

BETWEEN**KEITH MAYCOCK****PLAINTIFF****AND****NATIONAL COLLEGE IRELAND CLG T/A N.C.I.****DEFENDANT****RULING of Mr. Justice Bernard J. Barton delivered on the 16th day of May, 2017.**

1. This is an application by the Defendants in defamation proceedings to have paras. 4 and 5 together with paras. 10 to 15 of the Plaintiff's Statement of Claim struck out and which arises from a plea at para. 7 of the Defence, the essence of which is that the matters contained in the challenged paragraphs have nothing to do with the Plaintiff's cause of action are unnecessary, irrelevant and vexatious; the Court is not properly concerned with such matters, accordingly, they should be excluded. Furthermore the issues in the case were complex enough for the jury without adding to the complexity by the ventilation of matters which were extraneous to the complaint which lay at the heart of the proceedings, an allegedly defamatory letter.

2. Not surprisingly the Plaintiff opposes the application and disputes the Defendant's contentions submitting that the matters referred to in the challenged paragraphs are relevant since they place the subject letter in a proper and appropriate context, moreover, in the event of a determination that the Defence of qualified privilege is applicable the Plaintiff will be placed in the position of having to prove actual malice; to exclude the matters in the challenged paragraphs in those circumstances alone would be prejudicial to the Plaintiff to the point of working an injustice thus warranting refusal of the application.

3. The issue which the Court is called upon to resolve is a task which necessarily involves striking a balance between the competing interests of the parties. When embarking on that task the Court must be mindful that the object of the trial is to do justice and that justice is seen to be done between the parties. I have read the pleadings, the notices for and replies to particulars and have considered the submissions made by Mr. McCullagh S.C. on behalf of the Defendants and by Mr. O'Donnell S.C. on behalf of the Plaintiff which I do not intend to summarise as they will appear on transcript and are recorded on the D.A.R.

4. As already stated the application proceeds from the plea at para. 7 of the Defence which was initially directed to the matters pleaded at paras. 10 to 15 of the Statement of Claim, however, the Defendant now also seeks to have paras. 4 and 5 of the Statement of Claim included with the result that if the Court were to accede to the application the entire content of seven paragraphs and consequently all referable particulars would be excluded one consequence of which would be that the pleadings to be opened to the jury would look very different to those were the application refused.

5. The effect of the exclusion is best ascertained from a reading of the pleadings as well as the notices for and the replies to particulars with the material to which objection is taken omitted, an exercise which results in a sanitation of the circumstances and the environment which gave rise to the publication of the letter the subject of the complaint in the proceeding; absent the exclusion it is unquestionably placed in its proper context.

6. I am satisfied that the pleadings in their present form are unlikely to result in the jury being led into making decisions about matters which are not concerned with or otherwise relevant to the Plaintiff's cause of action. It is clear from a reading of the pleadings together with the notices for and replies to particulars that the Plaintiff's complaint is concerned with the letter and not with the matters to which objection is taken and in respect of which separate personal injury proceedings have been instituted against the same Defendants. The Court has been informed that the Plaintiff does not intend to refer to these proceedings; accordingly, they will not be before the jury unless introduced by the Defendants.

7. Apart from directions as to the law, the jury will have an issue paper which will direct their deliberations. I do not consider that the matters referred to in the challenged paragraphs would add unnecessary complexity to the determination of the issues involved in the case nor can I see how if left stand the jury would be deflected from reaching a true and proper verdict; to the contrary in my judgment such a result is more likely if the subject letter is placed in its proper context.

8. It was made perfectly clear by Mr. McCullagh why the application was being made before the case was opened to the jury, an explanation which the Court fully understands, nevertheless, whatever the reason if the application is acceded to it has the potential to have very significant consequences which must be weighed in the balance. In my judgment the Court should approach any such application made at the outset of proceedings before the case is opened to the jury, let alone before any evidence is given, with the utmost caution.

9. A circumstance which can certainly be anticipated from the plea of qualified privilege is that if applicable the burden which will fall on the Plaintiff will be one of establishing actual malice. On this ground alone it would be invidious and manifestly unjust if as a result of the exclusion the Plaintiff was to find later in the trial that he was prevented from calling evidence referable to the materials contained in the excluded paragraphs from which the jury might have inferred and found that there was actual malice in the publication of the letter.

10. On balance and for these reasons the Court considers that the interests of justice are best served by refusing the application. The Court will so order.