

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2024] IEHC 110

[2019 / 7009 P]

BETWEEN

JAMES GUERIN

PLAINTIFF

AND

GEMMA O'DOHERTY

DEFENDANT

Judgment delivered electronically on 23 February 2024 by Mr. Justice Tony O'Connor

Introduction

1. This judgment explains the determination of the interlocutory reliefs sought by the plaintiff in relation to the conduct of the defendant before a jury retrial of his claims against the defendant.

Pleadings

2. The statement of claim delivered 2 February 2021 claims damages for defamation to include aggravated and punitive damages for social media publications on 11 July 2019 and 12 July 2019 which constituted “a campaign of defamation” by the defendant. The claim is that words used by the defendant were understood to mean inter alia that “the plaintiff is a paedophile” and “has concealed the case from the general public for five years”.

3. Para. 5 of the defence delivered on 1 March 2021 pleads that: -

“The Defendant’s words at all times were clearly intended and understood to refer to Martin Guerin who is a well-known and well-publicised paedophile.”

4. The defence, signed by the defendant herself, referred at paras. 24 and 25 to: - “... intentional misdirection by the Plaintiff and his legal representatives”. Those representatives are named. The defence refers to “deceitful statements presented to the High Court by the legal representatives of ” the plaintiff. Those pleas were the subject of an unsuccessful application by the defendant to set aside an order for substituted service as explained in the judgment of Humphreys J. delivered on 12 October 2020 [2020] IEHC 490. That judgment was not appealed.

5. On the application of counsel for the defendant, the trial judge assigned to preside at the trial listed for hearing during the first week of the November 2023 jury sessions recused himself in a reasoned judgment. The trial then commenced before me during the third week of the jury sessions, commencing on Tuesday 21 November 2023. It finished on Monday 27 November 2023. The jury returned to announce on 28 November 2023 that they could not

reach the required majority verdict of nine. Thus, the proceedings were adjourned to the next list of fix dates for jury actions.

Tempering comments

6. During the exchange with the Court about whether the retrial could be listed for the jury sessions beginning on 30 January 2024, counsel for the plaintiff informed the Court that he was not “looking for orders” but submitted that the parties adopt “a tempered approach to whatever is said on both sides in preparation of the February sessions”.

7. Counsel for the defendant said “I suspect that the proposal would have no objection, it is clear given that there may be a retrial that anything said about it in the interim, understanding the position should be tempered.” The Court limited its comment by referring to what “is proper and appropriate” and expressed the view that “counsel had put it very well”.

Callover

8. On 14 December 2023, the Court was informed by representatives for the parties at the callover for the sessions beginning on 30 January 2024 that it was agreed to postpone the retrial to the April 2024 Jury sessions. Counsel for the plaintiff brought to the Court’s attention that the defendant had been posting about the plaintiff and his legal representatives in such a manner as might contaminate a future pool of jury members. The plaintiff’s solicitors had earlier emailed a four – page letter to the defendant’s solicitors with links and copies of the posts. One of the posts on 4 December 2023 read: -

“Gemma O’Doherty on Councillor Jimmy Guerin’s thugs in gowns led by [name] SC and the cover up of Mary Boyle by her mother Anne Boyle and RTE. You can watch back here.”

Counsel for the defendant was “not in a position to respond” to any application which was not before the Court with formal notice. Therefore, the Court gave liberty to the plaintiff to

issue a motion on Friday 15 December 2023 returnable to Wednesday 20 December 2023 seeking such interlocutory reliefs as the plaintiff then wished to make.

20 December 2023

9. On the second last day of Michaelmas term 2023, being 20 December 2023, counsel for the plaintiff indicated to the Court that the plaintiff wished to pursue the following reliefs as set out in the notice of motion: -

“(1) an order pursuant to the inherent jurisdiction of the court directing the defendant to remove the publications complained of by the plaintiff as an abuse of the processes of the court, a breach of the direction of the court, and as matters of scandalising and contempt *in facie curiae* and *sub judice*;

(2) in the alternative, orders pursuant to the inherent jurisdiction of the court directing the hosts of the impugned publications to remove the publications complained of.”

10. The affidavit sworn by the plaintiff’s solicitor on 15 December 2023 described various publications of the defendant which alleged how senior counsel (named in person) and “thugs in gowns” tried to silence the defendant. The plaintiff’s solicitor in that affidavit further summarised the various publications of the defendant as seeking to republish the matter which was the subject of the recent jury trial. The solicitor averred that “there is a real and very substantial risk to the Plaintiff of a future unfair trial if the publications.... are not removed, and the Defendant penalised for her actions.”

11. The motion was made returnable for 2pm on 20 December 2023 so that the defendant could reply and give instructions. Unfortunately, the defendant’s solicitor told the Court that he was “unable to secure instructions”.

12. Despite the frustration expressed by counsel on behalf of the plaintiff, the Court ruled that there were two matters to be considered by the defendant in order for the Court to adjudicate fully on the interlocutory reliefs: -

(1) whether the defendant would consent to a trial before a judge sitting without a jury; and

(2) whether she had proposals to remedy the plaintiff's allegations of ongoing defamation and scandalising.

13. The Court engaged with counsel for the plaintiff about whether the plaintiff was now going to extend his claim for the retrial. Counsel indicated that this would be considered.

14. The Court also pressed counsel for the plaintiff to respond to the Court's view that decent, honest and fair – minded people, who will be part of the jury for the retrial, will not be swayed from their duty to adjudicate upon the facts from the evidence adduced. It was apparent to the Court at that stage that a jury could be directed to disregard prejudicial commentary by one or other party and that the Court should have evidence that the general public was actually heeding whatever the defendant was posting about the plaintiff. Counsel referred the Court to the outline legal submissions comprised in 48 paragraphs when directing the Court to precedents for court orders inhibiting "...the making and publication of statements tending to influence the decision of a pending issue, particularly a trial by jury or holding a litigant up to public obloquy for exercising his right of access to the courts – the so – called '*sub judice*' rule, see *Re MM and HM* [1933] IR 299 at 341 (1932) 67 ILTR 24." Given that the defendant had not given instructions and that the Court was not satisfied to exercise its inherent jurisdiction as sought by the plaintiff at that stage without further evidence and without hearing the defendant, the Court adjourned the application with directions so that the application came on for hearing on Tuesday 23 January 2024. The directions gave liberty to the plaintiff to issue a new notice of motion before 8 January 2024 with a grounding affidavit and liberty to the defendant to serve and file a replying affidavit by 15 January 2024.

23 January 2024

15. When the motions were called, counsel for the solicitors on record for the defendant made an application pursuant to Order 7(3) of the Rules of the Superior Courts declaring that the solicitors were no longer on record as and from that date. The Court was informed that the defendant consented to such an order and that the plaintiff was not objecting. Therefore, the declaration sought was made.

16. Counsel for the plaintiff then impressed upon the Court the effect of the increasing commentary by the defendant about the proceedings and the legal representatives for the plaintiffs. The affidavits of 8 January 2024 were opened to the Court and counsel relied upon the outline written legal submissions for the plaintiff which had already been served and opened to the Court in December.

17. No application was made by or on behalf of the defendant to adjourn the hearing on 23 January 2024 although the defendant in her affidavit averred on 8 January 2024 at para. 30 that she was “beginning an international lecture tour next week and will not be available....”. She stated that she has: -

“...professional commitments abroad as part of this tour throughout 2024 and 2025. I also will be on religious retreat. I will not be in a position to attend any further court dates during this time and will resist strongly any attempt to physically threaten me in this regard. The courts and plaintiff have had five years to proof their case and have failed. They have purposely dragged it out over the years to try to persecute me”.

18. The Court read a copy of the publication by the defendant as editor of the “Irish Light Newspaper”, which was exhibited as “3 KK 1”. That exhibit bears the following headline “The five-year campaign of terror against Gemma O’Doherty by [name of counsel] and Jimmy Guerin for being a journalist.” There then followed 14 pages of what the defendant describes as “a five-year campaign of hell”, with negative suggestions about judges and this Court. Suffice to say that the defendant in that article referred to the legal team of the plaintiff

as having “committed the most egregious crimes against me and have sought to silence my work as an investigative journalist by attempting to bankrupt me and make me homeless....”.

19. The Court was concerned with a description by counsel of conduct involving a threat which had not been described on affidavit and the Court proposed a further adjournment to allow for an affidavit to be filed and served. Counsel for the plaintiff urged the Court to make an order in the interim relating to the conduct of the defendant affecting the legal representatives for the plaintiff which had not been denied.

20. Paras. 10 and 11 of the affidavit sworn by the plaintiff’s solicitor read as follows: -

“10. On 28 December 2023, and on the @irishlightpaper X (formerly Twitter) account, the defendant published the following words: -

“Wow! Spotted in [name of town] home to @thebarofireland [name] SC who has been telling lies to the courts about Gemma O’Doherty, banging her door down and invading her privacy for FIVE YEARS. Now he wants to shut down the Irish Light. Who’s funding him? #gueringate”

(together with a video image of the scrolling message).

11. It appears that the @irishlightpaper X (formerly Twitter) account operated by the defendant was suspended on 29 December 2023. I have no information as to what gave rise to that suspension – other than: - “X *suspends accounts that violate our rules* (Emphasis added)” or for how long that suspension will endure. However, the defendant had also been publishing via an account [name of account] which featured the face of the plaintiff’s senior counsel and various commentary concerning and connected to the plaintiff and his case. This account was also suspended by X (formerly Twitter) on 4 January 2023, (sic) again I have no information as to what gave rise to that suspension – other than: “X *suspends*

accounts that violate our rules” (sic) (Emphasis added)”.

Determination – 23 January 2024

21. After taking time to consider the papers and submissions, the Court delivered an *ex tempore* ruling “to maintain and control the exercise of the rights of the parties to litigate under the Constitution and pursuant to the laws of the State”. The Court made it clear that it was not determining whether the posts described by the plaintiff’s solicitor at paras. 10 and 11 of his affidavit and as suspended or removed by X / Twitter according to the deponent, would have any effect on the retrial of these proceedings before a jury. The Court expressed a preference to afford an opportunity for the defendant to consider the order made and the further orders sought given the suggestion of an irreparable threat to the conduct of a retrial before a jury with the legal representatives retained by the plaintiff.

22. The order of the Court made on 23 January 2024 reads as follows: -

“(1) it is ordered that the defendant be restrained pending the trial of this action or until the determination of further interlocutory applications by the parties from: -

(i) maintaining, repeating or publishing through any medium of communication any posts which assert or imply that any member of the plaintiff’s legal team have told lies or committed crimes in relation to these proceedings (save that the defendant may aver on affidavit for the adjudication of any application in these proceedings, facts which she can establish by independent admissible evidence to be true and necessary for the determination of applications in these proceedings);

(ii) maintaining, replicating or publishing online or through any medium of communication photos or images of any and all members of the plaintiff’s legal team.”

(2) The defendant was given liberty to apply to this Court to vary any part of that order on Monday 29 January 2024 at 2pm, provided the defendant gave notice to the plaintiff's solicitors of her proposed variation by 2pm on Friday 26 January 2024.

(3) The plaintiff was directed to serve his proposed amended statement of claim incorporating references to repeated and ongoing defamation on the defendant by 5pm on Monday 12 February 2024 and

(4) The defendant was directed to file and serve any replying affidavit with any written outline legal submissions limited to 2,000 words if she intended to oppose the application for said leave to deliver the proposed amended statement of claim by 2pm on Monday 26 February 2024.

(5) The balance of the motions seeking the other reliefs were adjourned to Monday 29 January 2024 at 2pm save for the application for leave to amend the statement of claim which is now listed for hearing on Tuesday 5 March 2024 at 10:30.

23. The order provided directions relating to service and to the filing and service of outline legal submissions before 28 January 2024.

Monday 29 January 2024

24. At the hearing on 29 January 2024, there was no appearance on behalf of the defendant. The Court had read the third affidavit of the plaintiff's solicitor and an affidavit of the plaintiff sworn on 25 January 2024. The plaintiff averred that matters which had been brought to the Court's attention on 23 January 2024 amounted to "stalking and harassment of [him] and [his family] and gave rise to cause for concern for [his] safety and that of [his] family." A litany of disturbing events from 18 December 2023 to 17 January 2004 were described. The affidavit of the plaintiff's solicitor identified three people who had

participated in uncivil conduct which led to the said apprehension of the plaintiff. The plaintiff identified one of those individuals.

25. The Court appreciates the human reaction to comments such as those uttered to the plaintiff according to para. 5 of the plaintiff's latest affidavit: "On approaching my car, one individual stated that "You should drop the case against Gemma as these things only shorten your life." The plaintiff described the tone as threatening and "he believes that it was designed to harass [him] to drop [his] legal action." The Court would make quite a leap if it found that the defendant had organised that statement or the threatening tone. The defendant herself has also alleged that she has security concerns but she does not attribute, according to the information known to the Court, any such threat or violence to the plaintiff.

26. It is unfortunate that both parties suggest that they cannot enjoy peace and security at their homes. The Court will indeed intervene if it is satisfied that one or other party to the proceedings have directly or indirectly organised threats.

27. The Court noted an apparent unfairness for the names of those accused of unlawful activity to be disclosed in open court without affording the said individuals an opportunity to respond to the allegations which were mainly of harassment of the plaintiff. Counsel for the plaintiff confirmed in reply to the Court that the plaintiff did not propose at that stage to institute proceedings against those named people or to put them on notice of the allegations. In those circumstances the Court declines to take account of the alleged harassment of the plaintiff and his legal team by those four individuals. The plaintiff always has liberty to apply to the Court for relief which was not sought in the notices of motion with which this judgement is concerned.

28. The following sub – headings describe the areas addressed by the Court on 29 January 2024: -

(1) Section 33 of the Defamation Act 2009.

- (i) Section 33 of the Defamation Act 2009 provides certain criteria for the making of orders prohibiting publication or further publication of statements. There are significant policy concerns when considering the granting of any such reliefs. Allen J. in *Beaumont Hospital v. O'Doherty* [2021] IEHC 469 at para. 58 stated: -

“The jurisdiction invoked by the plaintiffs on this application is, as has been said, a delicate one. The court must be careful not to interfere with free speech or the free expression of opinions, a fortiori I think with responsible journalism and the freedom of the press. Orders of the type now sought must be made only in the clearest cases and any doubt resolved against the applicant. On the other hand, journalists, no less than citizens in general, are not entitled to wantonly or recklessly traduce reputations and the court will intervene if it can be shown that statements have been made, and are liable to be repeated, for which there is no reasonable basis.”

- (ii) Counsel for the plaintiff clarified that it was not the intention of the plaintiff to seek an order pursuant to s. 33 of the Defamation Act and that the plaintiff was relying upon the inherent jurisdiction of the Court to regulate its own procedures. Counsel cited the Supreme Court judgment of O'Donnell J. (as he then was) in *Gilchrist v. Sunday Newspapers Limited* [2017] 2 IR 284 where the defendants had sought a hearing which would have permitted participants in the State's witness protection program to maintain anonymity. At para. 45: he explained:-

“The legal issue for this Court was presented in a very stark and binary form. The only options canvassed were a hearing fully in public or one

completely in camera. I do not consider that this is or can be the correct approach. In any event, since any departure from the rule of hearing in public is an exception which must be strictly justified, it is in my view necessary to consider the matter incrementally, and to ask whether any lesser steps would meet any legitimate interests involved. That may involve considerations of anonymising witnesses or orders that witnesses may not be photographed or identified in any way, or whether any part of the hearing may be conducted in public, or whether it is possible in respect of any hearing in private, that a redacted transcript of proceedings can be released to the media. Given the fact that the plaintiffs are already identified by name, and that there has been a range of interlocutory applications in this case, and furthermore that the trial of this case would necessarily involve disclosure of matters to at least the 12 jurors and any witnesses from the newspapers who were in attendance, it would in my view be incumbent on a court, even if satisfied, that there was a case for some exception from the general principle to consider the precise steps which might be taken in this case, starting from the proposition that any provision permitting trial other than in public is an exception to a general rule of fundamental importance. Nothing more should be permitted than is demonstrated to be necessary to avoid the damage to the public interest involved. As already observed, this is a matter which could be the subject of further submissions to the trial judge by the parties and if appropriate representatives of the media more generally.”

(iii) The incremental approach advocated in that judgment has been adopted in these applications. There is little doubt that the defendant wishes to avoid everything that is associated with a retrial as may be gleaned later from this judgment. The

defendant is objectively and subjectively offensive in her commentary. The parties ought to be aware now of trespassing into the area of defamation when seeking to dissuade each other from litigating or defending further. In short, a jury can decide if one or other party has defamed the other. This Court repeats its trust in the ability of reasonable and fair – minded citizens to discern the truth on whether one party has been defamed or not.

(2) Inherent jurisdiction

(i) Having regard to the concern of the Court about exercising its inherent jurisdiction where the Oireachtas has granted power to the courts under the Defamation Act 2009 to grant injunctions, counsel for the plaintiff referred the Court to O. 50 (12) of the Rules of the Superior Courts, which reads as follows: -

“12. In any cause or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court may grant the injunction, either upon or without terms, as may be just.”

(ii) Counsel continued on to submit that the conduct of the defendant was highly improper and that this Court could rely upon the Supreme Court judgment in *In the matter of MM (a person alleged to be of unsound mind)* [1933] IR 299. There, Johnston J. identified: -

“The question, however, that is to be decided is whether it amounted in law to an obstruction, or an attempted obstruction, of the course of justice in regard to the trial....”.

(iii) Ultimately, counsel for the plaintiff casts his application as a plea for the Court to ensure that a fair retrial will occur. The reliance by counsel on the Supreme Court judgments in *In Re: MM and HM (a person alleged to be of unsound mind)* [1933] IR 299 does not address the view repeated by this Court, on a few occasions now, that a future jury can be trusted and directed by the presiding judge.

(iv) Moreover, the Court rhetorically repeats its questions posed during exchanges with counsel for the plaintiff about the effect of tweets nowadays. The following quotation from the judgment of Simons J. in *Lobov v. McGregor* (unreported judgment of 23 December 2022) [2022] IEHC 724 at para. 24 resonates: -

“24. . . .to say that a person is a ‘rat’, without more, does not fulfil this definition [i.e. defamation]. The meaning will depend on the context and circumstances of the publication. It is necessary, therefore, to consider the context in which the statement complained of had been published.

25. The starting point for the analysis must be that the statement was published on Twitter rather than a more conventional – and more serious – medium such as a newspaper or on television. Useful guidance as to the approach to be taken to determining the meaning to be attributed to a post on social media is to be found in the judgment of the UK Supreme Court in *Stocker v. Stocker* [2019] UKSC 17, [2020] AC 593 (at paragraphs. 41 to 43):

“The fact that this was a Facebook post is critical. The advent of the 21st century has brought with it a new class of reader: the social media

user. The judge tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by a social media user must keep in mind the way in which such postings and tweets are made and read.

In *Monroe v Hopkins* [2017] EWHC 433 (QB); [2017] 4 WLR 68, Warby J at para 35 said this about tweets posted on Twitter:

‘The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter.’

I agree with that, particularly the observation that it is wrong to engage in elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (i.e., an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.”

(v) The Court understands the argument that matters are “*sub judice*” and that it may need to protect future jurors. However, the plaintiff has not satisfied this Court that the defendant has contaminated a future pool of jury members or that she is actively seeking to interfere with a future jury empanelled for the retrial. In fact, the defendant averred at para. 6 of her affidavit that she has “a keen understanding of defamation law and know[s] that the facts of a case such as this cannot be put into the public domain pre-trial as it can contaminate the minds of future jurors against one of the parties. These matters must remain sub judice until they come before the court. Due process at the earliest stages of this case was abandoned by [name of counsel] and he should be charged with contempt of court for same but for some reason he is allowed to engage in these most fundamental breaches of proper court procedure and natural justice ...”.

There is no merit in setting out the conspiracy theory of the defendant which follows that excerpt about my conduct of the trial and these applications because it does not advance the position of either party in these applications. Lest there be any doubt, I utterly reject the allegation of the defendant that I am “compromised”. I made and continue to subscribe to my declaration pursuant to Article 34.6.1 of the Constitution: “... that I will duly and faithfully and to the best of my knowledge and power execute the office of Judge of the High Court without fear or favour, affection or ill will towards any man, and that I will uphold the Constitution and the laws...”.

(3) Whether damages are an adequate remedy

(i) The Court referred counsel for the plaintiff to the principle that injunctions will not be granted where damages are an adequate remedy. In reply, counsel for the plaintiff

submitted that he was entitled to a fair trial and cited Article 34 of the Constitution which reads: -

“Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.”

In other words, it is submitted on behalf of the plaintiff that the court of public opinion is sought to be influenced by the defendant in such a manner as to affect a retrial. In that way, damages will not be an adequate remedy even though the jury may be asked to consider aggravated and or punitive damages for the defendant’s conduct.

The Court, while acknowledging the rather unique effort of the defendant to dissuade the plaintiff from proceeding to a retrial, cannot find that she has influenced the court of public opinion in her favour. Further I am not satisfied that if a jury finds in favour of the plaintiff that they cannot proceed to consider the issue of damages.

Right to retain legal representation

29. While the defendant has not sought to vary the limited order made on 23 January 2024, it was indicated earlier in this judgment that I would revert to the right of parties to retain their own legal representation.

30. The personal attacks on the legal team for the plaintiff constitutes an unorthodox approach by a litigant to dissuade further prosecution of the proceedings. In this regard, paras. 10 and 11 of the affidavits sworn by the plaintiff’s solicitor on 8 January 2024 which are set out earlier in this judgement, are noted particularly. The supplemental affidavit of the plaintiff’s solicitor sworn on 19 December 2023 describes and exhibits a copious number of uncivil publications by the defendant. One example has a picture of the plaintiff’s senior

counsel published on 15 December 2023 which has the following words: “Loopy [name of counsel] Needs a Booster for His GDS (Gemma Derangement syndrome)”. The plaintiff at paragraph 15 of his last affidavit describes the defendant’s post on X about the spouse of a named lawyer for the plaintiff. Lampooning members of the plaintiff’s legal team and questioning the support of a spouse for a lawyer on that team is a novel tactic indeed in the conduct of litigation in this State. This approach by the defendant is uncivilised and inappropriate. The defendant has made no effort to explain why it is necessary for her to revile named lawyers when she has other means of resolving any legitimate grievance about those professionals. The Court can only conclude that she wants to interfere with the right of the plaintiff to engage and rely on his chosen advisors and advocates.

31. Both branches of the profession assist the administration of justice, and there is a process for regulating both branches. Those who exercise the right to represent others in Court must be trained and are usually experienced advocates. They are expected to act fearlessly in the interests of their clients while respecting their obligations to the Court. Advocates who are obliged to institute separate proceedings to protect their good name and reputations risk losing their independence and fearlessness. The Court acknowledges that Counsel for the plaintiff assured the Court that Counsel was able to withstand the opprobrium cast by the defendant. However, the Court in exercising its control of proceedings is acutely conscious of the right of a litigant to choose and retain his or her own legal team.

32. By way of background, the Court first sets out most of Rule 5 of the Code of Conduct for the Bar of Ireland 2020 which provides as follows: -

“5.15 A barrister when conducting proceedings in Court is responsible for the conduct and presentation of his case, and must exercise the independent judgment called for during the case. A barrister must not act as a mere spokesperson for the client or the instructing solicitor.

5.16. Barristers must not deceive or knowingly mislead the court. A Barrister must take appropriate steps to correct any misleading statement made by the Barrister to the court as soon as possible after the Barrister becomes aware that the statement was misleading.

5.17. Barristers when conducting a case must not assert their personal opinion of the facts or the law unless expressly invited to do so by the court or required to do so by law.

5.18. Barristers when conducting a case must not make statements or ask questions which are merely scandalous or are intended only for the purpose of vilifying, insulting or annoying a witness or some other person.

5.19. In a civil case Barristers must, at the appropriate time in the proceedings, inform the court of any relevant decision on a point of law and, in particular, of any binding authority or of any applicable legislation of which they are aware and which the Barrister believes to be in point whether it be for or against their contention.

5.20. Barristers must in every case use their best endeavours to avoid unnecessary expense and waste of the Court's time. They should, (subject to Rule 5.21), when asked, inform the Court of the probable length of the case and also subsequently inform the Court of any developments which significantly affect the information already provided.”

33. Next the Court identifies Chapter 5 of the “Solicitors Guide to Professional Conduct 4th Edition (2022)” at page 61 which advises: “Solicitors owe a duty to do their best for their client. A solicitor also owes a duty to the court as an officer of the court. The proper administration of justice requires that the court is able to rely upon every lawyer who appears before it or who has dealings with it. A solicitor a) should promote and protect by all proper means, without fear or favour, the client’s best interests, b) should keep information about

clients confidential... , c) has an overriding duty to the court to ensure, in the public interest, that the proper and efficient administration of justice is achieved, and should assist the court in the administration of justice, and should not deceive, or knowingly or recklessly, mislead the court.”

34. The above rules are obligations which are linked to the statutory rights of regulated lawyers to represent a party. A self – representing litigant does not have the same obligations to the court. This explains why the Court will support and protect the independence and fearlessness of solicitors and barristers when they are attacked during the course of proceedings.

35. The defendant does not deny the right of the plaintiff to retain legal representation but she has evinced an intention to interfere with his choice. Denham J. (as she then was) at paras. 45 and 46 in *O’Brien v Personal Injuries Assessment Board* [2009] 3 IR 243 at para. 255 stated:

“[45] Legal representation is a right of special importance in common law jurisdictions where the relevant system is adversarial....

[46] Any restriction of the right to legal representation would have to be addressed clearly in legislation....”.

It is readily apparent that the defendant wishes to dissuade the plaintiff’s legal team from continuing to act for the plaintiff at the retrial. The defendant’s allegation of unlawful activity on the part of the plaintiff’s legal team may be pursued in a lawful and civil manner if she intends to persist in expressing those views.

36. As explained, if the plaintiff’s legal team are to institute proceedings, whether for defamation or otherwise, against the defendant, their independence at the retrial could be compromised having regard to the Codes of Conduct to which they are subject. It is in this context that the Court distinguishes its reliance on its inherent power to regulate the conduct

of the defendant. The Court is satisfied from uncontroverted evidence before it, that the defendant has sought to thwart the intention of the plaintiff to proceed to a retrial by her ad hominem campaign against individual members of the plaintiff's legal team.

37. The Court considers that its order made on 23 January 2024 is proportionate to the right of the defendant to express her views. The defendant, if she has any serious allegations to make, about members of the legal profession or of the judiciary, has the means to pursue same in a lawful and regulated manner. Neither party is entitled to interfere with the conduct or determination of these proceedings by seeking to court public opinion about the lawyers retained.

38. No effort was made by the defendant to explain why photographs of individual members of the plaintiff's legal team needed to be disseminated by her through her paper or on other platforms. The defendant has singularly failed to justify the sharing of images during her campaign of lampooning and criticism.

Final orders

39. Apart from the pending application on behalf of the plaintiff for leave to deliver an amended statement of claim, which is due to be heard on 5 March 2024, the following then will be the orders in respect of both notices of motion: -

(1) Strike out the applications for the orders sought in the notice of motion filed on 15 December 2023:

(2) Strike out the orders sought at paras. 1 and 2 of the notice of motion filed on 8 January 2024;

(3) Note that the plaintiff did not pursue the reliefs sought at paras. 3 and 4 of the notice of motion filed on 8 January 2024.

(4) The order of 23 January 2024 remains.

Costs

40. Subject to the exchange and filing within 7 days from the delivery of this judgment electronically, of written submissions limited to 1,000 words from the parties concerning the costs relating to the determination of each of these applications, the Court will on 5 March 2024 reserve the costs associated with both notices of motion for determination by the trial judge after the retrial. That trial judge will be in a better position than this Court at that stage to assess the conduct of the parties after the delivery of the verdict by the jury last November.