

THE HIGH COURT

[2011 No. 11617 P]

BETWEEN

DECLAN GANLEY

PLAINTIFF

AND

RAIDÍÓ TEILIFÍS ÉIREANN

DEFENDANT

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 26th day of April, 2016.

Introduction:

1. This is the plaintiff's motion that I be recused from hearing any matter connected with these defamation proceedings which arise out of a documentary programme aired by the defendant about the plaintiff. The defendant has adopted a neutral position on the motion.

2. The motion for recusal arises from the plaintiff's concern about an article I wrote approximately four years before I became a judge which was published in Village magazine in which I expressed certain views about Libertas, a political party founded by the plaintiff, and its campaign against the Lisbon Treaty in 2008. I also expressed views about the plaintiff. The article has been exhibited by the plaintiff in the affidavit grounding this application.

The article:

3. Part of the article was as follows:-

"It is a pity that the Irish people rejected the treaty. Most of the No campaign was based on false assertions. The Treaty did not reduce the one commissioner per state rule (that was done by earlier provision). It did not seek to introduce abortion, gay marriage or euthanasia. It did not require Ireland to harmonise her tax code and abolish the low corporate tax rate. It did not require the Irish army to participate in a European army. Lisbon rules could not even order an Irish soldier to tie her shoe laces!

The Lisbon Campaign in Ireland

Libertas ran a brilliant "Vote No" campaign, albeit one based on false claims. It was spectacularly well funded.

...

But I cannot understand what motivated Libertas. Mr. Ganley voted in favour of each European Treaty – including Maastricht and the Single European Act. But mild-mannered Lisbon made him snap. I want to know why.

The only way the motivation for the Libertas campaign can be verified is by knowing who paid for it. Declan Ganley won't tell us and he is not required by law to tell us more than he told the authorities in Ireland. Our financial disclosure rules for referendum campaigners are weak.

It seems to me that a second referendum on the Lisbon Treaty is unavoidable – politically, at least. And Libertas will be back with more well-funded false assertions designed to ensure that the European Union cannot begin operating under the Lisbon rules...."

4. Counsel for the plaintiff, Mr. Declan Doyle S.C., submits that on the basis of the comments in the article, in particular that Libertas made false assertions in the course of its anti-Lisbon campaign, a reasonable person would have a reasonable apprehension that the court is not neutral on whether or not Mr. Ganley makes false assertions, a matter having a direct bearing on these proceedings because the case the defendant seeks to prove is that the plaintiff made false claims about various matters (unrelated to the content of the Lisbon Treaty).

The test for objective bias:

5. There is well settled case law as to the test to be applied by a court when considering the issue of objective bias. It has been most recently set out by the Supreme Court decision in *Goode Concrete v. C.R.H. plc & ors* [2015] I.E.S.C. 70. The test was stated by Denham J. (as she then was) in *Bula Ltd v. Tara Mines Ltd* [2000] 4 I.R. 412 as follows:-

"...the test to be applied is objective, it is whether a reasonable person in the circumstances would have a reasonable apprehension that the applicants would not have a fair hearing from an impartial judge on the issues."

6. The circumstances in which the test applies were at issue in *Dublin Well Woman Centre Ltd v. Ireland* [1995] 1 I.L.R.M. 408 where statements of a judge in a non judicial capacity on issues which clearly related to a case the Judge was about to hear were examined. Carroll J. did not think she was biased but the Supreme Court found that an objective person might not have the same view. A further aspect to the test for objective bias articulated by Denham J. is that the test invokes the apprehension of the reasonable person only. The views of the plaintiff or the court are irrelevant.

7. Counsel for the plaintiff submitted that a reasonable person would have a reasonable apprehension that the plaintiff would not have

a fair hearing from an impartial judge because the views expressed by me indicate that I held a view in the past that Mr. Ganley made false claims, albeit about matters unconnected with the statements about which complaints are made in these proceedings.

8. I agree with Mr. Doyle S.C. that the test for objective bias is unrelated to the statement made by the judge giving rise to the apprehension of bias. Even if what I said about the anti-Lisbon campaign was incorrect and unfair, I cannot deny that I alleged that a political campaign in which the plaintiff played a major role was based on false claims about the meaning of the Treaty of Lisbon.

Decision:

9. Like most judges asked to be recused I am confident that I would preside over any aspect of this case in accordance with the declaration I made when I became a judge which was to act "...without fear or favour, affection or ill-will towards any man...." (see Art. 34 of the Constitution). However I am satisfied that an objective person with full knowledge of the article I wrote and with full knowledge of the issues in these proceedings could reasonably conclude that I have a view of the plaintiff which is inimical to his efforts to overcome the defendant's allegation that he is a person who makes false claims. I would not be viewed by such a hypothetical person as impartial as to that issue and that issue is of central importance in the proceedings.

10. I therefore agree that I should not preside over any aspect of these proceedings. As I am the judge in charge of the jury list at present it may be necessary for me to deal with minor aspects of the case from time to time and provided the plaintiff has no objection, I am happy to do that if that is what the parties wish.