

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

**BETWEEN:**

**MARK CHRISTOPHER BRESLIN AND OTHERS**

**PLAINTIFFS;**

**-AND-**

**SEAMUS MCKENNA AND OTHERS**

**DEFENDANTS.**

**RULING NO 4**

**MORGAN J**

[1] This is an application by the fifth and sixth named defendants for an order that the plaintiffs' claim be struck out in whole or in part or stayed on the basis that it discloses no reasonable grounds for bringing the claim, fails to comply with rules of Court in relation to particulars and is embarrassing, prolix, scandalous and obviously ill founded.

[2] In this action plaintiffs claim damages as a result of the defendants' alleged responsibility for the explosion of a bomb at Omagh town centre on 15 August 1998 which caused extensive injury and death. The writ of summons relies upon the following causes of action:

- (a) *intentional infliction of harm;*
- (b) *trespass to the person;*
- (c) *conspiracy to commit trespass to the person;*
- (d) *conspiracy to injure.*

[3] The statement of claim prepared by the plaintiffs deals in particular with the fifth named defendant at paragraphs 30 to 33 inclusive. In particular paragraph 30 asserts that the fifth named defendant was responsible for the detonation of the bomb at Omagh and conspired with others, in particular the sixth named defendant, to cause the explosion and shared in the RIRA's common purpose to do so. Paragraph 31 alleges that the fifth named defendant advocated using violent means including terrorist violence and had previous convictions for terrorist offences. Paragraph 32 alleges certain actions in relation to mobile phones which the plaintiff says were used in connection with the transportation of the bomb. Paragraph 33 refers to a conviction which has subsequently been quashed.

[4] The particular allegations against the sixth named defendant are contained in paragraph 21 to 26 inclusive of the statement of claim. At paragraph 21 it is alleged that he conspired with others to cause the explosion on 15 August 1998. It is further alleged that he shared in the common purpose of the RIRA and its members to use violent means and terrorism including the Omagh bomb. At paragraph 22 and 23 it is alleged that he is connected to phones which demonstrate that he travelled to Omagh in connection with the planting of the bomb. At paragraph 24 it is alleged that he made a comment on the evening of the bombing which disclosed that he knew how the bombing had been carried out. At paragraph 25 facts are alleged which the plaintiff says demonstrate that he was involved in obtaining the bomb car. It is also alleged against him that he was engaged in another terrorist bomb.

[5] It is submitted on behalf of the fifth and sixth named defendants that intentional infliction of harm requires a wilful act which was calculated to cause physical harm to particular plaintiffs. It is further submitted that trespass to the person requires an intention on the part of the defendants to commit violence to the plaintiffs and evidence of a direct and immediate interference with their persons. It is submitted that the pleadings in relation to each of these defendants do not assert such a case. The allegations against these defendants have to be seen in the context of a statement of claim which maintains that each of the defendants were liable for the explosion of the bomb at Omagh which caused the injury and death referred to. The particular allegations identify particular steps allegedly taken by each of the defendants in order to cause the explosion.

[6] The next pleading issue taken by the fifth and sixth named defendants relates to the entitlement of the plaintiffs to rely on an allegation of conspiracy to injure. These defendants contend that conspiracy is an economic tort only and that there is no cause of action constituted by a conspiracy to harm. I have been referred to Canadian authority and a commentary which make it plain that this is an issue of some debate.

[7] These defendants then complain about the manner in which material facts are set out. It is noted that there are general allegations in relation to the fifth named defendant of advocating and using violent means including terrorist violence and a reference to the fact that he had previous convictions but it is asserted that these are not facts which could establish the allegations made against him in relation to the Omagh bomb. It is further submitted that the case made against the sixth named defendant is inferential. In addition these defendants contend that the facts which ground the inference which the plaintiffs seek to draw are irrelevant.

[8] These defendants also adversely comment on the claim for an injunction. They point out that there was a delay of almost 4 years in seeking this equitable relief and in the absence of ongoing harassment it is contended that the claim must inevitably fail. These defendants further contended that the claim for exemplary damages must fail and that the plaintiffs have conceded that there is no evidence to substantiate the allegations.

[9] The court's power to strike out a claim in whole or in part is exercised pursuant to the supervisory jurisdiction of the court. It is a draconian remedy which prevents the opposing party proceeding with its claim despite the absence of a hearing on the merits. Accordingly it is a power which will be exercised sparingly. The jurisdiction to stay may not have the same draconian effect but does have the effect of at least temporarily bringing the litigation to a halt thereby delaying a hearing on the merits. It also, therefore, is part of the supervisory jurisdiction which protects the defendant from an oppressive claim.

[10] The essential object of pleadings is to ensure that the opposing party is aware of the case which he has to meet and that he is not embarrassed by a pleading which is scandalous or oppressive. A party is entitled to raise any issue of law and in certain cases is required by Order 18 Rule 8 to do so. A party ought not to plead the evidence by which he intends to prove his claim.

[11] In my view there is no substance to the suggestion that the pleading is defective in respect of intentional torts. It is in my view clear from the above that each defendant is alleged to have contributed in a particular way to the causing of the explosion in a highly populated area in circumstances where it was the alleged purpose of each of them. It is not necessary that the particular casualties should have been foreseen and it will be for the court to decide on the evidence if injury or death was foreseeable.

[12] The issues raised in respect of conspiracy will be the subject of debate at the trial. There is clearly a difference of view about the range of this tort but I can see no reason for exercising the supervisory jurisdiction of the court to prevent the ventilation of those issues at the trial.

[13] I accept that there are proper criticisms to be made of the form of the plaintiffs' pleading. The plaintiffs have clearly pleaded some of the evidence on which they intend to rely in the statement of claim contrary to the Rules of the Supreme Court. The court's task is to ensure that the pleading does not thereby become oppressive. In my view in this case the effect of the pleading is to alert the defendants to the way in which the plaintiffs will seek to make their case and thereby enable them to prepare more effectively to defend it. Apart from the assertion that the pleading is scandalous I have seen no basis for any prejudice affecting these defendants. Indeed an appreciation of the evidence on which the parties intend to rely in a sizeable case of this nature enables the court to manage the case so as to ensure that no prejudice is caused to any party at the hearing. This may also be necessary in order to secure the attendance of relevant experts for each of the parties in the course of the hearing.

[14] The issue is not whether the defendants have identified breaches of the rules of pleading but whether the circumstances found by the court adversely affect the right of all parties to a fair hearing on the merits. I find no evidence of such prejudice and accordingly consider that it would not be a proper exercise of the supervisory jurisdiction to strike out or stay the plaintiffs' pleading on that basis. The efforts of all parties should be on ensuring that they are ready for the trial which will commence on 7 April 2008.

[15] I can deal with the issues of the exemplary damages claim and the injunction claim briefly. The plaintiffs recognise that the exemplary damages claim may involve some development of the law. In those circumstances the court will sometimes hold a preliminary hearing of the issues if it considers that to do so would be an efficient use of court time. I do not consider that this would be so in this case. It is difficult to see how the length and complexity of the case would be materially affected whereas the possibility of appeal may give rise to delay in this long delayed action. Insofar as the claim for an injunction is concerned I consider that this will also have to be considered in the course of the full trial hearing. I see nothing to be gained by separating out that issue at this stage. Lastly it is not accepted by the plaintiffs that they cannot proceed in the absence of material held by the defendants although it is accepted that the proceedings may be more prolonged if the defendants do not comply with the discovery ordered.

[16] Accordingly I refuse this application.