THE HIGH COURT

[2024] IEHC 24
[2023] 1818 P

BETWEEN

ARNAUD GAULTIER AND SUP PLIABLE LIMITED

PLAINTIFFS

AND

MARK REILLY

FIRST NAMED DEFENDANT

ÁINE Mc GUIGAN

SECOND NAMED DEFENDANT

AND

LOUISE SWORDS

THIRD NAMED DEFENDANT

JUDGMENT (No. 2) of Mr. Justice Cregan delivered on 11th January 2024.

Introduction - The first named plaintiff's application for recusal

1. The first named plaintiff, Mr. Gaultier, has brought a notice of motion in which he seeks a number of reliefs as follows:

1. An order for my recusal "by reason of subjective bias and/or lack of integrity and/or lack of competence";
2. An order setting aside the "purported judgments of the Honourable Mr. Justice Cregan delivered on 16th May, 2023 and 28th July, 2023" by reason of subjective bias and/or lack of integrity and/or lack of competence and undue process;
3. An order removing the third defendant as party to the proceedings;
4. An order giving liberty to amend his plenary summons within 21 days;

5. An extension of time to file his statement of claim.

2. In addition the following motions were also before the Court on 16th November, 2023:

(1) the first named defendant's motion to dismiss the second plaintiff's claim as against the first defendant as being frivolous, vexatious, unsustainable, bound to fail and/or an abuse of process; and

(2) the second named defendant's motion to dismiss the first and second named plaintiffs' claims as against the second defendant, on similar grounds.

The call-over of the Chancery List – 4 May, 2023

3. I think it is important, for the purposes of transparency, and also because of the allegations of Mr. Gaultier, that this judgment should record that I took the Chancery call-over list on Thursday 4th May, 2023 at 10.45 am, which was the normal call-over of the Chancery list on that day. Mr. Gaultier's case appeared in the list. I have since requested a transcript of the DAR of that hearing and I have arranged for this transcript to be circulated to all parties. I have read the transcript of that day's hearing. There was nothing untoward about the manner in which the matter was dealt with on that day. Mr. Gaultier did not appear at the first calling and it was put to second calling. Mr. Gaultier appeared at the second calling and indicated that he had a booklet of pleadings for the Court. The booklet of pleadings was handed into court and received by me. Mr. Gaultier indicated that his application was for injunctive relief. The defendants appeared, through counsel, and applied for an adjournment to put in replying affidavits. I directed that the defendants file affidavits within two weeks, by 15th May, 2023. Mr. Gaultier said that the matter was urgent and that he would not want to reply to these affidavits. As a result of Mr. Gaultier's request, I put the matter in for hearing on 16th May, 2023 as Mr. Gaultier stated that he was very anxious to get a hearing date as soon as possible.

4. Having made those orders, I had no further involvement in the case until the hearing of the injunction was assigned to me – eight days later.

5. Subsequently, on 12th May, 2023, this case was assigned to me, for hearing on Tuesday 16th May, 2023. It was assigned to me in the normal way that cases are assigned by the Chancery judge managing the list to other Chancery judges who are hearing cases in the Chancery list. Of course, it should go without saying that I did not request that this matter be assigned to me as I had never heard of Mr. Gaultier before. There was nothing untoward about the process and any suggestion by Mr. Gaultier that I sought this case because of his reputation, is unfounded. (This is dealt with in more detail below).

The plaintiffs' application for an injunction – the hearing on 16 May, 2023.

6. On 16th May, 2023, I heard the application for an interlocutory injunction brought by the first and second named plaintiffs against all three defendants. The hearing lasted the whole day. As an initial matter, the first and second named defendants objected that Mr. Gaultier had no legal authority to represent the second named plaintiff, a company owned or controlled by him. Because of the well-known rule in *Battle v. Irish Art Promotion Centre Limited* [1968] IR 252, and two subsequent definitive Supreme Court decisions on this matter, in *Allied Irish Bank v. Aqua Fresh Fish Limited* [2019] 1 IR 517 and *Gaultier v. Registrar of Companies* [2019] IESC 89, I delivered an *ex tempore* judgment on that issue on that day upholding the first and second named defendants' objections. As most of the interlocutory reliefs sought in the injunction were sought by the company, I refused those reliefs against all three defendants. I then considered the remainder of the injunctive reliefs sought by Mr. Gaultier against the third named defendant, his wife, and subsequently, in a second *ex tempore* judgment, I refused these reliefs also.

The plaintiff's application to revisit the judgment and the first recusal application – the hearing on 20 June, 2023.

7. However, a few days later, Mr. Gaultier appeared in court before me on an *ex parte* basis, with an application (i) to ask me to revisit my *ex tempore* judgment and (ii) an application that I should recuse myself. As the order had not yet been perfected, I directed the plaintiff to put all parties on notice of this application and I fixed a date for the hearing of this application for Tuesday 20th June, 2023. The matter was heard before me for a full day on 20th June, 2023.

8. The grounds for this application were set out in a lengthy submission filed by the first named plaintiff running to some twelve pages of which some five or six pages were devoted to submissions on why I should recuse myself in this case. I will come back to these submissions later in this judgment.

9. Given that Mr. Gaultier had made certain criticisms of the manner in which the case had been assigned, and heard, and had made an application for recusal, I directed that a transcript of the Digital Audio Recording ("DAR") of the hearing of the matter on 4th May, 2023 (when the matter was in the Chancery call over list) and of the hearing of 16th May, 2023 be prepared and a copy of the transcripts be made available to all parties.

10. At the hearing on 20th June, 2023, when I explained to Mr. Gaultier how the case had come to be listed before me, the handling of the Books of Pleadings and related matters, Mr. Gaultier withdrew his application that I should recuse myself. That left only the substantive issue as to whether I should revisit my judgment of 16th May, 2023. I delivered a written judgment in this matter on 28th July, 2023 and refused the application.

Hearing on 3rd October, 2023 – Costs and Directions

11. Having delivered my judgment on 28th July, 2023, I then adjourned the matter to consider the issue of costs and this matter came before me again on 3rd October, 2023.

Having heard the submissions of all parties in relation to costs, I decided that the first and second named defendants should be awarded their costs of the said application against Mr. Gaultier personally (such costs to be adjudicated in default of agreement).

12. As I had also been case managing the applications of the first and second defendants to strike out the plaintiff's claims, these matters were also considered by me on 3rd October, 2023. On that day I directed:

1. that Mr. Gaultier should have two weeks until Tuesday 17th October, 2023 to file his statement of claim to which Mr. Gautier replied: "Yes that's fine, I can organise that" and, in effect, consented to that order;
2. that Mr. Gaultier should have four weeks, i.e. by Tuesday 31st October, to file any replying affidavit to the defendants' motions if he wished to do so;
3. that the defendants had one further week, until 7th November, 2023 to file any replying affidavits if required; and
4. that the defendants' motions would be given a hearing date on Thursday 16th November, 2023 and that one full day would be set aside for the hearing of these applications.

13. I would emphasise that the defendants were understandably anxious for their motions to be heard as soon as possible and there was a canvassing of dates by the Court with the various parties as to what dates would be convenient for all parties for the hearing of these motions. Mr. Gaultier indicated that he was unavailable from 20 November, 2023 until the end of term This was clearly unsatisfactory as it meant that the defendants' motions would not be heard for the entire Michaelmas term. In the circumstances I fixed the date for hearing on 16 November, 2023. Mr. Gaultier consented to that date and never indicated that he would have any difficulties on that day.

14. At this hearing, Mr. Gaultier also harangued me yet again about my judgment of 28th July, 2023 and insisted that I had failed to address some of his submissions. I indicated to him that he had a right to appeal to the Court of Appeal and that was where those arguments should be made.

15. Mr. Gaultier appeared to be of the view that he could not appeal my decision to the Court of Appeal if some of his submissions were not addressed in my judgment. First, of course, that submission is clearly incorrect; if Mr. Gaultier believes that any of his submissions have not been properly addressed by this Court, he can of course make this a ground of appeal to the Court of Appeal; secondly, I gave a lengthy written judgment on this matter, in which I considered all of Mr. Gaultier's arguments in relation to the matter. Therefore I do not accept his submission that some, or any, of his arguments were not addressed. I simply found his submissions devoid of merit or of substance.

16. As set out above, on 3rd October, 2023 I directed Mr. Gaultier to file a statement of claim within two weeks. This was not done. Indeed Mr. Gaultier has been in persistent default of court orders in respect of the filing of a statement of claim.

The *ex parte* applications by the defendants – Monday 6 November, 2023

17. On Monday, the 6th November, 2023, counsel for the first and second defendants appeared before me, on an *ex parte* basis, for leave to mention this matter because, they said, of an issue which had arisen. Counsel were aware that Mr. Gaultier was not present and, quite properly, did not make any substantive application to me on that day in Mr. Gaultier's absence. On the basis of their application, I directed that the matter be listed before me the following Thursday 9th November, 2023. Mr. Gaultier was informed by email about this matter. Mr. Gaultier then appeared before me on an *ex parte* basis on Wednesday 8th November to say that he was unavailable on Thursday. In the circumstances, the matter was then put in for mention before me on Friday 10th November, 2023.

18. On Friday 10th November, 2023, counsel for the defendants complained that Mr. Gaultier had failed to comply with the order of the High Court directing him to file a statement of claim and that he had failed to file a replying affidavit, as he was directed to do, if he wished to file one. Mr. Gaultier complained about his workload, his health, the numerous other cases that he had before the courts and the necessity that he had to earn a living. In those circumstances, I extended the time within which he could file his statement of claim.

19. However Mr. Gaultier also indicated that he did not want the hearing to go ahead on 16th November, 2023 as he had to collect his children from Cavan on that day. He also indicated that he had some health issues. However, as there was no medical evidence before the court and, as I had already fixed the date for hearing on 16th November, with Mr. Gaultier's consent, I refused this application for an adjournment.

20. Mr. Gaultier also indicated that he wished to bring another application that I would recuse myself. In the circumstances, I gave him liberty to issue and serve such a recusal application to be made returnable before me on 16th November, 2023. This motion was subsequently issued and served.

The hearing of applications on 16 November 2023

21. Thus on 16 November, 2023, there were three applications before the Court. The first two were the defendants' applications to strike out the plaintiffs' cases and the third was the recusal (and other) applications by Mr. Gaultier In the circumstances I heard Mr. Gaultier's application that I should recuse myself first. The recusal application took almost the entirety of the day. As a result the defendant's applications were unable to proceed.

22. As is clear from the transcript of the hearing of 16th November, 2023, Mr. Gaultier made his submissions throughout the morning. I rose at 12.48pm to read the remainder of Mr.

Gaultier's affidavit over lunch. I resumed the hearing at 2.05pm. Mr. Gaultier was called but he was not in court.

23. Mr. Aylward BL, counsel for the first defendant, indicated that he had spoken to Mr. Gaultier just after court at one o'clock, and that Mr. Gaultier had indicated that he intended to ask the registrar to apply to log in remotely for the hearing at 2pm. The registrar quite properly indicated that it was not a matter for her but rather a matter for the Court.

24. Just before the lunch time break Mr. Gaultier indicated to the Court that he had a court order directing him to be at Cavan at 2.40 pm. This might have been Mr. Gaultier indicating to me that he would not be there in the afternoon – but this was not clear to me at the time.

25. It appears that Mr. Gaultier decided at 1 pm that he was no longer going to make his submissions in person before the Court and that he was going to continue his submissions by way of a remote hearing from his car. I did not receive any advance notice of this application by Mr. Gaultier I was then confronted with a situation where either I abandoned the hearing for the day (with the consequent waste of court time) or instead acceded to Mr. Gaultier's application to continue his submissions by way of remote hearing. In the circumstances I decided that the best use of court time would be to permit Mr. Gaultier to make his submissions remotely. In so doing I was conscious that all the parties had assembled and were ready to hear the application, that the application was part-heard, and that other cases would be disrupted if a further day had to be found to enable Mr. Gaultier to complete his submissions. In any event I acceded to his application to continue his submissions by remote hearing. It was, in my view, a completely unacceptable action by Mr. Gaultier and one which betokened an extreme level of discourtesy on the part of Mr. Gaultier towards the Court.

26. Mr. Gaultier had already made an application on Friday 10th November, 2023 for an adjournment of Thursday November 16th which I had refused. It was clear however that Mr.

Gaultier entirely ignored such a refusal and intended to conduct the hearing of the case on 16th November in whatever way he chose, with or without the consent of the Court.

27. Given that the hearing was *in camera*, I asked Mr. Gaultier to activate the video on his mobile phone to confirm that he was in the car on his own. He confirmed that he was alone in the car but he indicated that he had a technical issue and was unable to activate the video on his phone.

28. Mr. Gaultier continued his submissions for a period of time until the parties became aware that the children were now with Mr. Gaultier in his car and were in a position to hear the proceedings. Mr. Gaultier confirmed his children were in the car with him. I asked Mr. Gaultier why he did not disclose to the Court that the children were now in the car, given that these were *in camera* proceedings and that his wife was a party to those proceedings. His answer was that the issues he was now raising were issues of law and therefore there should be no difficulty about the children being in the car. I indicated to Mr. Gaultier that I regarded this as most improper, a breach of the "*in camera*" rule and that I intended to bring the hearing to an end. Mr. Gaultier indicated that he intended to drop his children off in five minutes and I indicated that I would resume the hearing in ten minutes time. When the hearing resumed, Mr. Gaultier had, apparently, fixed the technical problem and one could see from the video that he was alone in the car.

29. There is no doubt in my mind, that Mr. Gaultier deliberately breached the "*in camera*" rule and continued with the hearing whilst his children were in the car, without disclosing this to the Court and, in circumstances, where he indicated that his video was not working properly so that the Court was not in a position to see the situation for itself. Yet again, this shows an attempt by Mr. Gaultier to play "ducks and drakes" with the court and to conduct all hearings his way without regard to the interests of any of the other parties to the litigation. That is an extraordinary – and unacceptable – way to behave.

Application to amend plenary summons

30. With the consent of all parties present (i.e. the first and second defendants), I made an order giving Mr. Gaultier liberty to amend his plenary summons within 21 days. As this application also involved striking out the proceedings against the third named defendant, his wife, and as she was not present, I made an order striking out the proceedings against the third defendant but allowing her four weeks within which to appear before the Court to make such submissions in respect of costs, or other matters, if she wished to do so. No such application has been made.

31. I also extended the time to file the statement of claim by a further two weeks to 1st December, 2023.

Application to revisit my judgment

32. Mr. Gaultier also applied to request that I revisit my judgment on the "*Battle*" issue for a third time – on a matter which has been comprehensively decided by the Supreme Court in no less than two recent decisions, I refused that application. I regard such an application as so obtuse and lacking in merit that it can only be characterised as an abuse of process. Mr. Gaultier is completely aware that his proper course of action is to appeal the matter to the Court of Appeal. I fail to understand why he made a second application to ask me to revisit my judgment, let alone why he made a third such application.

The application for recusal

33. The application for recusal was grounded on the affidavit of Mr. Gaultier, setting out his grounds for his application. The affidavit runs to some ten pages. I note that Mr. Gaultier found the time to prepare this motion, his lengthy affidavit and exhibits, and the research required to bring this application, even though he failed to find the time to comply with repeated orders of this Court to file a statement of claim in an expeditious manner, in circumstances where he had sought an urgent injunction from the Court.

34. The headings of the grounds of his application for recusal were:

A. Subjective bias – demonstrated bias and ill will against me:

1. Difference of treatment of unrepresented litigants;

2. Difference of treatment of evidence;

3. With due regard to "my wife and mother of my children";

B. Impropriety and alleged lack of independence:

(1) Request to keep book of pleadings;

(2) Losing the book of pleadings'

(3) Justification of request for holding on to said book of pleadings;

(4) Condition of assignment of this motion;

(5) Whereabouts and circulation of the book of pleadings;

(6) Comments on him wasting the court's time'

C. Lack of integrity and diligence:

(1) In relation to the position of the second plaintiff;

(2) In relation to misquoting legal precedent;

D. Lack of confidence:

(1) Selective memory loss and capacity.

35. There is also, under the grounds for setting aside my judgments of the 16th May, 2023 and 28th July, 2023, an allegation that *"the possibility of Cregan J. to interfere (or tamper) with evidence is therein referred"*. I will deal with this ground also.

36. In summary, the submissions amount to a full - on assault by Mr. Gaultier on the Court's integrity, independence and competence. As such, they must be answered in full - not just for the satisfaction of Mr. Gaultier, who will never be satisfied - but in order to ensure that the administration of justice is not only done but is seen to be done.

Legal principles applicable to recusal applications

37. The legal principles on recusal were considered by the Court of Appeal in *Dowling v. The Minister for Finance and Permanent TSB Plc* [2023] IECA 93.

38. At paragraph 55-60 the court stated:

"Objective Bias

55. There was no real dispute as to the principles of domestic law in relation to objective bias, and the principles governing the recusal of judges (which is forward looking but essentially the other side of the same coin). The test for objective bias was recently fully explored in the judgment of Dunne J. in the Supreme Court in O'Driscoll (a minor) v. Hurley [2016] IESC 32.

56. Dunne J considered the authorities, including O'Callaghan v. Mahon [2008] 2 I.R. 514. In that case, Fennelly J. had held as follows:

> *'(a) objective bias is established, if a reasonable and fair minded objective observer, who is not unduly sensitive, but who is in possession of all the relevant facts, reasonably apprehends that there is a risk that the decision maker will not be fair and impartial;*
>
> *(b) the apprehensions of the actual affected party are not relevant;*
>
> *(c) objective bias may not be inferred from legal or other errors made within the decision making process; it is necessary to show the existence of something external to that process;*
>
> *(d) objective bias may be established by showing that the decision maker has made statements which, if applied to the case at issue, would effectively decide it or which show prejudice, hostility, or dislike towards one party or his witnesses.'*

57. Dunne J. cited with approval the test set out by Denham C.J. in Goode Concrete v. CRH Plc & Ors [2015] 2 ILRM 289 (at paragraph 54) as follows:

'...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."

58. Dunne J. noted that the tradition of recusal in the Irish courts is reflected in the Bangalore Principles of Judicial Conduct (United Nations 2002, adopted in Geneva 2003) 5, in which the formulation " may appear to a reasonable observer" was agreed upon on the basis that " a reasonable observer" would be both fair-minded and informed."

"60. In para. 46 Dunne J. quoted Denham J.'s words in Bula Ltd v. Tara Mines Ltd (No.6) [2000] 4 I.R. 412 at p. 449:

'A judge has a duty to sit and hear a case. However, in certain circumstances it is appropriate that he or she disqualify himself or herself from a particular case. The test is not whether that judge believes he or she would be impartial. Nor is it whether the judge or judges on a motion to set aside such a judgment believes the judge was or would be impartial. The test is objective. This has been analysed by the Constitutional Court of South African: President of the Republic of South Africa v. South African Rugby Football Union 1999 (4) S.A. 147 as follows:

'...the correct approach to this application for the recusal of members of this Court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to

persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour, and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reason, was not or will not be impartial.'

19. Dunne J. observed:

'It would be difficult to improve on the observations made in those passages to the responsibility of a judge in approaching an application for recusal. After all, the first duty of the judge is to sit and hear cases. The administration of justice would grind to a halt if judges regularly recused themselves by responding in an over scrupulous way to an invitation to recuse. <u>It is important to bear in mind that the test involved is an objective test and that the onus of establishing the grounds for recusal rest upon the applicant.</u>'" (emphasis added).

39. The Court of Appeal also stated at paragraph 69 of its judgment:

"69. Whilst we have no statutory provision that mandates that a judge withdraw in any defined circumstances, the advice set out in the Bangalore Principles relating to " Value 2 Impartiality" applies to Irish judges. In particular Irish judges will observe the advice on disqualification given in Value 2.5:

'2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

(a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) The judge previously served as a lawyer or was a material witness in the matter in controversy; or

(c) The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy;

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.'

70. Moreover the test of objective bias is a well-established and well-understood part of judge made law, and the awareness of judges that justice must be administered without fear or favour – and the declaration that they all make to that effect before taking up office — underscores the application of the test."

40. The issue of the principles applicable to recusal were also considered by the Court of Appeal in *Smith v. Cisco Systems Internetworking (Ireland) Ltd* [2023] IECA 186. In this case the appellant contended that he had "a reasonable apprehension of bias rather than asserting actual bias against" the relevant judge. Whelan J. states at para. 29 of her judgment:

"29. The onus of demonstrating apprehended bias lies upon the individual who alleges its existence. In each case, whether a reasonable apprehension of bias has been made out is dependent entirely on the facts of the case. It is an objective

test. As was observed by McMenamin J. in Goode Concrete v CRH Plc. [2015] IESC 70, [2015] 3 I.R. 493 at 553:-

'Applications of this type should not be lightly made without clear grounds.'

……

41. Whelan J. also stated at paragraph 32 of her judgment:

"32. There is a strong presumption of impartiality applicable to judges. It is referenced in texts such as Blackstone, Commentaries on the laws of England, Book 3 (Oxford: Clarendon, 1788) at 361. He observes:-

> *'The law will not suppose a possibility of bias in a judge who is already sworn to administer impartial justice and whose authority greatly depends on that presumption and idea.'"*

42. At paragraph 35 to 39 of her judgment Whelan J. sets out the Bangalore principles in relation to judicial independence, impartiality, integrity, equality, propriety, competence and diligence.

43. At paragraph 40 Whelan J. sets out the guidelines adopted by the Irish judiciary on conduct and ethics.

44. These Irish guidelines provide at paragraph 2.6 that:

*"**Obligation to consider a recusal application rests with judge concerned in the first instance***

> *'2.6 A judge who is requested by a party to recuse himself or herself, or who apprehends that there may be grounds for recusal, other than those grounds set out above, shall consider such issue dispassionately and without undue sensitivity. The proviso that recusal is not required if no other tribunal can be constituted or because of urgent circumstances continues to apply. While it is*

not possible to list all the criteria that might apply, the judge should, in particular, bear in mind the following guidance:

2.6.1 It is a duty of a judge to sit and hear cases.

2.6.2 A judge should recuse himself or herself if a reasonably objective and informed person would, on the correct facts, reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case. The reasonableness of such an apprehension must be assessed in the light of the constitutional declaration made by judges on taking up office, and their ability to fulfil that declaration by reason of their training and expertise. It must be assumed that they can clear their minds of irrelevant personal beliefs.

2.6.3 If a request for recusal is grounded upon an assertion of objective bias, the judge should remember that such a ground does not imply personal criticism but is concerned with the perception of partiality in the eyes of a reasonably objective and informed observer.

2.6.4 Objective bias is not to be inferred merely from the fact that a judge has made interim or interlocutory orders in the proceedings, or has presided over a trial that did not come to a final verdict, or may have made legal errors in that process.

2.6.5 Objective bias may be established by showing that the judge has acted in such a manner as to give rise to a reasonable apprehension that he or she will decide the case without proper consideration of the evidence and submissions.'"

45. At paragraph 41-43 of her judgment, Whelan J. stated as follows:

*"**Each application turns on its own facts***

41. Every recusal application falls to be decided on the facts and circumstances of the individual case. Acceding to such an application without a valid basis for same being established is not in the public interest. It results in a greater cost, excessive and undue delays and additional expenses. Whereas fanciful or tenuous objections must be disregarded, the threshold is not an especially high one in this jurisdiction. It is not necessary to show a likelihood or real danger of bias but rather a " reasonable apprehension" when the salient facts are viewed from the perspective of the fair-minded and reasonable objective observer.

The duty of a judge to hear and determine cases or appeals to which they have been assigned

42. In cases in which recusal is sought based on apprehended bias where no suggestion is made that the judge has any personal or pecuniary interest in litigation outcome or material nexus with a case, party or witness, a judge ought not lightly or automatically accede to a request for recusal merely on the basis of such a request having been made by one of the parties to the proceedings in the first instance. Rule 2.6.1 of the 2022 Guidelines, above, makes that clear. Judges do not get to pick and choose the cases or appeals they try but rather are assigned by the Court President.

43.. Judges ought generally to be reluctant to recuse themselves given the need to proceed with court business, avoid delays and make expeditious determinations, unless there are good reasons identified for acceding to a recusal application. For instance, in the Court of Appeal there is a limited number of judges. Acceding to requests for recusal on demand or for unsound reasons could quickly eliminate a substantial number of judges, potentially resulting in an appellant succeeding in hand picking a panel whose members may be assessed or perceived to be more sympathetic

to the litigant's position in the appeal. Such strategic applications are to be discouraged because they are calculated to undermine the administration of justice, facilitate forum shopping and ought not to be acceded to save where a valid basis is established."

46. I also note that Whelan J. has set out, at para. 44 (and following), the Irish position on recusal and I have considered the principles set out therein in this judgment.

Preliminary remarks on Recusal application

(i) All grounds previously put forward and then withdrawn

47. It is important to record in this judgment that Mr. Gaultier made a previous application on 20 June, 2023 to request that I should recuse myself. On that day I explained to Mr. Gaultier how the case had been assigned to me, how books of pleadings had been retained by the Court (and had not been lost) and other matters, and I had understood that Mr. Gaultier myself. However he now appears not to be satisfied and wishes to renew his application.

48. Indeed, counsel for the first defendant carefully went through the grounds in the second application for recusal and compared them to the grounds in the first application for recusal and they are identical. I am satisfied therefore that this second application for recusal is, in substance, based on exactly the same grounds as the first application for recusal which Mr. Gaultier decided to withdraw on 20 June, 2023.

(ii) Application for recusal made after Mr. Gaultier was unsuccessful in his application for an injunction.

49. It is important to note that Mr. Gaultier made his first application for recusal on 20 June, 2023 after he had lost his application for an injunction at the hearing on 16 May, 2023.

50. It is also important to note that Mr. Gaultier has brought his second application for recusal after Mr. Gaultier had suffered two further defeats: first, in relation to his failed

application to ask me to revisit my judgment and secondly after he had suffered the normal award of a costs order against him. I have no doubt therefore that Mr. Gaultier decided to bring a second application to ask me to recuse myself because he had now lost on three separate occasions on three separate applications before me. It is a blatant attempt to find a different judge to hear his case.

Mr. Gaultier's first argument for recusal - The manner in which the case was assigned to me.

51. Mr. Gaultier sought to argue that his case was assigned to this Court in some untoward manner.

52. At paragraph 16 of Mr. Gaultier's affidavit sworn on the 11th November, 2023, grounding the application for recusal, Mr. Gaultier states as follows:

> "B4 Condition of assignment of this motion
>
> *16. Having been recently reminded by the head registrar of the Court of Appeal that assignment of a case is part of the administration of justice, I am also requesting to be informed under the conditions of the assignment of this motion, in my absence, despite the requirement of Article 34.1 of the Constitution".*

53. Mr. Gaultier elaborated on this in his oral submissions to the Court on 16th November, 2023. As the transcript shows at page 19, he said "*The case was assigned to yourself in my absence".*

> Judge: *Yes I explained that to you.*
>
> Mr. Gaultier: *Yes but the … I have been told by the registrar, the registrar of the Court of Appeal that the assignment of a case is part of the administration of justice.*
>
> Judge: *I see.*
>
> Mr. Gaultier: *And therefore as according to the Constitution a case should be made in public and allow the parties to object to same. So in this section…*

Judge: What's the point you are making in relation to that?

54. Mr. Gaultier then said at page 20:

"*My contention is and was that there is possibility, a strong possibility knowing my reputation in this court that judges can take a case for themselves as Mr. Justice Noonan did in the past and therefore try to for whatever reason, for the merit or because they want – and then prepare themselves in advance"*

Judge: "*So"*

Mr. Gaultier: *"Share the case with other judges to debate on this because what this matter is or became by the shenanigans used by my friends is the ultimate and I use the work ultimate because its going to be the last, so ultimate challenge to the rule in Battle and I've won it."*

Judge: *"So you say there is a strong possibility knowing your reputation in the court that judges can take the case for themselves, is that what you are saying?"*

Mr. Gaultier: *"Yes. Or that the case, that the missing book of pleadings, the missing book of pleading…"*

Judge: *"But Mr. Gaultier"*

Mr. Gaultier:*"– may have been circulated"*

Judge: *"I knew nothing about you until you came before me for the first time. I had never heard of your name. So I'd never heard of your name so*

Mr. Gaultier:*" the thing is the book of pleadings…"*

Judge: "*Are you saying that I asked for your case to be assigned to me because I knew about your reputation in the courts? Is that the allegation?"*

Mr. Gaultier: *"Yes it is the allegation, on the basis that you asked for the book of pleading before the case was assigned to you."*

Judge: *"But sure, that happens every day of the week. I always try and read the papers of a case that's assigned to me".*

Mr. Gaultier: *"But before it was assigned to you".*

Judge: *"No, I don't think that's – no, I would have asked for – I think this is all in the transcript I have a recollection"*

Mr. Gaultier: *"Yes, the transcript, the –"*

Judge: *"I have a recollection Mr. Gaultier that I was concerned about the issues that you – the allegations you were making, that I directed that a transcript of the date that the matter was before me was made up and circulated to all parties including you and I thought I had explained to you that the case had been assigned to me and I thought when you heard that explanation you were satisfied and that as a result of that you withdrew your application to me to recuse myself. Is that not right?"*

Mr. Gaultier: *"Yes".*

Judge: *"So"*

Mr. Gaultier: *"And"*

Judge*: "But now you are making the same application a second time?"*

Mr. Gaultier*: "No"*

Judge: *"Ok"*

Mr. Gaultier: *"I didn't make a first application the first time. I withdrew it."*

55. As Allen J. stated in *Smith v. Cisco Systems Internetworking (Ireland) Ltd* [2023] IECA 186 at para. 51:

"The informed observer will be familiar with the allocation of work amongst the judges of the relevant court. He or she will know that judges do not get to choose the cases which are assigned to them. In the case of some High Court lists and in every case in the Court of Appeal, he or she will know that the judge will have been

assigned some time in advance of the scheduled hearing date and may have undertaken a good deal of reading in preparation for the oral hearing."

56. I agree with the views of Allen J. set out therein. In the present case Mr. Gaultier's case was assigned to me in the normal way; I did not get to choose it nor did I request that it be assigned to me. Likewise, the case was assigned to me a few days in advance of the scheduled hearing day, so that I could read the papers in advance of the injunction application, which I did.

57. All these matters were explained to Mr. Gaultier at the hearing on 20th June, 2023 and therefore for him to be "re-visiting" this issue seems to me to be a considerable waste of court time.

58. In any event, I am of the view that there was nothing untoward about the assignment of this case to me on 4th May, 2023 or 16th May, 2023, or indeed thereafter, and Mr. Gaultier's argument on this is unfounded. It is certainly not a ground on which I should recuse myself.

Mr. Gaultier's second argument for recusal - the Books of Pleadings issue

59. Mr. Gaultier makes a number of allegations of supposed impropriety in relation to the books of pleadings in this matter. The grounds of this alleged impropriety and alleged lack of independence are stated to be:

1. *"The request to keep the book of pleadings";*
2. *"Losing the book of pleadings";*
3. *"Justifications of your request for holding on to the said book of pleadings";*
4. *"Whereabouts and circulation of the missing book of pleadings".*

60. It is difficult to make out exactly what complaint Mr. Gaultier is making in this regard but it appears to be that he is suggesting that there was something irregular in the handling and management of his book of pleadings.

61. On Thursday 4th May, 2023, at the call-over, Mr. Gaultier indicated that he had a booklet of papers for the Court. This book of papers was handed in by Mr. Gaultier to the registrar who handed them to me. I had the book of papers in front of me to consider the application for an injunction brought by Mr. Gaultier, the applications for adjournments made by both defendants, and Mr. Gaultier's reply.

62. When the application had been disposed of, I indicated that the book of papers could be returned to Mr. Gaultier. However, on realising that Mr. Gaultier was a lay litigant and that he would have to lodge a book of papers with the List Room, I requested him to hand back the book of papers to the registrar so that they could be retained in the List Room, to be given to the judge to whom the case was assigned. This was done in ease of Mr. Gaultier so he would not have to lodge the books in the Central Office.

63. When the defendants filed their affidavits, their affidavits were then added to the booklet of papers. After the case had been assigned to me, and some days before the 16th May, 2023, these papers were then collected by my judicial assistant and brought to my chambers so that I could read the papers in advance of the hearing, as is normal practice. There is no mystery about this. There was no missing book of papers; the papers were never mislaid, as Mr. Gaultier seems to suspect.

64. I am satisfied that Mr. Gaultier's allegations in this regard are without foundation and certainly are not grounds upon which I should recuse myself.

Mr. Gaultier's third argument for recusal - the issues in relation to the Digital Audio Recordings (the DAR).

65. Mr. Gaultier has also made various allegations in relation to the DAR. Although Mr. Gaultier in his affidavit appeared to set this forth as a ground for setting aside my judgment it appears that Mr. Gaultier is also relying on this ground as a reason why I should recuse myself. In his affidavit he states as follows:

"36. Cregan J. follows an undue process by failing to disclose that he had the opportunity and the entitlement to review and approve the DAR transcript before circulating same to the parties.

37. In the situation where there was an application for Cregan J.'s refusal, the possibility of Cregan J. to interfere (or tamper) with evidence that the first plaintiff may rely on for the said application for recusal is short of the requirement of due process rendering the following hearing unfair and the resulting judgment an order void ab initio.

38. Possibly under Cregan J.'s direction, the court registrar wrongly asserted that she could not share the said transcript she had received without confirmation of the parties email addresses at 5pm on Friday 16th June, 2023. The DAR transcripts was withheld from the parties until 6.23pm on the eve of the hearing. On the day of the hearing, the court registrar went further confirming the reason of the late delivery of the transcript as a "need to confirm the email addresses" this may be construed as an attempt to deceive. But most importantly, it did not give the first plaintiff, an unrepresented litigant, enough time to consider same. This is further short of the requirement of due process rendering the following hearing unfair and the resulting judgment and order void ab initio".

66. The facts of the case however show a different picture. First, given that Mr. Gaultier was making a big issue about the matters outlined above, I directed, in the interests of the proper and transparent administration of justice, that transcript copies of the DAR of the 4th May and 16th May be prepared – at the expense of the tax payer – to be circulated to all parties and of course, to me. This was done solely and exclusively to assuage any concerns that Mr. Gaultier might have about the conduct of his case.

67. Secondly, given that Mr. Gaultier demanded that I should revisit my judgment, I needed a transcript of my *ex tempore* judgment from the DAR. When I received the transcript of the DAR, I then copied over the relevant section (on my *ex tempore* judgment) to create this as a stand-alone document – an *ex tempore* judgment. I then revised this document for accuracy, typographical errors and clarity. I believe it is normal practice for judges to do this when revising and correcting *ex tempore* judgments so that they are available if required for the parties (and, if necessary, the Court of Appeal) to ensure that there is no doubt about the exact terms of the *ex tempore* judgment of the High Court judge. The full text of my revised *ex tempore* judgment was then set out in my judgment of 28th July, 2023, as is clear from the terms of that written judgment.

68. However, it should, of course, go without saying that I did not make any changes to any other aspect of the transcript apart from my *ex tempore* judgment. The transcript of the DAR remains exactly as it was transcribed. Indeed, the transcript of my *ex tempore* remarks also remains exactly as it was transcribed. What has been amended is the *ex tempore* judgment as copied over and set out in my judgment of 28th July, 2023. There was no attempt to amend the transcript of the DAR in relation to the evidence. Mr. Gaultier's allegations of tampering with the evidence are completely ludicrous and utterly without foundation. It is another of the wild allegations that Mr. Gaultier insists in making in these proceedings.

69. In relation to the emailing of the transcript to all parties, it is clear that the court registrar, out of an abundance of caution, and because the matter was heard *in camera*, with the identity of all parties redacted, quite properly emailed all parties before she sent out the transcript to ensure that she was sending it to the correct email addresses. For Mr. Gaultier to say that *"This may be construed as an attempt to deceive"* is a deliberate falsification of the facts. There is absolutely no justification for Mr. Gaultier to make such wild and unsubstantiated allegations against the court registrar who was simply carrying out her

functions assiduously and diligently, and it is most improper that Mr. Gaultier would seek to abuse his position as a lay litigant to make allegations which, in any other context, could be regarded as defamatory.

70. As regards Mr. Gaultier's complaint that he did not have enough time to consider the transcript, again that is an allegation utterly without foundation. Mr. Gaultier was present throughout the entirety of the hearings on the 4th May and the 16th May and therefore was well aware of what happened on those days.

71. In any event, I am satisfied that these nonsensical and wild allegations do not constitute sufficient grounds for me to recuse myself.

Mr. Gaultier's fourth argument for recusal – different treatment by the Court of submissions by him and third named defendant.

72. Mr. Gaultier's fourth argument for my supposed "demonstrated bias and ill will" against him was, apparently, that I treated Mr. Gaultier and Ms. Swords, the third named defendant, differently in how I considered their submissions.

73. The essence of this complaint is that Mr. Gaultier appears to complain that I *"accepted the third defendant's submissions as if they were evidence, without any exhibit or material documentation. Doing so, Cregan J. failed to ask or to make oath before doing so or to ask for any material documentation which he may have".*

74. Again however, in my view, this criticism is misconceived. The relevant affidavits were submitted by the various parties and were read by me before the hearing on 16 May, 2023. The third named defendant did not file an affidavit. I then heard submissions by Mr. Gaultier and submissions by the first and second defendants, (which submissions were directed at the argument that Mr. Gaultier should not have any entitlement to represent the second named plaintiff company). I then heard submissions from the third named defendant on the issues in the injunction application by Mr. Gaultier which were relevant to her. The

third named defendant's submissions were brief and to the point –particularly as she was not legally represented. As happens often in such applications, particularly where there are lay litigants, I accepted the submissions including certain submissions on facts, *de bene esse* ("for what it's worth"). I would note however that Mr. Gaultier never sought to cross-examine Ms. Swords on the day of the hearing. Moreover the Court did not treat Ms. Swords any differently from Mr. Gaultier. I also heard submissions from Mr. Gaultier, which included references to facts, in the normal way.

75. Moreover, it should be noted that Ms. Swords, initially did have a solicitor, (the second defendant), at the start of this dispute but was forced to accept a situation where Mr. Gaultier then sued her solicitor and, as a result, her solicitor had to step aside. Ms. Swords said that she had applied for legal aid but that it would take four months for the process to be finalised. She said that it was hard for her to know what to do in terms of putting in an affidavit when she did not have legal representation.

76. Mr. Gaultier also says that he objected "fiercely" about my *"Battle"* ruling, refusing to allow him to represent the company against the first and second defendants, because it left the third defendant exposed to take all the blame. First, my ruling refusing Mr. Gaultier liberty to represent the second plaintiff company is a legal rule of long standing which has been the subject of three recent Supreme Court decisions; it was not a rule made up by me but rather a rule of the Supreme Court, applied by me, as I am bound to do; secondly, if the consequence of that leaves the third defendant "exposed to take all the blame", that is a result of Mr. Gaultier issuing proceedings against the third named defendant. It has nothing to do with the application of the rule of law that Mr. Gaultier cannot represent the second plaintiff's company.

77. So it is simply not correct to say that the Court was favouring Ms. Swords as the third defendant, any more than I favoured Mr. Gaultier – to whom I have afforded enormous

latitude. As I indicated in the transcript on 20th June, 2023, the Court was trying to facilitate Mr. Gaultier as a lay litigant and the third defendant as a lay litigant. It is often the case that courts hear such submissions from lay litigants and consider such submissions *de bene esse* in order to try and move the application forward.

78. I am of the view that this argument also is without merit and certainly is not a ground on which I should recuse myself.

Mr. Gaultier's fifth argument for recusal- lack of integrity, competence and diligence

79. Mr. Gaultier also criticised my lack of competence and lack of diligence, apparently on the grounds that I had not fully taken into account his submissions on *An Garda Siochana v. The Workplace Relations Commission*. As this was now in substance, an attempt by Mr. Gaultier to relitigate, for the third time, the issues as to why I held that he could not represent his company, I do not propose to say anything more in relation to this matter. It is quite clear that any argument which Mr. Gaultier wishes to make in relation to these matters are matters for his appeal to the Court of Appeal. They are however not grounds upon which I should recuse myself.

80. Moreover, Mr. Gaultier appears to suggest that I have not dealt with his arguments in relation to *An Garda Siochana v. WRC*. However, at paragraphs 40 and 41 of my judgment, I did deal with the issue of *An Garda Siochana v. WRC* and I stated that the Supreme Court had in substance held, in *G. v. Register of Companies*, that the rule in *Battle* is a valid rule and that it does not contravene any EU law which was cited to it in argument. I am clearly bound by the decisions of the Supreme Court in this matter. I fail to understand therefore Mr. Gaultier's arguments on this point.

81. Mr. Gaultier also sought to contend that my refusal to address this point somehow illustrated a lack of impartiality. I do not accept this submission. I indicated, in my written judgment of 28th July, 2023, all the grounds upon which I rejected Mr. Gaultier's application

to revisit my judgment of 16th May, 2023. I know that Mr. Gaultier does not agree with some of those reasons (although I also note that he indicated that he understood and agreed with 90% of my reasoning). However these clearly are matters for Mr. Gaultier to argue before the Court of Appeal – not grounds on which I should recuse myself.

82. Mr. Aylward BL for the second defendant referred to Mr. Gaultier's allegations of lack of integrity and lack of diligence on the part of the Court and submitted:

> *"I think they are allegations that should be withdrawn frankly. The integrity of this court is unimpeachable and as for the alleged lack of diligence, I mean if matters were not so serious it would be laughable. Mr. Gaultier is here now for the third time trying to rerun matters. This court delivered a very extensive ex tempore judgment on 16th May. Mr. Gaultier convinced this court to review matters for a second time and this court did so. It sat for the best part of a day, read submissions and then delivered a reserved judgment. There was a full hearing and then on 3rd October we had a lengthy hearing dealing with directions and costs, another lengthy hearing last Friday. The simplest of things in this case takes on average an hour. How is there a lack of diligence on the part of the court. If anything the court has been too flexible – and I say this with respect but too flexible to Mr. Gaultier and the old adage, give them an inch they take a mile, that sadly now seems to be playing out with Mr. Gaultier today's conduct being another example of it.*
>
> *As for there is an allegation of a lack of competence and selective loss of memory, I think that allegation is outrageous, disrespectful and frankly rude and it should be withdrawn. It shows a complete lack of respect and there is simply no basis for it."*

83. I agree with these submissions. I am of the view that these allegations have no basis in fact. These do not constitute grounds for me to recuse myself.

Mr. Gaultier's sixth argument for recusal – subjective and/or objective bias

84. I am satisfied that no question of objective or subjective bias arises in this case.

85. I should add for the record that I had never heard of Mr. Gaultier or his company before his case was mentioned in the Chancery call over list on 4th May, 2023.

86. As Mr. Aylward BL for the first defendant submitted, given that Mr. Gaultier acknowledged and accepted that these grounds did not warrant a recusal of the Court as at 20th June, 2023, it cannot rationally be said that they warrant a recusal in November. I agree with this submission.

87. Mr. Aylward BL for the second defendant also submitted that he did not understand what point was being made to ground the claim of subjective bias. There was no allegation that the Court knew any of the parties; there was no allegation that the Court had a pecuniary interest in the matter and there was no allegation that the Court has any interest in the outcome of the matter. Indeed Mr. Aylward BL submitted it is clear that the more one heard Mr. Gaultier's submissions on recusal, they were grounded upon the fact that he was dissatisfied with the reasoned judgment which he had received on 16th May, 2023, 28th July, 2023 and the award of costs against him on 3rd October, 2023. I agree with these submissons.

Mr. Gaultier's other minor arguments - wasting the court's time.

88. Mr. Gaultier seemed to suggest that I should recuse myself because I had made some comments that Mr. Gaultier was wasting the court's time. However, it is absolutely clear from the matters set out in this judgment that Mr. Gaultier is arguing and rearguing the same point again and again and again, even after the Court has decided these matters against him. Insofar as he seeks to relitigate again and again matters which are more properly the subject of submissions to the Court of Appeal, then he is indeed wasting the court's time. It is not only that he is wasting the court's time but he is also imposing onerous legal costs on his opponents.

Submissions by first and second defendants – recusal application was an abuse of process

89. Mr. Freeman BL, on behalf of the second defendant, submitted that this recusal application was itself an abuse of process, given that it had been run before, strategically withdrawn, and was now being strategically resurrected. He also criticised Mr. Gaultier for "gaming" the system to ensure that the defendant's motions were delayed and making strategic decisions as to what court directions to comply with, or not comply with, so as to defeat the orderly conduct of the case management of the proceedings. I agree with those submissions.

90. Mr. Freeman characterised Mr. Gaultier's delays in filing a statement of claim, his constant questioning and re-questioning of court decisions and his second application for a recusal as *"an endlessly circular loop driven by emotion and rage on the part of the first named plaintiff which is just – that's not the conduct of litigation and at some point the first named plaintiff has to make contact with reality… I should say that the first named plaintiff is not the only person before the court. He made great play about how upset he was, how he didn't feel able to participate in court hearings because of his emotions. That is not litigation. The Superior Courts have said litigation is a tough business and one can't simply opt in and opt out as one's emotions permit. So I brought a motion to strike out and that has been gamed. The first named plaintiff has carefully gamed the court's directions and that motion to avoid the hearing of that".*

91. I agree with these submissions. I have no doubt that there was nothing between the first recusal application and the second recusal application which would justify Mr. Gaultier bringing the second recusal application and insisting that it be heard in advance of the two applications to strike out the proceedings, except for his desire to thwart the proper case management of these proceedings and to delay the hearing of both of these applications. In

other words, I am of the view that the bringing of the second recusal application was in itself a further manifestation of Mr. Gaultier's abuse of the court's processes for his own ends.

92. There is no doubt in my mind that Mr. Gaultier has consistently and persistently "gamed" the system to conduct this litigation in the way that he wishes to do so, rather than in an honest and bona fide attempt to comply with court directions. He has breached court direction after court direction in relation to the filing of a statement of claim; he has absented himself from court half-way through his submissions, without the leave of the Court, thus forcing a continuation of the court application by means of a remote hearing; he has conducted that remote hearing from his car and he failed to inform the Court that his children were now in the car thereby breaching the *in camera* rule.

93. Mr. Freeman also submitted that this litigation was being conducted by the plaintiff with *"a thread of contempt for everyone except the first named plaintiff running through it"*. Mr. Freeman also submitted that by contempt he meant *"contempt in the non-technical sense, in the terms of the needling and disrespect and abrasiveness of correspondence and submissions in court, and contempt in the technical sense in terms of the studied contempt that the first named plaintiff has shown for the court but that is a matter for the court".* I agree with this submission also.

94. Mr. Freeman submitted that *"the studied contempt for the court is the characterisation of the court's actions as lacking in integrity and the submission that there was an attempt to delay, improperly delay delivery of the DAR so as to disadvantage a litigant and the repeated description of orders of the court as purported orders".* Mr. Freeman also submitted that *"it seems that he feels entirely free to vituperate and abuse and make serious allegations against other people and most importantly the court from a position of some immunity".* I agree with these submissions.

95. Mr. Freeman submitted that Mr. Gaultier heard the Court's directions and thought *"Well, I'm going to conduct this litigation as I see fit and I will attend or not attend court entirely as it suits me… so whether or not its contempt in the face of the court in the technical sense, it just shows the most studied disregard for the directions of the court and for the proper conduct of litigation and it certainly an abuse. It's abusive, it's oppressive and it's an abuse of process".* I agree with this submission also.

96. Mr. Freeman also submitted that the grounds for recusal set out in Mr. Gaultier's affidavit *"are just a tired rehash of material that the court has heard before on several occasions now"* and that it was *"also contemptuous in the observations on the court's integrity and the potential for the court to interfere with evidence".* Again, I agree with this submission.

97. Mr. Gaultier indicated to the Court – in express terms – that in relation to complying with court orders about the progress and case management of this case, he had a different order of priorities. He indicated that his first priority was his health; his second priority was his own work; his third priority was his children and his fourth priority was to comply with orders of the Court. He submitted that he was not in a position to comply with the order to file a statement of claim within the period directed for these reasons. This of course is nonsense. Mr. Gaultier chose not to comply with a number of orders of the Court directing him to file a statement of claim within a period of time to which he consented, and instead put his energies into preparing a detailed notice of motion and affidavit on the recusal application.

98. It is surprising that, having withdrawn his recusal application in June, he now seeks to re-argue the recusal application a second time based on exactly the same grounds. This however is Mr. Gaultier's pattern as to how he conducts litigation. For example, having lost the point on his legal right to represent his company, he asked me to revisit the issue which

took another full day. I note that he made similar applications in other cases. He has now asked me for a third time to reconsider the "*Battle"* issue when it is clearly a matter for his appeal. Likewise, having opened his recusal application on 20th June, 2023 and having heard my observations and explanations as to how cases were assigned and the like, he then withdrew his application for recusal. Then, having lost a further two applications, he has now brought a second application for recusal. In constantly repeating these applications, he is forcing the defendants to come into court to defend utterly oppressive applications which result in significant costs being incurred by the first and second defendants, not to mention the waste of court time.

Conclusion

99. In the circumstances I will refuse the application that I should recuse myself and I shall now consider the motions of the first and second defendant to strikeout the plaintiff's claims against them.

Addendum

100. Given that Mr. Gaultier discontinued the proceedings against the third defendant, (his wife,) all parties agreed that my order made at the commencement of these proceedings, that the proceedings be heard *in camera* (with the identities of the parties redacted) could be lifted. I made such an order on 17 January 2024.

_____