

THE HIGH COURT

**[2023] IEHC 213
[2022 No. 276 CA.]**

BETWEEN

EOGHAN HARRIS

PLAINTIFF

AND

AOIFE MOORE

DEFENDANT

JUDGMENT of Mr. Justice Paul Burns on the 25th day of April 2023

- 1.** This is an appeal brought by the plaintiff from an order of the Circuit Court dated the 8th day of December 2022 by which the Circuit Court ordered pursuant to s.22(8)(a) of the Courts (Supplemental Provisions) Act 1961, as amended, that this action be sent forward to be tried in the High Court.
- 2.** The relevant statutory provision is as follows:

"(8) (a) Any interested party may at any time apply to the judge of the Circuit Court before whom an action commenced in that court or an appeal from the District Court is pending to have the action or appeal forwarded to the High Court and thereupon, in case the action or appeal is one fit to be tried in the High Court and the High Court appears to be the more appropriate tribunal in the circumstances, the said judge may send forward the action or appeal to the High Court upon such terms and subject to such conditions as to costs or otherwise as may appear to him to be just, and an appeal shall lie under section 38 of the Act of 1936, as applied by section 48 of this Act, from the decision of the judge granting or refusing any such application."
- 3.** The proceedings were commenced by way of Civil Bill dated 13 September 2021 and seek damages, including aggravated and/or punitive damages, for defamation limited to the monetary jurisdiction of the Circuit Court and other ancillary relief. The plaintiff, referred to herein as Mr. Harris, claims to have been defamed by a statement tweeted by the defendant, hereinafter referred to as Ms. Moore, referring to the operation by Mr. Harris of a Twitter account in the name of Barbara J Pym and stating:-

"This account sent me sexualised messages about whether Mary Lou McDonald "turned me on", the size of my arse and called me a terrorist from the month I started at the Examiner. Since then, I have had to go to counselling and the guards."

4. Mr. Harris claims that the said tweet falsely suggested (1) that he had communicated with Ms. Moore in a sexual or sexualised manner; and (2) that he had sent these communications by means of private message (or DM/direct message) on the Twitter platform. Mr. Harris alleges that, in their natural and ordinary meaning and/or by way of innuendo, the words meant and were understood to mean that he:-

- (a) had sent sexual or sexualised communications to Ms. Moore;
- (b) had communicated with Ms. Moore in a sexual manner;
- (c) had sent the sexualised communications privately;
- (d) had behaved towards and/or communicated with Ms. Moore in a sexually aggressive or sexually threatening manner;
- (e) had sent private messages to Ms. Moore in relation to her sexual orientation;
- (f) had sent private messages to Ms. Moore in relation to her anatomy; and
- (g) is sexually deviant and/or is a pervert and/or misogynistic.

5. Ms. Moore entered an appearance to the Civil Bill on 21 September 2021.

6. It should be noted that the indorsement of claim upon the Civil Bill contains reference to Mr. Harris being the operator of a Twitter account bearing the name of Barbara J Pym and confirms that he had published tweets in relation to Ms. Moore and in relation to tweets and newspaper articles written by her. The indorsement of claim specifically refers to the fact that she has instituted proceedings against him in the High Court seeking damages for defamation arising from tweets sent by him using that account. In the indorsement of claim, he specifically denies defaming Ms. Moore.

7. In her defence delivered on 24 November 2021, Ms. Moore makes a preliminary objection that the proceedings are frivolous, vexatious and an abuse of process. She specifically pleads that the Barbara J Pym account was operated anonymously by Mr. Harris (and other, as yet unidentified, individuals) to mount a malicious campaign of defamation against her from April 2020 to May 2021 which is the subject matter of the High Court proceedings referred to in the indorsement of claim. While she admits making the statement referred to in the indorsement of claim, she denies that same was defamatory of Mr. Harris. She admits that her statement suggested that Mr. Harris had communicated with her in a sexual or sexualised manner as alleged

at para. 10 of the indorsement of claim. She admits that her statement could bear the meanings pleaded at (a) and (b) set out above and that, in that regard, the statement was true. She further pleads the defence of honest opinion under s. 20 of the Defamation Act 2009 and the defence of qualified privilege pursuant to s. 18 of the Defamation Act 2009. By way of particulars to her defence of honest opinion, Ms. Moore specifically pleads that her statement was a response to the severe campaign of defamation orchestrated by Mr. Harris against her and that it was a matter of public interest that Mr. Harris was responsible for the operation of the Barbara J Pym account. This is also likely to be relevant in the context of the plea of qualified privilege, although not expressly set out by way of particulars to that plea.

8. Mr. Harris set the Circuit Court matter down for trial and Ms. Moore brought an application by way of notice of motion seeking various reliefs including dismissal of the action or in the alternative a transfer of the proceedings to the High Court.

9. Ms. Moore issued High Court proceedings by way of plenary summons dated 14 May 2021 against Mr. Harris and Twitter International Company seeking damages, including aggravated and/or exemplary damages for defamation as against Mr. Harris, together with other ancillary relief and seeking a *Norwich Pharmacal*-type order against Twitter International Company as regards the identity of the persons operating and controlling the Barbara J Pym account and another account known as Dolly White. Mr. Harris entered an appearance on 27 May 2021 and Ms. Moore served a statement of claim on 10 November 2021. At para. 4 of the statement of claim, it is pleaded that, on diverse dates between April 2020 and May 2021, Mr. Harris wrote and published or caused to be written and published various words on Twitter through the Barbara J Pym account defamatory of the plaintiff and the said tweets are set out thereunder. It is pleaded that the said words meant and were understood to mean the following various meanings:-

- (a) that she failed to decry and tolerates the bullying of women like Christine O'Mahony by Sinn Féin;
- (b) that her extremist views influenced the absence of an apology from the Irish Examiner newspaper on behalf of its journalist for liking Brian Stanley's tweet [condoning bombings carried out by the Provisional IRA];
- (c) that she defends behaviour on the part of the IRA that would sicken most people;
- (d) that she is a shill;
- (e) that she promotes toxic tribal politics;
- (f) that she supports fascism;

- (g) that she is two-faced and failed to call out Sinn Féin for not condemning the murder of Paul [Quinn];
- (h) that her disregard for Protestant children blown up by the Provisional IRA and their attempt to blow up children taking part in a remembrance parade is sickening;
- (i) that she condones the atrocities of the Provisional IRA;
- (j) that she infiltrated the Examiner newspaper from where she has sought to promulgate Sinn Féin extremist propaganda and peddle Trump-type fake news;
- (k) that her journalism is partisan and not fit to be published in The Irish Examiner newspaper or any newspaper;
- (l) that she condones, defends and supports the most sickening of IRA atrocities;
- (m) that she supports terrorism;
- (n) that she has no empathy for the systemic sectarian murders and ethnic cleansing of Protestants;
- (o) that she is a Sinn Féin sniper;
- (p) that she is not in touch with Irish politics;
- (q) that she is not a real reporter and is not interested in balance, fairness, impartiality or the accurate reporting of news and, in particular, political news;
- (r) that she acts unprofessionally, inappropriately and improperly as a political journalist;
- (s) that she is not fit to be a journalist.

10. At para. 8 of the statement of claim, further tweets are set out which Ms. Moore claims are defamatory of her and alleges that these words carried various meanings, including, *inter alia*, meanings similar to those already pleaded as regards the other statements. At para. 13 of the statement of claim, Ms. Moore pleads that the various statements were part of a malicious orchestrated and sustained campaign of defamation and vilification against her.

11. Mr. Harris has not yet delivered a defence in the High Court proceedings but the court was informed that he had recently been called upon to do so.

12. In the case of *Quirke v. Irish Sailors Trust* [1934] IR 439, a two-judge High Court dealing with an appeal from a Circuit Court refusal to transfer to the High Court (under s. 48 Courts of Justice Act 1924) reversed the Circuit Court order. Johnston J. noted that the Circuit Court judge had said:-

"I interpret the section to mean that I must be satisfied before I send forward the case to the High Court that the High Court is the more appropriate tribunal, and that it is in my discretion."

Johnston J. went on to state:-

"The test which he so lays down was, I think, perfectly correct, but I am of opinion that in his application of that test to the facts in the case he came to a wrong conclusion"

He further stated:-

"It appears, therefore, that a Judge of the Circuit Court in considering and deciding applications of this sort should apply his, mind, in each case, to the particular "circumstances" involved in the litigation, and when I take into account the circumstances of this case I can come to no other conclusion than that the High Court is the more appropriate tribunal. I desire to emphasise in this connection the word "more"."

Johnston J. regarded the particular case as being of some importance and one which should be tried in the High Court in Dublin. He noted:-

"If it were allowed to remain in the Circuit Court it is almost certain that there would be an appeal to the High Court from the decision whatever it might be, and the losing party in the High Court would almost equally certainly apply for a certificate giving him or them leave to appeal to the Supreme Court. Having regard to the matters in issue it would seem probable that such a certificate would be granted. This, of course, is not a legal test to be applied in dealing with a motion of this kind, but I think it is an incidental matter that may properly be taken into consideration."

13. In the case of *McGuinness v. Dunne* [1986] NI 80, the court was concerned with a road traffic accident in which there was a collision between a motor car and a motorcycle. A High Court writ was issued by one party arising out of the accident and, a short time later, a Civil Bill was issued by the other party. Under the relevant legal provisions for Northern Ireland, the Master of the High Court made an order removing the County Court proceedings to the High Court and consolidating same with the High Court proceedings. On appeal to the High Court, the Master's order was upheld. It was held that, where an action which has been appropriately commenced in the High Court and has proceeded with expedition and all issues arising in a County Court action on the same facts can be dealt with in the High Court action, it was, generally speaking, more appropriate that, notwithstanding the possibility of some delay and some additional costs, the County Court action be removed to the High Court and consolidated with the High Court action.

However, if delay or cost or both are significant, then it may well be that the action in the County Court should proceed ahead of the High Court action. The High Court was satisfied that, in that case, the issues in both actions were the same, namely that of liability and the delay in the High Court proceedings was due to the defendant, that the appellant and his legal advisors were aware of the High Court proceedings before issuing the County Court proceedings and that he knew or ought to have known that he could issue a counterclaim in the High Court. It was further held that, even if the action in the County Court were allowed to go ahead, a strong possibility of an appeal made any saving in time and cost unlikely.

14. In this matter the parties are the same in both sets of proceedings, although obviously playing reverse roles in respect of the respective actions. While it is true to say that each set of proceedings arises out of separate statements made by the respective parties on different dates, there is nevertheless a significant link and overlap between them. Indeed, reference to the High Court proceedings is expressly made in the Circuit Court pleadings by both parties.

15. In determining whether words are defamatory and/or whether any particular defence may be open to a particular defendant, the words complained of must be considered in their context. In this regard, it seems to me that there is a considerable and significant overlap in terms of context as between the statements referred to in the respective sets of proceedings.

16. Insofar as Ms. Moore relies in her defence to the Circuit Court action on the fact that she was responding to defamation(s) of her character carried out by Mr. Harris, the issue of whether Mr. Harris did in fact carry out a campaign of defamation against her and the complex issues of whether the fact that her statement was made in response to same is capable of giving rise to a defence as a matter of law, and does so as a matter of fact, are likely to be matters which will have to be determined in the course of the action commenced in the Circuit Court by Mr. Harris. Whether Mr. Harris engaged in a campaign of defamation against Ms. Moore is of course the central issue in the High Court proceedings initiated by her.

17. The High Court proceedings were issued first in time and, while there may be no obligation to bring a counterclaim instead of a separate action, public policy leans against a multiplicity of separate proceedings between the same parties arising out of or in connection with the same conduct or course of conduct. While no figures were presented to the court, it appears to be common sense that, in the majority of instances, a multiplicity of separate actions in different court venues will lead to greater expense than if matters were heard in a single action or if a number of actions were heard at the same time and in the same venue by the same court.

Equally, it would appear to be the case that, in most instances, the disposal of all issues between the same parties at the same time in the same venue by the same court will make for more efficient use of the valuable resource of court time.

18. Counsel on behalf of Mr. Harris pointed out that Mr. Harris is in poor health and wishes to have an expeditious hearing and to limit the expense of his litigation. The court has considerable sympathy for Mr. Harris in that regard. The court notes that Ms. Moore's proceedings in the High Court have not progressed with alacrity. Counsel on behalf of Ms. Moore explained that this was, to a large extent, due to the steps being taken to identify the other persons operating and controlling the relevant Twitter accounts and that there was a concern on the part of the plaintiff and/or her representatives that a failure to identify and include such parties in the proceedings could create difficulties in terms of s. 35 of the Civil Liability Act 1961. I am not convinced that a defendant could successfully plead s. 35 of the Civil Liability Act 1961 in relation to concurrent wrongdoers whom he fails to identify and/or who were acting in concert with the defendant. That is an argument for another day. Be that as it may, counsel on behalf of Ms. Moore assured the court that steps had now been taken to compel Mr. Harris to deliver a defence in the High Court proceedings and that the proceedings would be prosecuted with expedition.

19. As regards the issue of expense, it should be borne in mind that Mr. Harris is a party to High Court proceedings and, therefore, is already exposed to the expenditure which goes along with same. Counsel on behalf of Ms. Moore said that she is giving an undertaking to the court that, as regards the Circuit Court action, if same were transferred to the High Court, in the event of successfully defending his claim against her as set out in the Civil Bill, she would not seek any costs over and above those recoverable in the Circuit Court. Insofar as Mr. Harris might be exposed to having to expend additional sums for representation in the High Court as opposed to the Circuit Court, as already noted he was already a party to the High Court litigation when he commenced the Circuit Court proceedings. Further, having all matters dealt with at the same time in the same venue by the same court is likely to result in an overall saving of costs on his part.

20. While it is not a decisive factor, it is nevertheless a consideration that, given the nature of the proceedings, it is highly probable that the unsuccessful party in the Circuit Court will appeal to the High Court where the matter will have to be dealt with by way of rehearing and, thus, any savings on time or money as regards the Circuit Court proceedings are likely to be set at nought.

21. In terms of the issues to be considered in the context of the Circuit Court proceedings, a number of complex issues are likely to arise, such as the scope of ss. 18 and 20 of the Defamation

Act 2009 and the extent to which a statement made by a party in response to a statement or statements made by the other party are to be considered, as a matter of law, as being capable of giving rise to a defence.

22. In relation to any delays in the matter, counsel on behalf of Ms. Moore gave an undertaking to progress the High Court proceedings with expedition.

23. Having considered the particular circumstances of each set of proceedings and especially the circumstances of the Circuit Court proceedings, I am of the view that the High Court is the more appropriate tribunal to determine the matters raised in the Circuit Court proceedings. I am satisfied that there is a significant linkage and overlap between the two sets of proceedings. I am satisfied that the matters to be addressed therein should be tried at the same time in the same venue by the same court. I am satisfied that the complexity of the issues make the High Court a more appropriate tribunal. Furthermore, I am satisfied that, if the matters were not tried at the same time in the same venue by the same court that such a multiplicity of proceedings would add to costs and take up more valuable court time than would otherwise be the case. As regards having matters dealt with expeditiously, I accept the undertaking given by counsel on behalf of Ms. Moore that the proceedings will be prosecuted with expedition and, in order to ensure same, I direct that, upon transfer to the High Court, both sets of proceedings should be listed before the judge in charge of the Defamation List for case management, including an application for consolidation of same or an order directing that same be tried together. I note Ms. Moore's undertaking as regards costs in relation to the Circuit Court proceedings.

24. In light of the foregoing I confirm the order of the Circuit Court.

25. As regards the issue of costs, it seems to me that this is a matter in which the costs of the appeal should follow the event and so I order that the costs of the appeal be awarded to Ms. Moore as against Mr. Harris and the costs of the application in the Circuit Court be reserved. I stay execution on foot of the costs order until the determination of the proceedings or further Court Order.