

Ireland - The Law Relating to Fraud and its recent Interpretation by the Circuit Court

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The recent Judgment of the President of the Circuit Court, Mr Justice Raymond Groarke, in the linked cases of *Peter Slattery v Belinda McLoughlin & the MIBI*, *Ian Doyle v Belinda McLoughlin & the MIBI*, *Samantha Byrne v Belinda McLoughlin & Zurich Insurance Plc*, and *Jessica Byrne v Belinda McLoughlin & Zurich Insurance Plc*, provides a very concise summary of the current law relating to fraud in the context of road traffic accidents.

Background to the cases

Peter Slattery was a passenger in a vehicle being driven by Belinda McLoughlin which rear-ended the vehicle been driven by Ian Doyle. This accident occurred on the 21st July 2014.

In a separate accident on the 12th February 2015, Belinda McLoughlin rear-ended another vehicle, which was driven by Jessica Byrne. Samantha Byrne was a passenger in Jessica Byrne's vehicle. Zurich insured Belinda McLoughlin at the time of both accidents, but ultimately declined indemnity to her when she failed to cooperate with their investigations.

The Plaintiffs, Peter Slattery and Ian Doyle, sued Belinda McLoughlin and the MIBI. Zurich defended these claims using the nomenclature of the MIBI.

The Plaintiffs, Jessica and Samantha Byrne, sued Belinda McLoughlin and Zurich Insurance Plc. Zurich was therefore able to defend these claims using its own name

DAC Beachcroft Dublin's specialist Fraud team represented Zurich Insurance Plc in all four matters. These four cases were linked and heard by Justice Groarke over a period of three days in the Dublin Circuit Court in October 2017. The Defendant in all four cases, Zurich Insurance Plc, contested the bona fides of road traffic accidents alleging that they were staged.

What is "Fraud"?

Justice Groarke commenced his analysis by examining the definition of fraud and the burden of proof required to prove that a matter is a fraud. At page 2 of his Judgment, he commented that:

"there is a fraud where one party makes a material statement knowing it to be false, or without belief in its truth, or reckless, not caring if it is true or false. The conduct must be dishonest by the ordinary standards of reasonable and honest people. Carelessness alone is insufficient"

Justice Groarke then moved on to analyse the burden of proof.

Burden of Proof

The implications of making a finding of fraud can have such serious and grave implications for a Plaintiff, that the Defendant, who has made such allegations, undertakes to discharge a significant burden of proof. Hence, allegations of fraud reverse the burden of proof and the Defendant must establish to a high degree of probability that the evidence given or adduced by the Plaintiff has been false or misleading.

The burden of proof appears to be somewhat higher than "on the balance of probabilities", which is the usual standard in civil cases, but not as high as the criminal standard which is "beyond a reasonable doubt".

Justice Groarke endorsed the views and approach taken by Justice Quirke, in *Mary Farrell v Dublin Bus* (2010) IEHC 327. In this case, the defence has applied to the Trial Judge for a dismissal under s. 26 of the Civil Liability and Courts Act, 2004.

At page 9 of that Judgment, Justice Quirke stated that:

"the burden is not as weighty as the burden which rests upon the state during the prosecution of criminal offences... I take the view that an adverse finding under s. 26 of the Act, has such grave implications and consequences for a Plaintiff that the court should not make a finding unless it is satisfied that it is highly probable that the evidence which has been given or adduced by the Plaintiff has been false or misleading in any material respect".

Whilst the Judgment related to a S26 application, Justice Groarke interpreted Justice Quirke's comments to equally apply to the courts current interpretation of the burden of proof required to prove fraud.

Circumstantial Evidence and Drawing Inferences

The court ultimately relied on a huge amount of strong circumstantial evidence to enable it to draw inferences that that the claims were fraudulent. Justice Groarke appeared to place particular reliance on the succinct definition of when a Trial Judge should find that a claim is a fraud as set out in *Banco Ambrosiano SPA and Others v Ansbacher & Company Ltd and Others* (1987) I.L.R.M. In that case, Justice Henchy stated that:

"Proof of fraud is frequently not so much a matter of establishing primary facts as of raising an inference from the facts admitted or proved... If the Court is satisfied on balancing the possible inferences open on the facts, that fraud is the rational and cogent conclusion to be drawn, it should so find"

The Overwhelming Misfortune of Peter Slattery and Belinda McLoughlin

In addition to the above claims, investigations by Zurich revealed that Peter Slattery had been involved in another four road traffic accidents. These four accidents occurred between 7th July 2014 and 17 October 2016. He was at fault for all these accidents. The occupants of the third party vehicles he collided with pursued personal injury claims against the insurers of Peter Slattery. Altogether 15 claims from the third party vehicles were pursued. In the alleged accident that occurred dated 7th July 2014, his partner, Belinda McLoughlin, also sued him for injuries allegedly sustained in the accident.

Hence between them, Peter Slattery and his partner, the other co-Defendant, Belinda McLoughlin had been the cause of six different road traffic accidents over the course of 2 years and three months. Peter Slattery had caused four of these accidents and Belinda McLoughlin had caused two of these accidents. They were passengers in each other's vehicle on one occasion each. Altogether, a total of 24 injury claims were submitted by the parties involved in these accidents.

"Pushing the Explanation of Coincidence off the Cliff"

Whilst no direct links were uncovered between Peter Slattery and/or Belinda McLoughlin to the occupants of the vehicles that they collided with, extensive and thorough investigations by Zurich revealed that a number of the parties in the six vehicles were connected to each other. It raised concerns that Peter Slattery and Belinda McLoughlin had crashed into parties, who were interconnected and known to each other, on six different occasions.

Whilst this series of events could have been purely co-incidental, the overwhelming nature of the circumstantial evidence produced to Justice Groarke *"pushed the explanation of coincidence off the cliff"*.

Justice Groarke also relied on other matters that arose on cross-examination, such as non-disclosures of accidents and claims histories when analysing the credibility of each individual Plaintiff. However, it was the series of co-incidences that appeared to ultimately influence his decision.

In particular, the following evidence provided sufficient proof to allow Justice Groarke to draw inferences:

- Evidence was produced at Trial that some of the parties in the vehicles that were rear-ended regularly socialised with each other - some went on holidays together, attended and invited each other to various parties and events. Connections were also established through social media accounts.
- When this information was analysed further, it was revealed that a high number of the parties attended the same gym and/or business complex. All occupants of the six vehicles had an association with the geographic area of Ballyfermot. A series of charts and maps were used at trial to illustrate the close geographical and social connections.
- When the Plaintiffs were cross-examined on the connections which were uncovered, they each sought to distance themselves from the person/persons in the other accidents and other vehicles that were also struck by Peter Slattery or Belinda McLoughlin. Justice Groarke stated that he was "extremely concerned about why he was lied to about such relationships".
- Whilst not quoted in the Judgment, actuarial evidence was produced at Trial which concluded that the sequence of events was extremely rare. When the probability was compared to winning the Euromillions, the actuary concluded that there was a higher probability of winning the Euromillions twice than such a sequence of events occurring over a two year and three month timeframe.

In addition to producing evidence that the occupants of the six vehicles struck by Peter Slattery and Belinda McLoughlin were associated to each other and to the same geographical location, Justice Groarke also relied on other co-incidences:

- Belinda McLoughlin and Ian Doyle had either incepted policies of insurance or transferred vehicles onto their policies less than a week before the alleged accident.
- Jessica Byrne, who alleged that she had the vehicle for over a year, had notified her ownership of the vehicle to the

motor tax office on the 12 February 2015, being the same date that she was involved in an alleged accident with Belinda McLoughlin.

- The Gardaí were not called to the scene of any of the accidents.

Judgment

Judgment was delivered by Justice Groarke on the 15th November 2017. Justice Groarke was satisfied that the defence had established that "the already remote explanation of co-incidence is now utterly improbable" He determined that the defence had discharged the standard of proof to prove that the claims were fraudulent. Dismissing all four claims he concluded that the accidents were planned and that fraud was the rational and cogent conclusion to be drawn. He was satisfied that all four Plaintiffs were willing participants in these accidents and party to a fraud.

Conclusion

The Judgment is instructive and informative for a number of different reasons, namely:

- It provides a concise summation of the current law as it relates to fraud in this jurisdiction. It reiterates the required burden and standard of proof required to prove fraud.
- Where fraud is alleged, the burden will rest on the defence to prove that the matter is a fraud.
- The burden of proof is higher than the normal civil standard of "on the balance of probabilities" but not as high as the criminal standard of "beyond a reasonable doubt".
- Whilst the burden of proof is high, the Judgment highlights that the courts, in certain circumstances, are willing to draw inferences and rely on purely circumstantial evidence to dismiss fraudulent claims, providing enough strong and persuasive compelling evidence is produced.
- It also dispels old thinking, that it is not possible to defend these cases without uncovering direct links between vehicles. Establishing patterns and building circumstantial evidence can also assist to ground successful defences.

These cases also highlight to the courts and to the public that fraud is actually occurring and occurring on an organised basis. Hopefully these cases provide insurers with the confidence to defend more spurious claims before the courts.

A copy of the written judgement is available upon request from reception@dacbeachcroft.com.

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