

THE HIGH COURT**2011 7095 P****Between:****Damien M. P. Tansey****Plaintiff****And****John Gill (a bankrupt), Ans Vogelaar, Dotster Inc.****And (by Order) Ann Vogelaar****Defendants****Judgment of Mr Justice Michael Peart delivered on the 31st day of January 2012:**

1. The plaintiff is a well-known solicitor, who, along with many other solicitors in this country, has been the subject defamatory statements being made about him on a website www.rate-your-solicitor.com (hereinafter referred to as 'the website'). Many but not all these defamatory statements are made anonymously or under a pseudonym. He claims that the words used mean in their natural and ordinary meaning that he has committed criminal acts, has engaged in dishonest appropriation of clients' property, has lied to clients, has engaged in corrupt conduct, has engaged in unprofessional conduct, has engaged in incompetent conduct, and that serious grounds existed for believing that these matters are true.

2. Put briefly, these proceedings are commenced against the defendants in order to put a stop to such defamatory material being posted on the website, and to prevent defamatory material from being posted in the future, including if necessary by an order requiring that the operation of the website be terminated.

3. On the 30th May 2011 this Court granted an order under Order 11, rule 1 RSC permitting the plaintiff to issue proceedings against the third named defendant whose registered office is outside the jurisdiction of this Court and to serve notice of such proceedings on that defendant at that address in the United States of America.

4. On the 22nd July 2011 this Court granted an order pursuant to the provisions of Section 11(2)(c)(ii) of the Defamation Act, 2009 ("the Act") extending the limitation period in respect of which the plaintiff be entitled to bring these proceedings in order to cover the period between the date of commencement of that Act, and one year prior to the institution of the proceedings, that is to say from the 1st January 2010 to the 12th August 2010. In addition, the plaintiff was given liberty to bring the present application by way of Notice of Motion for injunctive relief pursuant to the provisions of Section 33 of the Defamation Act, 2009.

5. These proceedings were then commenced by way of Plenary Summons on the 3rd August 2011, and notice of same together with copy Statement of Claim and copy verifying affidavit were duly served upon the third named defendant on the 5th August 2011 by ordinary pre-post to its registered office. No appearance has been entered by that company. A Notice of Motion seeking judgment against the third named defendant has been issued and served and is before the Court also for determination.

6. On the same date, the proceedings were served upon the first and second named defendants by pre-paid registered post.

7. The first named defendant served a personal appearance on the plaintiff's solicitors by letter dated 15th August 2011. He may not have actually entered that appearance in the Central Office as required, but one way or another he has appeared in person before the Court to argue his defence to the plaintiff's Notice of Motion.

8. The second named defendant instructed solicitors to enter an appearance, and they did so, and she was represented by counsel before me. She swore an affidavit in response to the claims made against her and denies any knowledge of the subject matter of these materials, and the plaintiff appears to accept that. Counsel for the plaintiff informed the Court that no relief is sought against the second named defendant on this application for injunctive relief.

9. However, her daughter, Ann Vogelaar, the fourth named defendant, swore an affidavit in which she stated that she was an unpaid volunteer for the website, and in the light of this averment the plaintiff applied on the 13th October 2011 for an order to join her as a fourth named defendant, and that order was granted on that date. She was duly served with the proceedings. She has not entered an appearance, but she had previously sworn an affidavit before being joined in the proceedings in support of her mother's response to the application for injunctive relief. That affidavit was prepared by the solicitors acting for her mother. I will come to its contents in due course. In addition, she wrote a letter to the Court dated 14th November 2011 indicating that she did not intend to attend court, and amongst a number of other matters in that letter she states that she has nothing to add to the said affidavit, but asks the Court not to grant the reliefs sought against her.

10. It has taken the plaintiff some years to identify the relevant parties against whom the proceedings should be directed, since he first became aware of it in 2007, given the anonymous or pseudonymous nature of the material posted on the website. By May 2008 he was in a position to write to those parties whom he believed had posted material, or who operated and/or hosted the site, and he called upon them, *inter alia*, to take down the offending material, apologise, and undertake not to repeat the same or similar material in respect of the plaintiff. Not unexpectedly perhaps these letters did not achieve any useful purpose and no reply was received from any party written to.

11. The plaintiff engaged the services of Dr Mark Humphries, B.Sc. Joint Hons. (UCD), PhD(Cambridge), and who is a lecturer in the School of Computing at Dublin City University to prepare a number of reports in order to assist in the identification of the relevant parties who operate and control the website. Among those identified were the first, second and third named defendants. The parties identified by Dr Humphries, including the first, second and third named defendants were written to and were called upon to withdraw the defamatory remarks, to apologise, to give an undertaking not to publish any further such material and to pay compensation, and

were warned that a failure to comply with these requests would lead to the commencement of proceedings. No response was received.

12. The reports from Dr Humphries are extremely technical and thorough. I could not possibly do justice to the comprehensive contents of same by attempting a summary, beyond saying that it is pellucidly clear that the first named defendant runs the website here, and that it is hosted by the third named defendant, and indeed the name of the website was registered by that defendant. He also identified the second named defendant as an operator of the site, but the affidavit of the fourth named defendant and indeed the affidavit sworn by the second named defendant clarifies that the second named defendant has had no real involvement even though her name appears connected.

13. The fourth named defendant's replying affidavit sets out her involvement in the website. She states therein that her mother, the second named defendant, knows nothing of her use of the internet and does not monitor her use at all. She goes on to state that since June 2010 she has been an unpaid volunteer for the website which she understands is a not for profit website. Her work on the website consisted of answering questions which may be sent to the website by email, and if she is unable to answer the questions she forwards the query to any friend of hers who she thinks may be able to do so. She states that her role is confined to this activity or involvement. She denies that she has ever had any involvement in the process of posting comments on the website, or that she runs, controls or organises the site. It appears that the reason why her mother may have been identified as being involved was that she (daughter) was using her mother's computer around June 2010.

14. The second named defendant swore a replying affidavit also. She says that she is a stranger to the proceedings, but that she is familiar with the site because her late husband had had some dispute with a certain solicitor and had given publicity to that dispute on the website but by using his full name. But she absolutely denies having had any role or involvement whatsoever with the site.

15. The first named defendant has sworn a replying affidavit also. As I have said, he represents himself in these proceedings. In that affidavit he describes how he first met the plaintiff in March 2001 after a member of An Garda Síochána had recommended the plaintiff to him as a solicitor who would take a case against other solicitors who Mr Gill considered had engaged in what he describes as "*wrongdoing, perjury, forgery, bribery, distortion of legal contracts, money laundering and perverting the course of justice to a degree that only the frightened inflicted can understand*". He describes how he was given an appointment for a consultation at the plaintiff's offices in Sligo on the 6th March 2001, and he attended for that appointment. He states that he had a lengthy consultation when he was able to go into great detail about the case he wanted the plaintiff to handle in relation to his business. Mr Gill believed when he left that the plaintiff would take his case, but a few days later received a letter returning all his papers and stating that regrettably the firm was not in a position to assist him. Mr Gill complains that the plaintiff had undertaken to take on his case, and that he has breached that undertaking.

16. Thereafter, in his affidavit, Mr Gill makes extensive complaint about Mr Tansey and a number of other named solicitors who appear to have had involvement in his affairs, and presumably about which he had wanted the plaintiff to act for him. He makes complaints and allegations about certain court officials connected with Mr Gill's bankruptcy. Thereafter his affidavit goes into how an organisation he describes as 'Victims of the Legal profession' has exposed the plaintiff and others for what he describes as "*their part in forgery, theft, and placing illegal charges on the property of vulnerable citizens of Ireland without their knowledge*". He exhibits a considerable amount of documentation in relation to the matters complained of, and says "*we have massive Will and Probate fraud, medical negligence fraud, Road Traffic fraud, and many other frauds involving [the plaintiff], his colleagues and others*".

17. Richard Humphries SC for the plaintiff has submitted that there has been no attempt by Mr Gill or the other defendants to substantiate any of the allegations and accusations which have been posted on this website, and that the only evidence put forward against the plaintiff's application is the affidavit filed by Mr Gill to which I have referred and the exhibits attached. He submits that no effort has been made to have affidavits filed by any of the other persons who have published defamatory material to stand over what they have published, and he submits that the mere assertion of allegations cannot be sufficient to justify that material remaining on public view, when the material is so clearly defamatory, and where the website in question facilitates the posting of such material without any control over what is said.

18. Mr Gill has stated in his oral submissions that there are many people who are available to give evidence of the wrongs which they complain that the plaintiff is guilty of in relation to the matters in respect of which the plaintiff has acted. Indeed, he said that some of these persons were in court during the hearing to support him.

19. Mr Humphries has referred to the judgment of Kelly J. in *Reynolds v. Malocco* [1999] 2 IR. 203 in support of his submission that a bald statement of intention to plead justification was not sufficient to debar a plaintiff who might otherwise be entitled to an injunction from such relief. In his judgment, Kelly J. considered the judgment of Murnaghan J. in *Gallagher v. Tuohy* [1924] 58 I.L.T.R.134 where the Court refused an interlocutory injunction in circumstances where a plea of justification was made by the defendant, and did so on the basis that the Court should not readily grant an injunction where the material "is not obviously a libel", and that justification having been raised, the Court should not prejudge that issue on an interlocutory application. Kelly J. referred to a Supreme Court judgment in *Cullen v. Stanley* [1926] I.R. 73 where a different view was taken in the face of an assertion on affidavit that the material published was true. In that case, O'Connor J. contrasted the affidavit evidence of the plaintiff and the "*baldest affidavit*" of the defendant, and held that on the evidence before the Court "*there was nothing to support the plea of justification*". Kelly J. concluded that he preferred the latter approach, and stated:

"Of these two approaches I prefer the latter. I do not think that a rule which permits a defendant to, in effect, oust the ability of this Court to intervene by way of injunction in an appropriate case by the simple expedient of expressing an intention to plead justification at the trial of the action, is consistent with the obligations imposed on the court under the Constitution. Furthermore, the application of such a rigid rule, without an ability on the part of the court to ascertain whether the plea of justification had any substance or not, would provide a happy hunting ground for unscrupulous defamers.

I am therefore satisfied that it is open to the court to examine the evidence adduced by the defendant in support of the justification plea so as to ascertain whether it has any substance or prospect of success.....".

20. Having concluded thus, the learned judge went on to consider whether the undoubted discretion which exists as to whether or not to grant an interlocutory injunction should be exercised in favour of granting same. Kelly J. had regard to the unlikely prospect on the evidence that the successful plaintiff would be able to recover any damages which might be awarded. In the present case, the nature of the material is such, and the damage it has and would cause to a professional man such as the plaintiff is such that if an award of damages is made it would be substantial. The first named defendant was certainly in the past adjudicated a bankrupt and I have no evidence that this bankruptcy has been discharged or that he is a man of any substantial means. I have no doubt that

neither he nor the fourth named defendant would be a mark for any such damages.

21. I have considered all the material exhibited by Mr Gill in his affidavit. It is voluminous. What is evident from it is that he harbours many grievances not only against the plaintiff in relation to his own affairs, but also against a number of other solicitors and other persons. But it is also clear that he has moved from those personal grievances to a point where he has decided to front a generalised campaign against the solicitors' profession generally, including by establishing the website complained of in order to facilitate other persons in making their similar grievances against their solicitors made known publicly, and where anything and everything can be stated publicly on the website, without any opportunity for such solicitors, including the plaintiff from defending themselves. It can truly be said in the words of Kelly J. that this site has become "*a happy hunting ground for unscrupulous defamers*". It provides a facility whereby persons who have a grievance against a solicitor with whose services they are dissatisfied for whatever reason can publish that grievance and say whatever they wish about that solicitor, even anonymously or under a pseudonym, thereby making it almost impossible for any solicitor who feels defamed from seeking any redress against them. Laws exist whereby a person who is named on a site and is the subject of allegedly defamatory material may communicate with the host or operator of the site and request that the material to be taken down. In the present case those attempts were unsuccessful prior to the commencement of these proceedings, and even prior to the application coming on for hearing. I am however informed by Mr Humphries for the plaintiff that the website may now be shut down. I am unsure whether that is so as a matter of fact as I have no evidence as such about it, but I certainly have no knowledge that it has been terminated in a permanent way. In addition, unless restrained, there is no reason why a similar site would be registered for a similar purpose.

22. The grievances which Mr Gill has aired publicly on the website have been repeated in his affidavit, but in spite of the exhibits which accompany his affidavit, I am completely satisfied that no matter how genuinely he believes that he and others have been let down by the plaintiff or other solicitors, the plea of justification which may be put forward at any trial of this action has no prospects of success. The evidence put forward is nowhere near substantiating any wrongdoing of the nature alleged, even though it is clear that the plaintiff harbours many grievances. Apart from his own grievances he relies on the complaints of others, and has concluded for himself that all these matters entitle him to regard not only the plaintiff but others too as fair game for his generalised accusations which include criminal activity, such as fraud, theft, money laundering and so forth.

23. Such accusations are very serious indeed for any person. It is particularly so for any professional person such as the plaintiff to be subjected to this sort of unbridled accusation of criminal activity in relation to his occupation as a solicitor. The material, unless removed and restrained is publicly available for all to see, and is not even confined to this jurisdiction but is available worldwide. If a solicitor has acted negligently, the client has his/her remedy under the law of tort, and these days this is a remedy very often pursued against solicitors, and on occasion successfully. Where a client alleges that a solicitor has wrongfully withheld his/her client's money, or charged fees which the client feels are overcharged or not justified, there are avenues for redress by means of the disciplinary mechanisms available at the Law Society. Such claims are investigated and if they are decided to be well-founded, sanctions may be imposed and compensation obtained. If a client alleges criminal conduct on the part of a solicitor he, like any other victim of an alleged crime, may make a complaint to An Garda Síochána, who will investigate the matter and if satisfied that the offence may have been committed the DPP may decide that a prosecution should be brought. These are remedies available under the laws of the land whereby the rights of citizens are protected and vindicated. The rule of law applies to a solicitor in just the same way as it does to any person in the State.

24. In older times before the arrival of the Internet, any solicitor who was defamed in a newspaper or in any other public way could sue for defamation, and in an appropriate case could be granted interlocutory injunction pending any trial of the action, as occurred in *Reynolds v. Malocco* [supra]. The owners of such a newspaper or other media outlet would have been readily identifiable as would the author. Such a remedy was easily availed of as those to be named as defendant in any such action could be readily identified and sued for damages. Life has changed in that regard since the arrival of the Internet as this case demonstrates clearly, and it seems to me that whatever judicial hesitation has existed in the matter of granting an interlocutory injunction to restrain publication pending trial should be eased in order to provide an effective remedy for any person in this State who is subjected to unscrupulous, unbridled, scurrilous and defamatory material published on a website which can, without any editorial control by the host of the website, seriously damage him or her either in his/her private or business life. In my view, the ready availability of such a means of defaming a person by any person who for any reason wishes to do so has such a capacity to cause insult and immediate and permanent damage to reputation means that the Courts should more readily move to restrain such activity at an interlocutory stage of the proceedings in these types of proceedings, particularly where an award of damages is considered likely to provide an empty remedy.

25. The Internet has facilitated an inexpensive, easy, and instantaneous means whereby unscrupulous persons or ill-motivated malcontents may give vent to their anger and their perceived grievances against any person, where the allegations are patently untrue, or where no right thinking person would consider them to be reasonable or justified. By such means, anything can be said publicly about any person, and about any aspect of their life whether private or public, with relative impunity, and anonymously, whereby reputations can be instantly and permanently damaged, and where serious distress and damage may be caused to both the target, children and adults alike, leading in extreme cases to suicide. So serious is the mischief so easily achieved that in my view the Oireachtas should be asked to consider the creation of an appropriate offence under criminal law, with a penalty upon conviction sufficient to act as a real deterrent to the perpetrator. The civil remedies currently available have been recently demonstrated to be an inadequate means of prevention and redress.

26. The present Notice of Motion which was issued on the 24th August 2011 pursuant to leave in that regard being granted on the 22nd July 2011 seeks the following reliefs:

1. An order pursuant to section 33 of the Defamation Act, 2009 prohibiting the publication or further publication of the defamatory material complained of and/or an injunction requiring the defendants and each of them, their servants or agents, to remove from the internet any defamatory material of and concerning the plaintiff and/or restraining the defendants and each of them, their servants or agents, from publishing further defamatory material of and concerning the plaintiff.
2. An order by way of mandatory interlocutory injunction requiring the said defendants, and any person having notice of the making of such order, to terminate the operation of the website upon which defamatory material of and concerning the plaintiff is published.
3. An order by way of mandatory interlocutory injunction directing the said defendants to deliver up to the plaintiff the names and address of all persons involved and concerned in the publication of defamatory material of and concerning the plaintiff, including the author of such material and all persons involved in maintaining the website upon which the material is hosted.

Section 33 (1) of the Act provides:

"(1) The High Court, or where a defamation action has been brought, the court in which it was brought, may, upon the application of the plaintiff, make an order prohibiting the publication or further publication of the statement in respect of which the application was made if in its opinion--

(a) the statement is defamatory, and

(b) the defendant has no defence to the action that is reasonably likely to succeed."

27. I am entirely satisfied that the material complained of in these proceedings is seriously defamatory of the plaintiff. I am also satisfied based upon the contents of the replying affidavits and the submissions which have been made by Mr Gill that any defence he wishes to put forward at trial has no reasonable prospect of succeeding. Whatever grievances he has must be addressed by the various lawful means available for so doing, and do not entitle him and others to take the law into their own hands by publishing whatever defamatory accusations and allegations they wish against the plaintiff, or indeed others named, on this or any similar website.

28. I have no hesitation in granting interlocutory injunctions in terms of paragraphs 1, 2 and 3 above against the first and fourth named defendants, and will so order.

29. In respect of the third named defendant, Dotster Inc., there is a Notice of Motion seeking judgment in default of Appearance before the Court. I am satisfied that Dotster Inc. was properly served with the proceedings and the Notice of Motion dated 8th November 2011 and that they have not entered any appearance. I will make final orders in the terms of paragraphs 1, 2 and 3 above against Dotster Inc., and adjourn the question of damages for assessment should the plaintiff wish to pursue that issue against them.

30. In so far as the relief sought at 2 above is for a mandatory interlocutory order, I am satisfied that the facts of this case are such as to overcome the higher threshold for the granting such an order, namely that the plaintiff's case should have a strong prospect of success at trial. I am satisfied that damages cannot be an adequate remedy for the plaintiff for the reasons stated, and also that in any event the balance of convenience lies squarely in favour of granting such injunctions.

31. I will put the matter back to another date for a consideration of any outstanding issues to be dealt with.

32. I will hear Counsel for the plaintiff as to the need now for any order in relation to relief 3, which is for an order under Norwich Pharmacal principles for the disclosure to the plaintiff of the names and addresses of all persons involved and concerned in the publication of defamatory material on the website.