

**Neutral Citation No. [2010] NIQB 81**

*Ref:* **WEA7899**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

*Delivered:* **30/06/2010**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEENS BENCH DIVISION (COMMERCIAL)**

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**BRENDAN CASSIDY**

**Plaintiff**

**-v-**

**DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT**

**Defendant**

**PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND**

**Third Party**

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**WEATHERUP J**

[1] This is the defendant's application under Order 18 Rule 19 and the inherent jurisdiction of the Court that some of the particulars in the plaintiff's Statement of Claim be struck out as disclosing no reasonable cause of action. Mr Duffy appeared for the plaintiff, Mr Coll for the defendant and Mr McEvoy for the third party.

[2] The plaintiff's Statement of Claim pleads that the plaintiff was employed by the defendant as an animal health and welfare inspector from 7 March 1983 until 31 October 2003. The defendant was the responsible Department for the introduction of the Cattle Identification (Notification of Births, Deaths and Movements) Regulations Northern Ireland) 1999, as amended in 2004. On 8 October 2003 a summons was issued against the

plaintiff to answer seven charges under the Regulations. The plaintiff was then convicted of the charges and subsequently dismissed from his employment with the defendant. Later the convictions were quashed on the basis of irregularities in the operation of the Regulations. Accordingly the plaintiff claims for damages for loss and damage alleged to have been sustained by the plaintiff by reason of the breach of contract and negligence of the defendant in relation to the employment of the plaintiff and further the preparation and enactment of the Regulations and further the duty of care to the plaintiff in relation to the instigating and progressing of prosecutions under the Regulations.

[3] The defendant had a number of roles in relation to the matters giving rise to the plaintiff's claim. The defendant was the employer of the plaintiff. The defendant acted in the preparation and introduction of the Regulations. The defendant was the investigator of alleged offences under the Regulations. In addition the plaintiff claims against the defendant as the prosecutor of offences under the Regulations. However the defendant denies a role as prosecutor of offences under the Regulations and contends that prosecutions were undertaken by the Public Prosecution Service. The defendant has issued a Third Party Notice against the Public Prosecution Service.

[4] The Cattle Identification (Notification of Births, Deaths and Movements) Regulations (Northern Ireland) 1999 No. 265 were made with effect from 26 July 1999, further to EC Regulation 820/97 (establishing a system for identification and registration of bovine animals and regarding the labelling of beef and beef products). The EC Regulations were repealed by EC Regulation 1760/2000 which was to be given domestic effect in 2000. However the Northern Ireland Regulations were not amended to reflect the new EC Regulation until 2004 No 420. Accordingly prosecutions in 2003 under the Northern Ireland Regulations were not undertaken in accordance with the new EC Regulation. When this was discovered the Northern Ireland Regulations were amended and the plaintiff's convictions under the unamended Regulations were quashed.

[5] The defendant applies to strike out parts of paragraph 6 of the Statement of Claim. The defendant contends that there is no duty to the plaintiff in relation to either the validity of the Regulations or the investigation of the alleged offences or the prosecution of the plaintiff.

First of all, in the introduction the words "... the preparation and enactment of cattle identification legislation and its duty of care in instigating and progressing prosecutions ...."

Secondly the defendant challenges various particulars of breach of contract, which fall into three categories. First, the particulars that relate to the validity of the Regulations, namely (b), (c) and (f), failing to carry out any

or adequate investigation in relation to the legality of the Regulations, causing and permitting Regulations to be enacted that were unlawful and failing to investigate the Regulations. A second group of particulars concerns the investigation of the alleged offences and the defendant's role as employer of the plaintiff, namely particulars (i), (j), (k), (l), (m) and (r), in essence they are concerned with the defendant putting allegations to the plaintiff which were not lawful, failing to inform the plaintiff that the Regulations were not lawful, causing the plaintiff to be dismissed on the basis of a conviction under unlawful Regulations, failing to advise the plaintiff during the course of his employment that the Regulations were void and causing the plaintiff to be informed wrongfully that the Regulations were valid. The third group of particulars concerns the prosecution, namely particulars (d), (e) and (n), causing an invalid summons to be issued, causing a prosecution of charges that were unlawful and wrongfully instigating and continuing a prosecution against the plaintiff.

Thirdly the defendant challenges the particulars of negligence, namely (a), (b) and (c) that concern breach of economic duty of care and failure to take reasonable care in relation to the plaintiff and to matters reasonably incidental to his employment.

[6] In the relation to the defendant's role as investigator of the alleged offences, a comparison was made with the absence of a duty of care on the part of the police in relation to the investigation of offences. A number of authorities were referred to, namely Hill v Chief Constable of West Yorkshire (1989) AC 53, Brooks v The Commissioner of Police for the Metropolis (2005) 1 WLR 1495 and Van Colle v The Chief Constable of Hertfordshire Police (2008) 3 All ER 977. The core principle is that there is no general liability in tort placed on the police in respect of the negligent investigation of criminal activity. Public interest concerns have resulted in no duty of care arising in respect of those aggrieved by the nature of the investigation. However there may be exceptional cases, for example, where the police have assumed responsibility. The House of Lords summarised the position in Van Colle where Lord Brown stated -

“In what circumstances ought the police to be subject to civil liability at common law for injuries deliberately inflicted by third parties ie. for crimes of violence? When in short should they in this type of case be held to owe a duty of care to the victim? That there are such cases is not in doubt. Swinney v Chief Constable of Northumbria Police [1997] QB 464 provides one example, the facts there suggesting that the police had assumed responsibility for the complainant informer's safety (although his claim in the event failed at trial). Another example (again on

the basis of assumption of responsibility) is Costello v Chief Constable of Northumbria [1999] ICR 752 where a police inspector was found liable to a woman police constable for injuries inflicted on her by a woman prisoner in a police station cell.”

[7] At the heart of the present case is the alleged failure of the defendant to amend the Northern Ireland Regulations in 2000 after the new EC Regulation was introduced. While the defendant did carry out the investigation into the alleged breach of the Regulations, the present case does not fall within the arena of potential inclusion in or exclusion from any duty of care in relation to the investigation of offences. Rather, the complaint concerns the defendant’s response or lack of response to the new EC Regulation.

[8] In relation to potential liability for negligence in the prosecution of offences, reference was made to Elguzouli-Daf v Commissioner of Police of the Metropolis [1995] 1 All ER 833. The general principle is that there is no duty of care on the part of the prosecutor. Public interest concerns preclude the recognition of a duty of care to those aggrieved by decisions of Crown Prosecution Service lawyers. However there may be exceptions, for example where responsibility has been assumed to a particular plaintiff. Steyn LJ stated –

“Subject to one qualification, my conclusion that there is no duty of care owed by the CPS to those it prosecutes is intended to be of general application. The qualification is that there may be cases, of which [*Welsh v Chief Constable of Merseyside* [1993] 1 All ER 693] was an example, where the CPS assumes by conduct a responsibility to a particular defendant (see *Spring v Guardian Assurance plc* [1994] 3 WLR 354. 368 per Lord Goff of Chieveley). And it is trite law that such an assumption of responsibility may generate legal duties.”

[9] The defendant was not the decision maker in relation to the prosecution of the plaintiff. The defendant prepared a prosecution file and recommended prosecution of the plaintiff. That decision was taken by the Public Prosecution Service.

[10] A strike out is appropriate where the pleading does not raise an arguable case. The plaintiff resists the defendant’s application for strike out on the basis of a special relationship between the plaintiff and the defendant giving rise to a duty of care in the circumstances. That special relationship is said to arise from the overlapping roles of the defendant as employer of the plaintiff, being involved in the preparation of the Regulations under which

the plaintiff was prosecuted, the plaintiff being employed in the investigation of such offences, the defendant instigating and progressing the investigation and prosecution of the plaintiff.

[11] There is no reasonable basis for the claims against the defendant in respect of the prosecution of the plaintiff, those being matters that lay with the Public Prosecution Service. I propose to strike out the pleading against the defendant in relation to the prosecution of the plaintiff. At paragraph 6 of the Statement of Claim, in the introduction, the words "... and its duty of care in instigating and progressing prosecutions" will be deleted. Paragraph 6 particulars (d), (e) and (n) which are concerned with the prosecution will be deleted.

[12] I refuse to strike out the particulars in relation to the preparation of the Regulations. These particulars raise a different issue to that of the duty of care in relation to investigation of alleged offences. Rather the issue concerns the preparation or review of the domestic Regulations. Counsel sought to establish whether there was any authority on the civil liability of a public authority in such circumstances and did not identify any such authority. The issue of the responsibility of the defendant in relation to the domestic Regulations remains arguable and I refuse to strike out particulars (b), (c) and (f).

[13] I refuse to strike out the particulars in relation to the investigation of the alleged offences. The defendant was not merely an investigator but also had responsibility for the Regulations and was employer of the plaintiff. There remains an arguable case in that regard and I refuse to strike out particulars (i), (j), (k), (l), (m) and (r).

[14] I refuse to strike out the particulars of negligence (a) to (c) save for the reference to "economic" in particular (a) which relates to the allegation of breach of an economic duty of care to the plaintiff.

[15] Accordingly I accede to the defendant's application only so far as it applies to the prosecution of the plaintiff by the defendant and will strike out in paragraph 6 the introductory words referred to above and particulars (d), (e) and (n).

[16] In relation to the prosecution under the Regulations, the plaintiff fails on the facts as the defendant was not the prosecutor. Had the defendant been the prosecutor the pleading would have been struck out in any event as there are no circumstances in the present case capable of giving rise to liability. There is no basis for joining the Third Party as a defendant in the proceedings. The Third Party Notice against the Public Prosecution Service will also be struck out.

[17] The plaintiff has leave to amend the Statement of Claim to refer to the defendant "recommending" prosecution as part of the role in the investigation of the alleged offences. Further the plaintiff has leave to amend the Statement of Claim to clarify the pleading in relation to the alleged failures of the defendant in connection with the amendment of the domestic Regulations to reflect the EC Regulations in 2000.

[18] The action will continue against the defendant on an amended Statement of Claim reflecting the matters struck out and the matters on which leave to amend has been granted, such amended Statement of Claim to be served on the defendant by 31 August 2010.