

## THE HIGH COURT

## CIRCUIT APPEAL

[2015 No. 459]

BETWEEN:

STACEY CASH

PLAINTIFF

-AND-

HENNES AND MAURITZ (IRELAND) LIMITED

AND

NOONAN SERVICES GROUP

DEFENDANTS

THE HIGH COURT

CIRCUIT APPEAL

[2015 No. 457]

BETWEEN:

MARIA O'REILLY

PLAINTIFF

-AND-

HENNES AND MAURITZ (IRELAND) LIMITED

AND

NOONAN SERVICES GROUP

DEFENDANTS

**EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on the 30th day of January, 2017.**

1. These are two related cases since they concern two sisters, Ms. Stacey Cash, and Ms. Maria O'Reilly, who took unsuccessful defamation proceedings in the Circuit Court (Judge David Riordan) against the H&M Store in Cork City, which are before this Court on appeal.
2. This case can only be determined by a decision by this Court regarding which version of events is correct, that of the two plaintiffs or that of the security guard employed by H&M, Mr. Bruton, and the security guard employed by River Island, Mr. McDonagh. The reason for the involvement of the security guard in River Island is because the alleged defamation by Mr. Bruton took place in the River Island store.
3. The facts, which are not in dispute, are that the two plaintiffs were shopping in H&M in Cork with Ms. Cash's son, who was 4 ½ years old at the time. It is accepted that they were being monitored by Mr. Bruton as they shopped. It is also accepted that the plaintiffs were aware of this monitoring at the time, since Ms. Cash subsequently asked Mr. Bruton (in the River Island shop) why he had been following them around in H&M.
4. It is also not in dispute that the boy wanted to buy a Spider-Man outfit in H&M which he had in his hand as they went around that shop but that his mother had refused to buy it for him. He took the mask off the outfit and put it under his top and left the shop without paying for it. As the two plaintiffs and the boy subsequently entered River Island, the boy took the mask out from under his top and put it on his head. The mask is a complete head mask and so covered his head. Mr. McDonagh was at the entrance of the River Island store and on spotting what the boy had done and the fact that the two plaintiffs had H&M shopping bags on them, he radioed Mr. Bruton to let him know about this suspicious activity. Mr. Bruton checked the Spider-Man outfit that had been left by the boy in the store and discovered that the mask was missing. He then made his way to the River Island shop to get the mask back. It would have taken at least 5 minutes from the time the boy put the mask on his head to the time that Mr. Bruton arrived to take the mask back.
5. Ms. Cash and Ms. O'Reilly both say that they did not witness the mask on Ms. Cash's son until the second Mr. Bruton arrived to seek the mask back. This is difficult to believe, since one is dealing with a period of at least 5 minutes when the full face mask was on the head of a 4 ½ year old boy and the evidence is that the ladies shopped on the top floor and then went down the stairs to the lower level of River Island. One would expect that two adults, in charge of a boy of that age who was going down the stairs in a city centre shop, would keep a regular and watchful eye on him. If they had done so, it would be almost impossible to miss the fact that he was wearing a stolen mask from a shop that they had just left. This Court does not therefore accept the plaintiffs' evidence that they had not noticed the mask until the second Mr. Bruton arrived to take it back.
6. In considering which version of events to believe, it is this inconsistency in the evidence of both Ms. Cash and Ms. O'Reilly that leads this Court to prefer the evidence of Mr. McDonagh, who was an independent witness of what happened next. While the plaintiffs allege that Mr. Bruton grabbed the mask off the boy's head and called the women the "*biggest shoplifters in the city*", it is the evidence of Mr. Bruton that he asked for the mask back and the child handed it to him and that he did not call the plaintiffs the biggest shoplifters in Cork or make any other similar comments.
7. Significantly, Mr. McDonagh, the independent witness, says that he followed Mr. Bruton down the stairs of River Island and that he

witnessed the child hand back the mask to Mr. Bruton when he asked for it and that Mr. Bruton did not makes the comments alleged by the plaintiffs.

8. Since this Court has found that the incident as described by the plaintiffs did not occur, this Court dismisses the plaintiff's proceedings and it affirms without amendment the decision of Judge Riordan in the Circuit Court.