identify how the Lisbon and Amsterdam Treaties

give rise to a cause of action which he, as an individual citizen of the European Union, could seek to enforce before this national court.

9. The plaintiff repeatedly referred to his intention to bring his claims before the Court of Justice of the European Union in Luxembourg and the European Court of Human Rights in Strasbourg, and his belief that he needed to go through this Court with his claim before he could pursue it before either or both of those courts.

Discussion

10. In accordance with the Rules of Superior Courts, the plaintiff's pleadings must define precisely the issue of law and facts on which he relies in establishing a cause of action giving rise to the claim he makes. The underlying facts on which his claims are based and which constitute the cause of actions must be identified. A bald plea of negligence, breach of duty, etc. cannot suffice.
11. The plaintiff's pleadings make a number of allegations that he was badly treated by his former employer. None of those allegations, even if the court were to take them as facts that the plaintiff could prove, could give rise to the plaintiff having a cause of action against the defendants. Further into his pleadings, the plaintiff sets out a very brief account of his dealings with the defendants when he says that, in 2016, he asked for the help of the Irish Government, the Department of Labour and the Department of Foreign Affairs, all of whom, he claims, ignored and neglected him. He also alleges he was threatened and intimidated by Government bodies, including the Chief State Solicitor.
12. The plaintiff states in his pleadings that he sued Ireland because the State facilitates slavery and profits from it and did nothing to protect his rights, thereby failing in its duty of care to him. He describes those alleged actions of the defendants as "accomplice to modern day slavery, human exploitation, violations of his civil liberties as well as negligence and failure of duty of care and violation of the international laws and treaties Ireland did sign and was obligated by". He alleges that, as a result of his ordeal, he lost his home, his savings and his dignity.
13. If it was established that there was no credible basis for suggesting that the facts were as asserted by the plaintiff and that the proceedings were therefore bound to fail on the merits, then the inherent jurisdiction of the court could be invoked (*Lopez v. Minister for Justice, Equality and Law Reform* [2014] 2 IR 301). I do not consider that to be appropriate here.
14. In considering this application pursuant to O. 19, r. 28, the law is clear that I must take the plaintiff's case at its highest. I therefore, for the purpose of this application, accept the plaintiff's assertion that he was experiencing serious difficulties in his employment and sought assistance from various government departments who declined or refuse to assist him. The question is whether those facts could ever give rise to the cause of action against the State that the plaintiff has claimed in these proceedings.

15. The State has put an extensive statutory framework of protective legislation in place to ensure that employees have access to an enforcement mechanism if they believe their employer is disregarding the rights and obligations arising from the employment relationship. That legal framework includes the doctrine of state immunity as part of Ireland's obligations in international law pursuant to the 2004 UN Convention on State Immunity and the Vienna Convention on Diplomatic Relations, 1961. The doctrine is not part of domestic policy chosen by the Government as the Government is obliged, as a member of the international community and a signatory to the Vienna Convention, to have regard to and apply those obligations in its national employment legislation and the enforcement thereof.
16. In those circumstances, an employee of an embassy based in Ireland is at risk of having significantly lesser protection of their employment rights than other employees by virtue of the doctrine of state immunity which means that, depending on the nature of the employee's role and the extent of their involvement in the implementation of policy or Government authority in the State of the embassy by which they are employed, they may be denied what would otherwise be their right to litigate against their employer. The doctrine is properly part of Irish law and is not something that, in itself, can give rise to a cause of action against the Irish State.
17. If an employee believes that their employment rights, including any rights derived from European law, are not being adhered to, then their remedy lies against their employer (or former employer) with whatever restrictions the State's framework of employment law allows including the application of the doctrine of state immunity. The employment relationship is essentially a private relationship between employer and employee and, even though it is highly regulated by the law of the land, the relationship is not one to which the State is a party and therefore cannot give rise to a cause of action against the State, other than in exceptional circumstances such as a claim against the State for Francovich damages or where the law applicable to the employment relationship is found to be unconstitutional or in breach of the citizen's Convention rights.
18. I am satisfied that no such exceptional circumstances have been identified here. The plaintiff seeks to assert a vague claim, which suffers from at least a little hyperbole, against the State for having failed to discharge what he claims is the State's duty of care to protect him as an EU citizen. Insofar as any such duty is owed (and I do not so find), it is discharged by the State's implementation of a vast range of protective employment law statutes, which can be invoked by the employee within a legal framework that allows for some legitimate restrictions including the doctrine of state immunity. The limitations afforded by that framework, including by the doctrine of state immunity, do not give rise to a claim against the State of the type set out at paragraph 17 above.
19. I am satisfied that the plaintiff's claims of negligence and a breach of duty, as set out in his plenary summons arising from what he says was the State's failure to respond to his allegation of mistreatment by his employer, does not give rise to a cause of action whether at common law or pursuant to the unidentified international laws and treaties

referred to in the plaintiff's statement of claim or the "European Constitution" or the Treaties of Lisbon or Amsterdam referred to in his affidavit and the plenary summons.

20. In those circumstances and accepting that the court's jurisdiction should be exercised sparingly and only in clear cases (*Barry v. Buckley* [1981] IR 306), I consider this case comes within the type of case that Whelan J. in the Court of Appeal found in *Maurice v. Marine Hotel (Sutton) Ltd & ors* [2019] IECA 85 merited the exercise of the court jurisdiction where she held at paras. 30 and 31:

"The question is whether the facts as pleaded in the statement of claim delivered are capable of discharging the onus of proof. Taking the plaintiff's case at its highest does not involve disregarding either that onus or the necessary elements for such an action as pleaded to succeed. I am accordingly satisfied that the statement of claim – even taking the plaintiff's case at its height – discloses no reasonable cause of action.

As such, accordingly, the pleadings are 'frivolous and vexatious' since they are doomed not to succeed".

21. I have also had consideration to the fact that this plaintiff seeks to avail of the scarce resources of the courts to hear a case which has no prospect of success, which was a significant factor in the decision of Irvine J. (as she then was) in the Court of Appeal in *Fox v. McDonald & ors* [2017] IECA 189 to dismiss the plaintiff's appeal against the order of the High Court striking out his proceedings pursuant to O. 19, r. 28.
22. If I am wrong in my application of O. 19, r. 28, then I consider that the wider jurisdiction of the courts to strike out proceedings pursuant to its inherent jurisdiction would require these proceedings to be struck out having regard to the fact that the plaintiff's employment was found by the WRC to come within the doctrine of state immunity. That decision was unsuccessfully appealed to the Labour Court and is currently under appeal to the High Court. That statutory jurisdiction of the Unfair Dismissals Acts and the Payment of Wages Acts is the appropriate one for the plaintiff to assert whatever wrong he believes were perpetrated against him by his employer during his employment. I do not consider there is any credible basis for the plaintiff to assert that the State defendants either had or breached a duty of care to the plaintiff, that it facilitated slavery or profits from it or that it, through various Government bodies, threatened or intimidated the plaintiff and violated his civil liberties.
23. Therefore I strike out the plaintiff's proceedings pursuant to the inherent jurisdiction of the court in the event that it is not open to me to strike them out pursuant to O. 19, r. 28.

Indicative view on costs

24. My indicative view on costs is that, as the defendants have succeeded in their motion, in accordance with the provisions of s. 169 of the Legal Services Regulation Act, 2015, the defendants are entitled to the costs of this motion and the entire proceedings against the

plaintiff. I will put the matter in for mention at 10am on 20 July for the parties to make whatever submissions they wish in relation to final orders and costs. I do not require written submissions but if either party wishes to make them then they should be lodged with the court at least 24 hours before the matter is back in before me.