# THE COURT OF APPEAL

# CIVIL

**APPROVED** **NO REDACTION NEEDED**

**Court of Appeal Record Number: 2023/283**

**High Court Record Number: 2023/1818P**
**Neutral Citation Number [2024] IECA 103**

**Binchy J.**
**Meenan J.**
**O'Moore J.**

**BETWEEN/**

**ARNAUD GAULTIER AND SUP PLIABLE LIMITED**

**PLAINTIFFS/APPELLANTS**

**- AND –**

**MARK REILLY, AINE MCGUIGAN, LOUISE SWORDS**

**DEFENDANTS/RESPONDENTS**

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 29th day of April 2024**

**1.** This is an appeal from the judgment and order of the High Court (Cregan J.) dismissing an application brought by Mr. Arnaud Gaultier (the appellant) and Sup Pliable Limited (the company) seeking certain interlocutory reliefs against the respondents. By order of the High Court (Cregan J.) of 16 November 2024, on the application of the appellant, the proceedings were discontinued against Ms. Louise Swords, wife of the appellant and the third named respondent.

**2.** The appellant and Ms. Swords were directors of the company. Ms. Swords was the 100% shareholder of the company and, following the issue of these proceedings, resigned as director and transferred her entire shareholding to the appellant. The appellant states that he had worked for some ten years in developing the business activities of the company and acted as general manager, becoming a director on 24 January 2020.

**3.** A dispute arose concerning stock, allegedly the property of the company, which the appellant believed had not been accounted for by Ms. Swords.

**4.** The first named respondent is an accountant in the firm KBG Accountants who was retained on behalf of Ms. Swords. The second named respondent acted as a solicitor for Ms. Swords and advised her, *inter alia*, on matters concerning the breakdown in the marital relationship between herself and the appellant.

**5.** The appellant is a litigant in person. In the course of this judgment, I will be looking at the nature of the proceedings, the various applications that have been made by the appellant and this appeal. It will become immediately obvious that the proceedings are without any merit whatsoever and are an abuse of process. Unfortunately, in dealing with these proceedings the respondents have been put to financial expense, a fact which the appellant is all too aware of and only too willing to exploit. Further, an inordinate amount of court time, both in this Court and the High Court, has been expended dealing with these proceedings to the detriment of other litigants who have genuine and serious issues to be determined.

**The Proceedings: -**

**6.** A Plenary Summons was issued on 24 April 2023 seeking, *inter alia,*: -

> "(1) An order for damages against the first and second named defendants to the first plaintiff of €10,000 each for their complicit role, by action or omission, in the breach of contract between the first plaintiff and the third defendant;

(2) An order for damages (*sic*) against the first and second named defendants to the second plaintiff of €40,000 each for their complicit role, by action or omission, in the misuse and/or embezzlement of the assets of the second plaintiff."

**7.** A Statement of Claim was delivered following the discontinuation of the proceedings against Ms. Swords. The respondents were each accused of professional negligence concerning their dealings with Ms. Swords. The first named defendant was allegedly negligent in the filing of tax returns and in the giving of advice to Ms. Swords. The second named respondent was allegedly negligent *"by not expressing her most vigorous criticism to the first plaintiff's wife conversion or wrongful appropriation of the second plaintiff's stock.."*. It was also alleged that the second named respondent gave *"erroneous legal advice in relation to the sale of the property registered in the name of the first plaintiff's wife.."*.

**8.** In the course of his submissions to this Court, the appellant confirmed that he had made these allegations of professional negligence without having available to him any reports from a suitably qualified independent expert. It is well-established that to bring professional negligence proceedings in the absence of such a report is an abuse of process, see *Cooke v Cronin* [1999] IESC 54.

**The Interlocutory Application: -**

**9.** In the interlocutory application, which was refused by the High Court, the appellant sought, *inter alia*, the following reliefs: -

*"(1) An interlocutory injunction ordering the first and second defendants to lodge €40,000 each in court to cover for the potential loss of the second plaintiff in relation to stock which had a retail value excluding VAT in excess of €80,000 on 31 December 2022.*

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*(9) An interlocutory injunction ordering the first defendant to infirm (sic) or confirm the affidavit of the first plaintiff in relation to possible litigation against the Revenue Commissioners and to assess the loss if any in relation to same of the second plaintiff, in order to preserve its economic interest within four weeks of the order."*

**10.** It is clear that these reliefs are either unknown to the law or unintelligible. Seeking a payment into court of monies to pay damages where no liability has been established is unknown to the law. The order which the appellant seeks at para. 9 above is unintelligible. No explanation for this relief is set out in either of the appellant's affidavits which grounded the application.

**11.** At the hearing of the motion in the High Court the appellant faced the hurdle that he had no legal authority to represent the company. Ó Dálaigh CJ stated in *Battle v Irish Art Promotion Centre Limited* [1968] IR 252: -

*"This survey of the cases indicates clearly that the law is, as we apprehended it to be when this application was first made to us, is that, in the absence of statutory exception, a limited company cannot be represented in court proceedings by its managing director or other officer or servant ..."* (the rule in *Battle*).

**Judgment of the High Court: -**

**12.** On 16 May 2023, Cregan J. delivered an *"ex tempore"* ruling on the interlocutory reliefs being sought, the transcript of which is set out in the judgment of 28 July 2023.

**13.** The ruling of 16 May 2023 considered the application of the rule in *Battle* to the appellant. The trial judge had regard to two later decisions of the Supreme Court, being *Allied Irish Bank v Aqua Fresh Fish Limited* [2019] 1 IR 517 and *Gaultier v The Registrar of Companies & Ors.* [2019] IESC 89. The trial judge readily concluded that the company could only be represented by a solicitor and barrister with a right of audience in court. The trial judge then proceeded to consider a number of submissions made by the appellant.

**14.** The appellant made a number of submissions to Cregan J. as to why the rule in *Battle* did not apply. Firstly, he submitted that the rule was not applicable to single member companies and, pursuant to s. 41 of the Companies Act 2014, a company may empower any person as its attorney to do any matter. Both these issues had already been determined in the later two decisions of the Supreme Court, one of which the appellant was a party to. The appellant also argued that judges in Ireland will only follow the rule in *Battle* because such rule benefits members of the legal profession. Again, this argument was considered by O'Donnell J. (as he then was) in the appellant's earlier case where he stated that the rule in *Battle* was not a free-standing rule designed to buttress the right of audience of members of the legal profession. It was, as noted by Cregan J., a corollary of a fundamental feature of company law that a company is a separate legal entity from its shareholders.

**15.** Following the delivery of his detailed and comprehensive *ex parte* ruling wherein he considered all the relevant authorities, one might have thought that this dealt with the appellant's interlocutory application. However, this was not the case. The appellant applied to the trial judge to revisit his *ex tempore* judgment. The trial judge set out the legal principles that govern such an application. He cited the following passage from Clarke J. in *Re McInerney Homes Limited* [2011] IEHC 25 where he stated: -

> *"In order for the court to exercise its jurisdiction to revisit a question after the delivery of either an oral or written judgment, it is necessary that there be 'strong reasons' for so doing."*

This was a decision that was subsequently upheld in the Supreme Court. Cregan J. was satisfied that the appellant put forward no *"strong reasons"* or *"exceptional circumstances"* which would require him to revisit his earlier *ex tempore* judgment. Indeed, the trial judge concluded that the various submissions now being made by the appellant were, in effect, a collateral attack on the decision of the Supreme Court in *Gaultier v Registrar of Companies*.

Even though the trial judge was not obliged to do so, he considered the further submissions made by the appellant and found them to be without any merit.

**Notice of appeal: -**

**16.** In his notice of appeal, the appellant identified a number of questions which he said arose for consideration: -

*"(a) To which extent a judgment or judicial decision not addressing the main arguments of a party's submission is to be deemed arbitrary, unfair and thereto void ab initio?*

*(b) To which extent a judgment or judicial decision not giving a clear reasoning to its decision is to be deemed arbitrary, unfair and thereto void ab initio?*

*(c) What is the order of precedence between Articles 40.3.2 and Article 34.4.3 and 34.5.6 of the Constitution which states retrospectively?*

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*(d) Is the inherent jurisdiction of a court to (1) revisit its judgment before the order is perfected or (2) set aside its judgment discretionary, exceptional or compulsory, when 'by reason of judicial error or some other extraneous consideration it is plain that the outcome of [a] case cannot be said to be the administration of justice for the purpose of Article 34 then it cannot be said to be a [Judicial] 'decision' […]'? This question is requesting this court to reconsider the view of O'Donnell J. (as he was known then) in Nash v Director of Public Prosecutions [2017] IESC 51, from paragraph 10 onwards."*

**17.** The appellant filed written submissions dated 21 February 2024 and further submissions dated 6 March 2024. The latter submissions were filed in support of a notice of motion which the court heard at the hearing of the appeal.

**Consideration of appeal: -**

**18.** The first matter which this Court had to consider were the reliefs sought in the notice of motion. I will set out a number of these reliefs as they demonstrate, yet again, the manner in which the appellant conducts litigation. The reliefs sought were: -

(1) An order staying the herein proceedings until an effective remedy is supplied by the State to the second plaintiff in relation to the claims and reliefs it sought, pursuant to Article 13 of the European Convention of Human Rights.

(2) A declaration pursuant to Article 5.1 of the European Convention on Human Rights 2003 - 2020 that the rule in *Battle* is incompatible with Article 13 of the European Convention on Human Rights (ECHR), following notifications of the office of the Attorney General and of the Irish Human Rights and Equality Commission, pursuant to O. 60A of the Rules of the Superior Courts in relation to same.

(3) An order for the recusal of the panel of judges Mr. Justice Binchy, Mr. Justice Meenan and Mr. Justice O'Moore, for the reasons set out in the grounding affidavit.

(4) A further order for the herein proceedings not to be assigned to any other judge who is held in contempt for a failure to "hear" an application rightly put before them.

(5) A further order for the herein proceedings not to be assigned to any other judge who has family connections in the Law Society or the Law Library to hear this matter according to paragraph 2.5.3 of the Guidelines for Judicial Conduct and Ethics 2022.

(6) An order joining KBG Accountants as defendants.

(7) An order joining McGuigan Solicitors as defendant.

(8) An order joining CNA Insurance Company (Europe) SA insurer for the second defendant, as defendant of the herein proceedings.

**19.** Clearly a number of these reliefs are new and ought not to be considered at the appeal stage. I will return to the relief seeking to join an insurance company as a defendant later in the context of another disturbing aspect of these proceedings.

**20.** The basis upon which the appellant sought to have Binchy J. recuse himself was that as members of his family were in the legal profession, they had a financial interest in maintaining the rule in *Battle*. The basis that I recuse myself was that I was guilty of *"contempt"*. The appellant explained that this *"contempt"* arose in a matter which I dealt with in the High Court, *Fitzgerald v DPP* [2021] IEHC 493, wherein I declined to hear a further application by Mr. Fitzgerald following the delivery of my judgment. In fact, Mr. Fitzgerald appealed the matter unsuccessfully to this Court and, again unsuccessfully, to the Supreme Court. In any event the appellant was not a party to, nor had any interest in, the *Fitzgerald* case. The appellant did not pursue his application that O'Moore J. recuse himself. The court held that these recusal applications came nowhere near the well-accepted test for recusal as set out by Denham CJ in *Goode Concrete v CRH Plc* [2015] 3 IR 493 where she states: -

> *"..whether a reasonable person, in all the circumstances of the case would have a reasonable apprehension that there would not be a fair trial from an impartial judge. As it is an objective test, it does not invoke the apprehension of a judge, or any party; it invokes the reasonable apprehension of a reasonable person, who is in possession of all the relevant facts."*

**21.** The appellant's appeal against the decision of Cregan J. not to revisit his *ex tempore* ruling of 16 May 2023 is unsustainable. Again, the test is clear. I refer to the following passage from the judgment of Clarke J. in *Re. McInerney Homes Limited* [2011] IEHC 25: -

> *"In those circumstances, it seems to me that, in order for the court to exercise its jurisdiction to revisit a question after the delivery of either an oral or written judgment, it is necessary that there be 'strong reasons' for so doing. It would, again, be a recipe for procedural chaos if a party were entitled, at such a stage, to seek to introduce new evidence or arguments simply because the relevant matters have not been advanced during the hearing. …"*

This passage was cited by a trial judge. The application to revisit the *ex tempore* ruling was nothing more than an attempt to re-litigate his application for interlocutory reliefs and to make further submissions which clearly had not been made during the hearing. In any event, the trial judge did consider the various issues raised by the appellant and rejected them.

**22.** In this court the appellant, though accepting that the rule in *Battle* was not unconstitutional, submitted that the rule is inconsistent with EU law and the European Convention on Human Rights.

**23.** The appellant submitted that the rule in *Battle* was incompatible with Art. 19 TEU which provides:

> *"Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by European law."*

In the context of this submission the appellant also argued that the rule in *Battle* was inconsistent with the provisions of the European Convention on Human Rights, an issue that does not appear to have been raised in the High Court. In any event, this issue was dealt with in another decision of the Supreme Court being *Coffey v Environmental Protection Agency* [2014] 2 IR 125. This case concerned a number of applicants who intended to issue proceedings seeking judicial review of a decision made by the Environmental Protection Agency. The applicants sought permission to be represented by a Mr. Percy Podger who

was not connected with the proceedings in any way. In refusing permission Fennelly J., for the Court, stated: -

*"[40] Finally, Mr. Podger purports to demand that the court provides some reference to a provision of European Law excluding him from representing the appellants. This would be the reverse of the proper nature of the enquiry, which is whether there is any provision of European Law precluding the court from applying the fundamental tenets of its legal system adopted in the interests of the protection of the integrity of the administration of justice. In fact, Article 19 of the Statute of the Court of Justice of the European Union regulates the representation of parties in proceedings before the court. Member States and the institutions of the Union must 'be represented before the Court of Justice by an agent appointed for each case.' The Agent 'may be assisted by an advisor or by a lawyer'." Most materially, the Article then provides: -*

*"Other parties must be represented by a lawyer.*

*Only a lawyer authorised to practice before a court of a Member State or another State which is a party to the agreement on the European Economic Area may represent or assist a party before the court." _ _ _ _ _*

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*To similar effect, r. 36 of the Rules of Court of the European Court of Human Rights provides that the Applicant 'must be so represented at any hearing decided by the Chamber, unless the President of the Chamber exceptionally grants leave to the applicant to present his or her own case, subject, if necessary, to being assisted by an advocate or other approved representative.' Furthermore, any such representative shall 'be an advocate authorised to practice in any of the contracting parties and resident in the territory of one of them, or any other person approved by the President of the Chamber.'*

*It is clear, therefore, that there is no warrant for the claim that, in the application of European Union law or the European Convention on Human Rights 1950, specifically either by the Court of Justice or the European Court of Human Rights, there is any obligation on the court of a Member State to permit a litigant to be represented by a person other than a duly qualified lawyer.*

*[41] Thus Mr. Podger's application to be allowed to represent the appellants at the hearing of their appeals must be rejected."*

This is a clear statement of the law which establishes the absence of any merit in the appellant's submission.

**24.** The appellant also relied on the provisions of Directive 2009/102/EC which concerns company law on single member private limited liability companies. There is no merit in this submission either, a fact which the appellant must be aware of given the decision of the Supreme Court in *Gaultier v The Registrar of Companies* where O'Donnell J. (as he then was) stated: -

*"38. It is, I think, plain that this argument is entirely misconceived. Apart from the fact that what has been set out above is merely a recital in the Directive, I consider that what is clear is that Mr. Gaultier is misinterpreting the provision. There is, first, no suggestion that single member companies should not be subject to the regulation which applies to other companies. What the recital addresses is the possible abuse of single member companies where, for example, a natural person is the sole member of several companies or a single member company is, in turn, the sole member of another company.*

*39. In those circumstances, Member States may, but were not required by law to, lay down restrictions on the use of single member companies to remove the limits and liabilities of the sole members. Nothing in the recital supports the contention advanced*

*by Mr. Gaultier and, accordingly, I am satisfied that there is no issue of European law which would require a reference to the CJEU."*

**Appellant's conduct of Litigation: -**

**25.** It is clear from the foregoing paragraphs that the appellant engages in litigation that seeks reliefs unknown to the law, seeks to re-litigate matters that have already been clearly decided and attempts to revisit judgments without any basis for doing so. This litigation comes at a financial cost to those who have to defend themselves. The appellant is fully aware of this. In the course of the appeal the following email from the appellant, dated 6 November 2023, sent to the second named respondent was brought to the attention of the court. The email states: -

*" ---*

*I have currently some cash in my hand to allow me the followings:*

*(1) A notice of motion and grounding affidavit for the recusal of Mr. Justice Cregan, setting aside all his orders to date which I can file (sic) early this week, amending the plenary summons, including the removal of Louise from the herein proceedings.*

*(2) Two appeals to the Court of Appeal (to be filed by the end of this week) of Cregan's judgment, which will be followed if required by a further application for leave to appeal to the Supreme Court …*

*You and I perfectly understand that there are no Court of Justice or court of law in this country, but what a Registrar best described as Court of Shenanigans. The biggest of which is the battle and threat of legal costs: 'grow the other side legal bill or force it to pay for yours.'*

*With five current proceedings in the High Court, you may understand that I am not afraid and that I know how to deal with those (cf. judgment of Faherty J. and Barr J.*

*in the matter of Gaultier v CRO). Over the last ten years, I put all my wealth in my wife's name to protect and not expose my family to such possible legal costs (some of which predated our marriage.)*

*So, the question is: 'do we keep going or do you want to settle out of court?'*

*I give you until end of business (5pm) on Tuesday 7.11.2023 to decide. That should give you enough time to discuss same with your partners and insurers. Please note that in my five High Court cases against the State, I have not seen a junior counsel standing without a senior counsel by his side since January 2017.."* (emphasis added)

Though the appellant denied this, it is perfectly clear from this email that the appellant is wrongfully threatening the second named respondent to either settle or incur further legal costs in circumstances where the appellant has put his own assets into his wife's name so as to render at naught any costs orders that will inevitably be made against him. This cannot be considered as anything other than a gross abuse of the legal system by the appellant. I assume that this was the basis upon which the appellant sought to join an insurance company as a defendant in these proceedings.

**Conclusion: -**

**26.** By reason of the foregoing, I will dismiss the appeal herein. As the respondents have been "entirely successful" the provisional view of the court is that they are entitled to their costs (to include all reserved costs) of the appeal. Should the appellant wish to dispute this he may do so by filing written submissions (not in excess of 1,000 words) within 14 days of the date hereof. Should the respondents wish to reply they may do so by filing submissions (also not in excess of 1,000 words) within 14 days thereafter.

**27.** As this judgment is being delivered electronically, Binchy and O'Moore JJ. have authorised me to state that they agree with it.