

## THE HIGH COURT

[2012 No.254 P]

BETWEEN

EOIN MCKEOGH

PLAINTIFF

AND

**JOHN DOE 1 (USER NAME DAITHI4U) AND JOHN DOE 2 AND JOHN DOE 3 (TAXI EIRE.LEFORA.COM) AND FACEBOOK IRELAND LIMITED AND GOOGLE IRELAND LIMITED AND GOOGLE INC (AS SUBSTITUTED BY ORDER OF THE COURT DATED 27TH JANUARY 2012) AND YOUTUBE AND YOUTUBE LLC AND YAHOO! (UK) LIMITED AND CROWDGATHER INC**

DEFENDANT

**JUDGMENT of Mr. Justice Gilligan delivered on the 27th day of November, 2015**

1. An order is sought on this application by Paul Lambert, solicitor of Merrion Legal Solicitors, being the former solicitors to the plaintiff herein, that the costs incurred by the applicant be referred for taxation of costs as against the plaintiff and the plaintiff's parents Eamonn McKeogh and Fidelma McKeogh. The plaintiff has confirmed to the Court that he consents to an order directing that the solicitor/client costs incurred by the applicant be referred to taxation strictly on the basis that both sides bear their own costs and without prejudice to his right to raise the issue of the basis of the retainer as to whether this was on a "no foal no fee" basis or otherwise before the taxing master and on the basis that the taxing master will be the ultimate arbitrator in this regard. Nothing in the consent of the plaintiff herein is to be construed as in any way binding the plaintiff's parents.

2. The plaintiff's parents object on a number of grounds to the relief as sought by the applicant as against them being acceded to.

3. The background to these proceedings is very well set out in the opening paragraph of a judgment of this Court (Peart J.) delivered on the 22nd January, 2012, in an application brought on the plaintiff's behalf against a number of leading newspaper media outlets and is in the following terms:

"Who would have thought when in the dark hours of the 13th November, 2011, a young man got out of a taxi in Monkstown without paying the fare, that this would result in another young man, the plaintiff, who was thousands of miles away in Japan on that date, would discover on the 29th December, 2011, after his return to this country, that not only had video footage of the first man exiting the taxi been posted on YouTube by the taxi driver in an effort to have his identity revealed, but also that thereafter another person, travelling the information super highway that is the internet under the pseudoname "Daithi4U" would see that footage and wrongly identify the plaintiff as being the person who had left the taxi without paying the fare, thereby defaming him, and that this zemblanity, the very opposite of serendipity, would see the appearance of a phalanx of at least a dozen lawyers before this Court for seven hours throughout yesterday for a debate of weighty issues, such as the right to privacy, the right to freedom of the press to fairly and accurately report Court proceedings, and the right to an effective remedy, the combined costs of which might be sufficient to purchase a decent house in any part of the country? Yet that is what has happened."

4. The plaintiff was incorrectly identified and was subjected to a great deal of negative repercussions online and elsewhere and, accordingly, a decision was taken to try to limit the damage that was being done to the plaintiff, but at all material times he was in Japan and thus it was his parents who, following an unsuccessful search, became aware of an article written by the applicant, Paul Lambert, which appeared to demonstrate that he had a certain expertise with regard to the matters that were in issue between the parties to these proceedings and the plaintiff's parents approached him and formal legal instructions were taken in January, 2012, and the matter progressed with a successful conclusion in respect of certain restraining orders against the various defendants but with an unsuccessful outcome to an application which, in effect, sought to restrain newspaper media outlets from reporting on the proceedings and thereby identifying the plaintiff.

5. Relations between the plaintiff and his solicitors became strained and on the 28th June, 2013, the retainer of Paul Lambert was terminated and the plaintiff is now represented by a new firm of solicitors. The difficulty that has arisen is that rather than accept an undertaking from the plaintiff's new solicitors as regards the payment of any costs recovered, the applicant now seeks taxation of his costs to date on a solicitor/client basis not only as against the plaintiff, as named in the title of the proceedings, but also as against his parents.

6. It is not disputed that the plaintiff, as named in the title of the proceedings, was a client of the applicant prior to the termination of his retainer but the plaintiff's parents strenuously deny that they were clients of the applicant or that they are persons chargeable within the meaning of section 2 of the Attorneys and Solicitors (Ireland) Act 1849 as amended or pursuant to Order 99, Rule 15 of the Rules of the Superior Courts and they say they never entered into or had a legal binding contractual agreement with the applicant that they would discharge his fees either on a solicitor/client basis or any other basis.

7. A variety of other matters are raised on behalf of the plaintiff and his parents, where the applicant is seeking to tax his costs as against them, jointly and severally, in the sum of €1.95 million, against a background where these proceedings have not gone beyond the interlocutory stage and were partly successful in an interlocutory application for relief as against the original defendants and unsuccessful in a claim for relief as against the notice parties who are media newspaper outlets, and in addition, there is the aspect of a complaint by the plaintiff to the Law Society which appears as yet to be unresolved and in addition a complaint by the Law Society as against the applicant in respect of his personal failure to honour an undertaking in his capacity as the solicitor representing himself and involving the purchase of a property and the draw down of a loan in the sum of €400,000.00 which has not been repaid and which is the subject matter of a judgment of this Court (O'Malley J.) in *ICS Building Society v. Lambert* [2014] IEHC 581.

8. It is, in my view, clear from the judgment of this Court (Laffoy J.) in *Brookes* and others practising as *Maples and Calder solicitors v. Woods* [2011] IEHC 416 that the issue such as complaints about the manner in which solicitors handle the matter on behalf of a client and complaints to the Law Society or by the Law Society as against the relevant solicitor are not matters that it is appropriate to take into account at this juncture of the proceedings and, in effect, such reasons would not prevent the Court from referring the question of costs incurred by a solicitor retained by a client for taxation. In the circumstances of this case, the plaintiff accepts that

he was a client of the applicant, but the parents deny that they were clients. However, in any subsequent proceedings for the recovery of such costs as taxed, these various issues may, amongst other issues, become relevant for determination at a full plenary hearing.

9. The relief as sought by the applicant on this motion is for an order dispensing with the need for a signed requisition to tax.

10. It is quite clear from reading the papers that there are a myriad of allegations and counter-allegations, and issues of law arising, and, *inter alia*, all of these various matters can be resolved having regard to the adversarial position as adopted by all parties at a full plenary hearing, when the applicant, having taxed his costs, will have to institute proceedings against the plaintiff and his parents for recovery of any amount maintained to be due and owing by the plaintiff and/or his parents.

11. This Court has a broad discretion under section 2 of the Act of 1849 to give such directions and impose such conditions as the Court thinks proper when referring a bill to taxation at the suit of the solicitor as is the position in this case.

12. In the particular circumstances that arise, there is no dispute that the named plaintiff in the title of the proceedings is a client of the applicant and it does appear appropriate that the costs which he may be obliged to pay the applicant herein be referred to taxation, but in making such a direction I am specifically stating that it will be open to the plaintiff to raise such issues as he considers appropriate in the event that, following the taxation of the costs involved, the applicant institutes proceedings against him for judgment in respect of the amount of the taxed costs and, in effect, this Court is making the order entirely without prejudice to any defence or any issues which the plaintiff wishes to raise.

13. The position of the plaintiff's parents is that they deny any liability in respect of costs to the applicant but I consider it appropriate that, having regard to the fact that the named plaintiff's costs are going to be taxed in any event, and are going to be in the same amount as any claim that will eventually be made against the named plaintiff and his parents, that such referral to taxation and their participation if they so wish in defending the matter is entirely without prejudice to any defence on any issues which they may wish to raise in subsequent proceedings brought by the applicant against them for recovery in respect of whatever sum is found to be appropriate in respect of the specific claim that is made by the applicant for solicitor/client costs.

14. I will hear the submissions of counsel and the plaintiff as to the form of the order to be drawn up.