EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2021] CSIH 34
P906/20

Lord Malcolm
Lord Woolman
Lord Pentland

OPINION OF THE COURT

delivered by LORD WOOLMAN

in the Petition of the Lord Advocate

for a vexatious litigant order against

GABRIEL POLITAKIS

Under section 100 of the Courts Reform (Scotland) Act 2014

Petitioner: Jajdelski; Scottish Government
Respondent: Party

1 July 2021

Introduction

[1] The Lord Advocate seeks a vexatious litigant order against Mr Politakis in terms of section 100 of the Courts Reform (Scotland) Act 2014.

[2] Mr Politakis has instigated multiple litigations and legal applications over many years. In support of his application, the Lord Advocate only relies on conduct from 2014 onwards. The origins of Mr Politakis' claims can, however, be traced back to 1990. In that year Apollo Engineering Limited carried out pipe-work under a sub-contract with John Scott Limited ("Scott"). Mr Politakis holds 90 per cent of Apollo's shares, while his wife holds the remainder. It went into liquidation in 1991.

[3] Disputes arose about the subcontract. In 1992 Scott raised an action in this court against the liquidator of Apollo, who lodged defences and a counterclaim. In or about 1993, the action was sisted pending an arbitration between the parties. The first arbitration, which commenced in 1996, was unsuccessful. In 2004 the arbiter resigned because of advanced age. A second arbitration commenced before Mr John Spencely CBE in 2005. His final draft opinion dated 18 May 2007 indicated an intention to dismiss most of Apollo's claims.

History of litigations

Challenge to the arbiter's proposed decision

[4] Apollo challenged the proposed decision in two sets of proceedings: (a) an appeal by way of a stated case, and (b) a petition for judicial review of the arbiter's decisions. The court directed that the judicial review proceed first and the stated case was sisted pending the outcome of that. The judicial review failed before the Lord Ordinary and in the Inner House.

[5] Mr Politakis then applied to be sisted in place of Apollo (or as an additional party) both in the stated case and in the arbitration. His application was unsuccessful: *Apollo Engineering Ltd* v *James Scott Ltd* [2012] CSIH 88. This court refused to grant leave to appeal, but the UKSC granted permission in part. The UKSC ultimately refused the appeal in November 2014.

First action against Mr Spencely

[6] Mr Politakis brought a small claim in Edinburgh Sheriff Court against Mr Spencely. He sought payment of £3,000, together with interest, damages and expenses. The sheriff

dismissed the action, holding that, as Mr Politakis was not a party to the arbitration, he had no title to sue. The Sheriff Principal refused the appeal in December 2014.

Note in the liquidation of Apollo

[7] In 2015 the Lord Ordinary recalled the sist in Apollo's liquidation on the application of Scott. Mr Politakis had opposed recall. He lodged Answers on behalf of Apollo but the Lord Ordinary held that to have been incompetent. Mr Politakis also lodged Answers on his own behalf as an individual but then withdrew them. There were therefore no valid Answers lodged in process. This court held Mr Politakis' reclaiming motion against the decision at first instance to be incompetent.

Second action against Mr Spencely

[8] In 2015 Mr Politakis raised a second action against Mr Spencely in Edinburgh Sheriff Court for declarator and damages. The sheriff dismissed it in 2016 following a debate, holding (a) that Mr Politakis had no title to sue, (b) that the rights and obligations under the arbitration contract were not assignable by one party without the consent of the others, (c) that the sheriff court did not have jurisdiction to review decisions of arbitrators, (d) that the declaratory craves were incompetent as lacking specification, (e) that the action was fundamentally irrelevant, and (f) that any obligation to make reparation had prescribed.

[9] Mr Politakis appealed to the Sheriff Appeal Court. In 2017 it refused the appeal. He then applied to amend (i) to add craves directed against Scott and (ii) to allow the substitution of Apollo as the pursuer (with him as its lay representative). The SAC refused the appeal and the applications. Subsequently, the SAC, the Inner House and the UKSC all

refused permission to appeal. In a letter to the UKSC, Mr Politakis made pejorative comments about members of the judiciary who had heard his case.

European Court of Human Rights

[10] In 2015 Mr Politakis raised proceedings in the name of Apollo against the United Kingdom in the European Court of Human Rights. He complained that he had been denied access to the court, and that the proceedings were excessively lengthy. The court unanimously held that the complaint was inadmissible: *Apollo Engineering Ltd* v *United Kingdom* (Admissibility) (22061/15) (2019) 69 EHRR SE12.

Action against RBS

[11] In 2017 Mr Politakis raised an action in Ayr Sheriff Court for payment of the sum of £2.2m against the Royal Bank of Scotland plc. It was claimed that payment of the sum arose by virtue of a guarantee granted by RBS in 1991 facilitating the release of arrestments on the dependence in the context of Apollo's counterclaim against Scott in this court. The sheriff refused to grant his motion for a proof before answer. Mr Politakis appealed without success to the SAC. Both the SAC and this court refused to grant him permission for a further appeal.

Action against John Wood Group plc

[12] In 2019 Mr Politakis raised an action at Ayr Sheriff Court against John Wood Group plc. He sought various orders, including declarator and payment. In 2020 he enrolled a motion for summary decree which was refused. On his opposed application, the case was remitted to the Court of Session. Following a debate the Commercial Court judge

dismissed the action. In his opinion dated 26 January 2021, Lord Clark held (i) that the action was incompetent, (ii) that the defender was not liable for the alleged liabilities of Scott, (iii) that the averments were irrelevant and lacked specification and (iv) that the obligations upon which the claim was based had been extinguished by prescription.

Interim orders

[13] On 28 January 2021, two days after the commercial judge issued his opinion, the Inner House heard a motion for interim orders in the present petition. As well as founding on the litigation history, counsel for the Lord Advocate invited the Court to take into account the content of several blog posts published by Mr Politakis. Counsel submitted that some were relevant to the question of a prima facie case, as they levelled unfounded allegations against a number of persons and referred to a conspiracy. Counsel submitted that others were relevant to the question of the balance of convenience, as they expressed an intention to appeal against Lord Clark's decision.

[14] Mr Politakis opposed the motion on the basis that there was no prima facie case for the interim orders being granted. In his opposition - which largely followed the same arguments made out in the answers to the petition - he denied that he was a vexatious litigant, and claimed that to grant an interim order under section 100 would be to infringe upon his fundamental right to seek justice. He disputed the Lord Advocate's position that the prior litigations were unmeritorious. As such, the inference that he was a vexatious litigant could not be drawn from the history of the court proceedings initiated at his instance.

[15] The Inner House, having heard from the parties, made the following interim orders

> "(i) that no legal proceedings shall be instituted by the respondent in the Court of Session, Sheriff Court, or any other inferior court unless the respondent first obtains the leave of a judge sitting in the Outer House of the Court of Session, having satisfied such a judge that there is a reasonable ground for such proceedings in terms of section 101(4) of the Courts Reform (Scotland) Act 2014; and
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> (ii) that the respondent may not make any motion or appeal against any decision, judgment or interlocutor in the cause *Gabriel Politakis* v *John Wood Group plc* (formerly Court Ref: AYR-A263-19; Court of Session Ref: A196/20), Commercial Court Ref: A78/20, unless the respondent first obtains the leave of a judge sitting in the Outer House of the Court of Session, having satisfied such a judge that there is a reasonable ground for taking such a step in terms of section 101(4) of the Courts Reform (Scotland) Act 2014".

Submissions for the Lord Advocate

[16] The submissions mirrored those made at the hearing on 28 January 2021, with the only difference being that the orders now sought were permanent, rather than of an interim nature.

Submissions for the respondent

[17] As noted above, the respondent has lodged answers to the petition. Those extend to over 100 pages and largely centre on the merits of the underlying litigations. It is said that the Lord Advocate's application is brought in bad faith. As noted above, the respondent denies that he is a vexatious litigant and that such an inference can be drawn from the history of the litigations. That position appears to be at least partly predicated on the basis that Mr Politakis considers that those proceedings were of merit. The oral submissions by the respondent at the hearing before the Inner House followed the reasoning set out in his Answers and in his opposition to the motion for interim orders.

The Legal Test

[18] In terms of section 101(1) of the 2014 Act, the Inner House may make a vexatious litigant order if satisfied that a person:

> "has habitually and persistently, without any reasonable ground for doing so (a) instituted vexatious civil proceedings, or (b) made vexatious applications to the court in the course of civil proceedings (whether or not instituted by the person)."

[19] Counsel for the Lord Advocate cited a number of authorities decided both before and after the 2014 Act as providing further guidance. They included *Lord Advocate* v *Cooney* 1984 SLT 343; *Attorney General* v *Barker* [2001] 1 FLR 759; *HM Advocate* v *Frost* 2007 SC 215; *Lord Advocate* v *McNamara* [2009] CSIH 45; *Lord Advocate* v *Duffy* [2013] CSIH 50; and *Lord Advocate* v *Aslam* [2019] CSIH 17.

[20] The critical question is whether the conduct in question can be classified as "vexatious". Delivering the opinion of the court in Aslam, Lady Dorrian stated:

> "[10] … it is not enough for an individual to be classed as a vexatious litigant that actions which he has instituted, or applications made, have not succeeded or been abandoned: it is not persistent failure which is the key, rather that the failure in question has been based on there being no merit even to commence the litigation or make the application. The critical finding will be that repeated litigations and applications have failed for reasons of competence, irrelevance and the like. It is the fact that repeated actions were commenced with there being no reasonable grounds for doing so which can render them vexatious".

[21] It is recognised that the provisions permitting the granting of vexatious litigant orders amount to an interference with the rights of the citizen (see *McNamara*, para [19]). However, the extent of that interference is limited and designed to prevent abuses of court processes. It should also be recognised that the granting of an order under section 100 does not mean that the individual in question is prohibited from raising a court action. Instead, he or she simply has to satisfy the court that there is a reasonable ground for raising proceedings.

Should a vexatious litigant order be granted?

[22] Deciding whether to grant a vexatious litigant order involves asking two questions.

[23] First, has the section 100 test been met? We answer that question in the affirmative. Following paragraph [10] of *Aslam*, it cannot be said that failure to succeed in litigation is always a marker of a vexatious litigant. However, in the current context, the respondent has not enjoyed any measure of success in the various proceedings raised at his or Apollo's instance. Many, if not all of the proceedings have fallen at an early stage, by failing to surmount the necessary hurdles (of competency and relevancy) for pursuing a court action. Mr Politakis has raised actions repeatedly without a reasonable basis. All have failed as being without merit. His applications and appeals likewise have had no legal foundation. For those reasons we are satisfied that the history of litigations and legal applications can properly be described as vexatious.

[24] Second, is it in the interests of justice that we exercise our discretion to make an order? We also answer that question in the affirmative. We have had regard to the whole picture, including: the *prima facie* right of all citizens to invoke the jurisdiction of the civil courts, the availability of other powers to deal with abuses of process; the overall conduct of Mr Politakis; his ability to pursue actions with leave of the Lord Ordinary, the need to protect persons whom he might sue; and the finite resources of the court itself.

Conclusion

[25] We shall grant the prayer of the petition. We are satisfied that expenses should follow success. Accordingly we award the expenses of process in favour of the Lord Advocate.