

THE HIGH COURT

[2020/5081P]

BETWEEN

LIAM LAPPIN

PLAINTIFF

AND

MEDIAHUIS UK LIMITED, SUZANNE BREEN AND RUTH DUDLEY EDWARDS

DEFENDANTS

JUDGMENT of Mr. Justice Charles Meenan delivered on the 29th day of November

2023

Introduction: -

1. The plaintiff is a schoolteacher and a Sinn Féin constituency organiser. On 1 March 2020, the Sunday Life newspaper (then owned by a predecessor of the first named defendant) published in both its print and digital online edition an article written by the second named defendant. The article was accompanied by a number of photographs, one of which included the plaintiff. The plaintiff was neither named in the article nor identified in any of the photographs. The photograph in which the plaintiff appeared was taken some months earlier at the Sinn Féin Newry and Armagh Christmas party. Apparently, this photograph also appeared on a Sinn Féin website. Present in the said photograph is Mr. Frank McCabe, described as “Officer Commanding’ (OC) of the IRA in South Armagh –”.

2. On 2 March 2020, the third named defendant, an occasional contributor to the Sunday Life, sent a tweet with a link to the said article and photographs with accompanying comments.

3. On 17 August 2020, the plaintiff commenced proceedings seeking damages for, *inter alia*, defamation and injurious falsehood in respect of both the said article and photograph published in the newspaper (and online) and the tweet. In the course of the statement of claim, delivered 2 September 2020, the plaintiff claimed that the article and accompanying photograph in which he appeared meant, in their ordinary meaning and innuendo that: -

“.. The plaintiff is a member of a criminal and terrorist organisation operating under the name and style of the IRA.”

4. The application before the Court was brought by the first and second named defendants seeking to dismiss part of the plaintiff’s claim pursuant to the provisions of ss. 14 and 42 of the Defamation Act 2009 (the Act of 2009) as it relates to the article and photographs published (in print and online) on 1 March 2020. Though served with the motion papers, the third named defendant, who is separately represented, did not take part in the application. The legal relationship between the first named defendant and the third named defendant, the issue of vicarious liability, was referred to in the course of the application but it is not necessary to determine this issue at this time.

Article and photographs: -

5. The article and photographs are printed over pages 8 and 9 of the newspaper. There are four photographs: -

(a) The main photograph consists of a group of some fourteen people, including the plaintiff, taken at the Sinn Féin Newry and Armagh Christmas party. The social nature of the photograph is evident in that one person is holding a drink and there are other drinks on nearby tables. There are clear red circles around two persons in the said photograph, being Conor Murphy MLA (then Finance

Minister) and the said Frank McCabe. The photograph has the following caption: -

“Pals: Conor Murphy (circled left) and Frank McCabe (circled right) out in a restaurant with friends ..”

(b) On the left (p. 8) there is a photograph of the late Paul Quinn who, at the age of 21, was murdered in a particularly brutal fashion. On the right (p. 9) is a photograph of his mother, Breege Quinn.

(c) Also on p. 8 is another photograph of Conor Murphy and Frank McCabe apparently taken at another social occasion. This photograph has the caption:-

“In Good Spirits: Conor Murphy (left) and Frank McCabe have a laugh at a dinner. Above left: murder victim Paul Quinn.”

6. There are three headlines. “The strap” headline over both pages 8 and 9, reads: -

“EXCLUSIVE SINN FÉIN MAN SEEN SOCIALISING WITH IRA CHIEF WHOSE GANG IS ACCUSED OVER ATTACK”

The main headline (on p. 8) reads: -

“MURPHY AND THE PROVO BOSS LINKED TO QUINN MURDER”

The third headline, under the photograph in which the plaintiff appears, reads: -

“Son of South Armagh “OC” clashed with victim just weeks before he was bludgeoned to death”

7. The accompanying article, written by the second named defendant, appears over both pages 8 and 9. Murphy and McCabe, who had red rings around them in the main photograph, feature in the article. The article commences: -

“This is Sinn Féin Finance Minister Conor Murphy with the IRA commander whose gang members are accused of murdering Paul Quinn.

Mr. Murphy is photographed enjoying a meal and drinks with Frank “One Shot” McCabe, and also socialising with him at the Sinn Féin Newry and Armagh Christmas party just two months ago.

McCabe was the ‘officer commanding’ (OC) of the IRA in South Armagh when its members lured the 21-year-old Cullhanna man to a barn in Oran, Co Monaghan, and beat him to death with iron bars and nail-studded cudgels.

It must be stressed that there is no suggestion that he played a role in the actual killing in October 2007.

He is also photographed with him at a party in Newry just days before Christmas. The Crossmaglen grandfather is a hugely influential figure in the border area and is a key Sinn Féin supporter. ...”

8. The article outlines the events that may have led to the murder of Paul Quinn and gives an account of the brutality of the murder and the steps taken to remove any forensic evidence from the scene of the crime.
9. The article also refers to the various public pronouncements, including an apology to the Quinn family, which Conor Murphy has given concerning the said murder.
10. At no stage in the article was the plaintiff either identified or referred to.

The Defamation Claim: -

11. For the purposes of this application the first and second named defendants refer to particular sections of the Statement of Claim: -

“2b At all material times, by innuendo the words written, and photographic image published in its ordinary and natural meaning was understood to mean that (the plaintiff) (sic) member of a criminal terrorist murder gang.”

and;

“2c The words and photographic image published directly and/or indirectly describes the plaintiff as a member of a criminal terrorist murder gang.”

and;

3 The words and tone of the published statements and photograph image in their natural and ordinary meaning and/or by innuendo convey the following:

- “(a) that the plaintiff is a criminal murderer;
- (b) that the plaintiff was a member of a criminal gang, who conspired to murder and did murder Paul Quinn;
- (c) That the plaintiff conspires with other criminal murderers to commit acts of murder;
- (d) that the plaintiff was involved in a criminal and terrorist act of murder;
- (e) that the plaintiff conspired with other terrorist gang members to commit criminal and terrorist acts;
- (f) that the plaintiff is a blackguard;
- (g) that the plaintiff is a member of a criminal and terrorist organisation operating under the name and style of the IRA;
- (h) that the plaintiff is a person of low moral character and ill-repute;
- (i) that the plaintiff has a record of serious criminality;
- (j) that the plaintiff wilfully perverts the course of justice;
- (k) that the plaintiff is untrustworthy;
- (l) that the plaintiff is a member of a criminal terrorist gang responsible for murder;
- (m) that the plaintiff’s reputation has been lowered in the eyes of reasonable members of society and has been brought into public scandal, odium and contempt;”

The Injurious Falsehood claim: -

12. Other than seeking damages for injurious falsehood, the only reference to injurious falsehood is at para. 2d which reads: -

“2d. The malicious and defamatory publication of words with the photographic image seeks to describe and identify the plaintiff as a criminal murder gang member for purely negative, derogatory and defamatory purposes.”

Other Claims: -

13. The plaintiff also claims damages for “*breach of privacy and breach of the plaintiff’s data*”. Also, as referred to previously, the plaintiff claims damages for defamation and injurious falsehood in respect of the third named defendant’s tweet.

The Application: -

14. The first and second named defendants sought the following reliefs by way of notice of motion: -

- “(1) An order pursuant to s. 14 of the Defamation Act 2009 that the words and images and/or statements comprised in the article published on 1 March 2020 under the headline ‘Murphy and the provo boss linked to Quinn murder’ and sub-headline ‘Exclusive: Sinn Féin man seen socialising with IRA chief whose gang is accused over attack’ are not reasonably capable of bearing the imputation pleaded by the plaintiff, namely the meanings pleaded at paragraphs 2b, 2c and 3 in the Statement of Claim.
- (2) An order dismissing such part of the claim as alleges that the article published on 1 March 2020 was defamatory or dismissal of such portion of the main claim as this court shall deem fit.
- (3) An order pursuant to Order 19, rule 28 RSC and/or pursuant to the court’s inherent jurisdiction striking out the plaintiff’s claim for injurious falsehood

(and/or malicious falsehood) on the ground that it discloses no reasonable cause of action and/or is bound to fail”.

Applicable law: -

15. Section 14 of the Act of 2009 provides: -

“14(1) The court, in a defamation action, may give a ruling -

- (a) as to whether the statement in respect of which the action was brought is reasonably capable of bearing the imputation pleaded by the plaintiff, and
- (b) (where the court rules that the statement is reasonably capable of bearing that imputation) as to whether that imputation is reasonably capable of bearing a defamatory meaning,

upon an application being made to it in that behalf.

(2) Where a court rules under *subsection (1)* that –

- (a) the statement in respect of which the action was brought is not reasonably capable of bearing the imputation pleaded by the plaintiff, or
- (b) that any imputation so pleaded is not reasonably capable of bearing a defamatory meaning,

it shall dismiss the action insofar only as it relates to the imputation concerned.”

(3) ---

(4) An application under this section may be brought at any time after the bringing of the defamation action concerned including during the course of the trial of the action.”

16. In respect of the claim for malicious falsehood, s. 42 of the Act of 2009 provides: -

“42(1) In an action for slander of title, slander of goods or other malicious falsehood, the plaintiff shall be required to prove that the statement upon which the action is founded –

- (a) was untrue,
 - (b) was published maliciously, and
 - (c) referred to the plaintiff, his or her property or his or her office, profession, calling, trade or business.
- (2) In an action for --- other malicious falsehood, the plaintiff shall be required to prove –
- (a) special damage, or
 - (b) that the publication of the statement was calculated to cause and was likely to cause financial loss to the plaintiff in respect of his or her property or his or her office, profession, calling, trade or business.”

17. The provisions of s. 14 were considered, in some detail, by the Court of Appeal in *Gilchrist v Sunday Newspapers Limited* [2017] 2 IR 714. The judgment of the court was given by Irvine J. (as she then was). These were defamation proceedings in which the court considered the principles to be applied to an application under s. 14 of the Act of 2009: -

“35. It is not disputed that for the purposes of an application under section 14 (1) of the 2009 Act, the onus rests upon the defendant to establish that the article complained of is not reasonably capable of bearing the imputations and meanings pleaded by the plaintiff. The test to be applied by the court is whether the article, when viewed objectively by the reasonable reader, is capable of giving rise to the pleaded meanings (see Hardiman J. in *Travers v Sunday Newspapers Limited* (Unreported, Supreme Court, 12 October 2015). It is also not disputed that the role of the judge on a s. 14 application is not to determine the meaning of the words or an article published but to delimit the outside boundaries of the possible range of meanings that might be ascribed thereto by the notional reasonable reader... .”

Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ. 130, (Unreported, Court of Appeal of England and Wales, 31 January 2008) helpfully summarised the principles relevant to how the meaning of words should be determined as follows: -

“(14) ..

- (1) The governing principle is reasonableness.
- (2) The hypothetical reasonable reader is not naïve but is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
- (3) Over-elaborate analysis is best avoided.
- (4) The intention of the publisher is irrelevant.
- (5) The article must be read as a whole, and any “bane and antidote” taken together.
- (6) The hypothetical reader is taken to be representative of those who would read the publication in question.
- (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, “can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation”.”

Submissions: -

18. The first and second named defendants in their submissions, essentially, sought the court to apply the principles as set out in *Gilchrist v Sunday Newspapers Limited* which ought to result in the claim made by the plaintiff in respect of the photographs and article published on 1 March 2020 being dismissed. In respect of the plaintiff’s claim for injurious falsehood, these

defendants submitted that the matters pleaded in the Statement of Claim fell considerably short of what is required, as per s. 42 of the Act of 2009, to maintain an action for injurious falsehood.

19. The plaintiff submitted that the photograph of him and the accompanying article were defamatory in that there was an innuendo that he was associated with the IRA, an organisation which he described in his pleadings as being “*a criminal and terrorist organisation*”. The plaintiff relied on the decision of the Court of Appeal in *Speedie v Sunday Newspapers Limited and Ors.* [2017] IECA 15.

20. In *Speedie v Sunday Newspapers Limited and Ors.* the plaintiff sought damages for defamation arising from two articles published and authored by the defendants. The first article included the following: -

“*The Sunday World* has learned that retired Liverpool striker, David Speedie, is involved in a relationship with a relative of [X] and has been associating with known gangsters. ...”

The second article was headed “*Speedie the Snake*” and referred to the fact that a solicitor’s letter had been sent to the newspaper claiming that he had been defamed by the first article. In the High Court, the jury awarded the plaintiff a sum of damages. In the instant case the plaintiff submitted that his position was analogous to that of David Speedie.

21. The plaintiff placed some emphasis on the fact that no defence had been delivered by the first and second named defendants. The plaintiff submitted that were the court to reach the conclusion that the photograph and accompanying article were capable of being defamatory but that the pleadings, as they stood, did not reflect this, then an opportunity ought to be given to amend the pleadings. A similar submission was made in respect of the claim for injurious falsehood.

22. The plaintiff made clear that the claim for defamation and injurious falsehood, as pleaded, was being made both in respect of the said article and photograph and the tweet from the third named defendant.

Consideration of issues: -

23. Though a Defence has not been delivered by the first and second named defendants, I do not think that this is material. The wording of s. 14 (4) states that an application “*may be brought at any time after the bringing of the defamation action concerned..*”. When a plaintiff is faced with an application such as this, he or she has to decide whether they are going to stand on the pleadings as they are. The purpose of s. 14 is to provide a procedure where unmeritorious actions can be dismissed without having to incur the considerable costs of going to a full trial. If, following a successful application, part of an action is dismissed, a plaintiff could theoretically apply to amend the pleadings. However, it would be safe to assume that such an application would be opposed on the grounds, *inter alia*, that it amounted to a new action which was now out of time.

24. I do not think that the decision in “*Speedie*” is of assistance to the plaintiff. In para. 20 above I set out the substance of the articles in respect of which David Speedie brought his defamation proceedings. It is clear that David Speedie was specifically named in both articles, and indeed, the second article was headed “*Speedie the Snake*”. In the instant case, as stated earlier, the plaintiff is neither named nor referred to in the article. He does appear in an accompanying photograph but does not have a clear red ring around him for the purposes of identification. Therefore, this application falls to be determined by the application of the principles clearly set out by the Court of Appeal in *Gilchrist v Sunday Newspapers Limited*. The burden lies on the first and second named Defendants, the moving parties.

25. The passages from *Gilchrist*, which I have cited above, set out the characteristics of a “*reasonable reader*”. It seems to me that these characteristics are acquired by the “*reasonable*

reader” from some experience in reading newspapers. When faced with a group photograph where two of those present, have red circles superimposed around their heads, the “*reasonable reader*” would know that those persons, in this case Conor Murphy and Frank McCabe, are being singled out for a particular reason. That reason is to be found in the accompanying strap headline “-- *Sinn Féin man seen socialising with IRA chief..*”. Clearly the reference to “*man*” and “*chief*” is in the singular, not to any other person in the photograph who may be members of Sinn Féin. If the “*reasonable reader*” had any doubt about this, it will be dispelled by the fact that there is a further photograph of Conor Murphy and Frank McCabe at a separate social event.

26. The accompanying article reflects what is in the photographs and headlines. It specifically refers to the involvement of Frank McCabe “*Officer Commanding*” of the IRA in South Armagh.” As far as Mr. Murphy is concerned, it details his various public utterances, including an apology, concerning the murder of Paul Quinn. There is no reference to the plaintiff, express or implied.

27. Looking now at what is pleaded by the plaintiff, the claims can be grouped under a number of headings. Firstly, the plaintiff claims that the article and photograph in their natural and ordinary meaning/or by innuendo convey that the plaintiff is a criminal murderer, is a member of a criminal group that engages in murder, is a member of the IRA, has a record of serious criminality and wilfully perverts the course of justice.

28. I do not think that a “*reasonable reader*” would believe that a person photographed at a social event in the company of others, including a member of the IRA and neither named nor referred to in the accompanying headlines and article means, ordinarily or by innuendo, that the person is a murderer, is a member of a criminal gang that engages in murder, is a member of the IRA, has a record of serious criminality and wilfully perverts the course of justice.

29. The second “*group*” of meanings contended for by the plaintiff is that the article and photograph in their natural and ordinary meaning and/or by innuendo convey that the plaintiff is a blackguard, is of low moral character and of ill-repute. The word “*blackguard*” is not one that is in common usage and is more likely to be found in Victorian novels. All these words and terms mean or imply a person being held in disgrace, ignominy and/or who is dishonourable or contemptible. Though a “*reasonable reader*” would condemn the activities of the IRA, I cannot see that he or she would conclude that being present in a photograph of a social event with others, including a member of the IRA, in the context of an article and headlines neither of which refer to or identify the plaintiff, would convey the meanings contended for by the plaintiff.

30. The final meaning contended for by the plaintiff is that the article and photograph in their natural and ordinary meaning and/or by innuendo convey that he is untrustworthy. This means or implies that the plaintiff is dishonest or untruthful. As in the other meanings contended for by the plaintiff, I do not believe that a “*reasonable reader*” looking at the photograph in the context of the headlines and article would see or read anything that might lead them to conclude that the plaintiff was “*untrustworthy*”.

31. In summary, a “*reasonable reader*” would condemn murders carried out by the IRA and agree with the Plaintiff’s characterisation of the IRA as being a “criminal and terrorist organisation”. However, such a reader, even reading between the lines, would have no difficulty rejecting the meanings contended for by the Plaintiff where he is neither named nor identified where others specifically are.

32. I am satisfied that the meanings of the article and photograph contended for by the plaintiff are, in the words of Clarke MR in *Jeynes v News Magazines Limited*, as cited in *Gilchrist v Sunday Newspapers Limited*, “strained”, “forced” and “utterly unreasonable”.

33. The plaintiff's claim for "*injurious falsehood*" appears to arise from the use of the word "*malicious*" in the Statement of Claim. Considerably more is required to maintain an action for "*injurious falsehood*". At para. 16 above I set out the provisions of s. 42 of the Act of 2009. There is no mention in the Statement of Claim of any "*special damage*" nor is there anything stated to the effect that the publication "*was calculated to cause and was likely to cause financial loss to the plaintiff in respect of his or her property or his or her office, profession, calling, trade or business.*" It is also noteworthy that there was no attempt to address this clear deficit in the pleadings by way of the replying affidavit sworn by the solicitor instructed by the plaintiff in opposing the application. I am satisfied that the plaintiff's claim for damages for "*injurious falsehood*" should be struck out.

Conclusion: -

34. By reason of the foregoing, I propose to make an order dismissing the plaintiff's action for defamation insofar as it relates to the photographs and article published by the first named defendant on 1 March 2020. I will also make an order striking out the plaintiff's claim for "*injurious falsehood*" on the ground that the pleadings disclose no cause of action.

35. As for costs my view is, subject to submissions by the parties, that the first and second named defendants are entitled to the costs of the motion (to include reserved costs) and to the costs of defending the proceedings to date in respect of the plaintiff's claim for defamation and injurious falsehood, such costs to be adjudicated in default of agreement. If the parties wish to make any submissions either in respect of the form of the order or the issue of costs, I require that the plaintiff furnish written submissions (not in excess of 1,500 words) to be delivered within 14 days of the date hereof and the first and second named defendant to deliver any replying submissions (not in excess of 1,500 words) within 14 days thereafter.