Neutral Citation [2012] IEHC 372

THE HIGH COURT

[2006 No. 850 P.]

BETWEEN

THOMAS TALBOT

PLAINTIFF

AND

HERMITAGE GOLF CLUB, GOLFING UNION OF IRELAND AND EDDIE MURPHY

DEFENDANTS

JUDGMENT of Mr. Justice Herbert delivered the 27th day of July 2012

The plaintiff was, up to his retirement, an insurance official. He became a member of The Hermitage Golf Club, (the Club) on the 11th February, 1962. During the course of his long membership of the Club, he has been its honorary secretary, 1981 – 1982 and, has served on its handicap sub-committee, 1979 – 1980. The Club is an unincorporated association. Rule 11 of its rules provides that the Club shall consist of its several categories of members. Rule 9 provides for the appointment of sub-committees of the executive committee of the Club: in particular the handicap sub-committee. Of importance in the instant case is rule 9.5 which requires that minutes be kept in proper books of all resolutions and proceedings of sub-committees which, when signed by the chairperson, shall be conclusive evidence without further proof of the facts stated therein. For the years ending December 2002, and December 2003, the third defendant was chairman of the handicap sub-committee of the Club.

On the 8th December, 2011, during the course of this action, a handicap record sheet for the plaintiff was printed by a member of the handicap sub-committee using the Genesys Convenor computerised handicap record system. This printout covers the period from the 22nd June, 2001, to the 29th December, 2010. It shows that on the 18th March, 2001, the plaintiff had a playing handicap of 15. Between the 6th April, 2002, and the 30th November, 2002, inclusive the plaintiff submitted a total of 22 score cards to the handicap sub-committee. On the 30th November, 2002, his playing handicap had been adjusted to 13. Between the 30th April, 2003 and 4th October, 2003, the plaintiff submitted a total of 55 score cards to the handicap sub-committee. On the 4th October, 2003, his adjusted playing handicap was 13. During the period from the 30th June, 2002 to the 28th August, 2003 inclusive, the plaintiff's playing handicap was adjusted 9 times by the handicap sub-committee as follows:-

> 30th June, 2002 – 16, 30th September, 2002 – 17, 7th October, 2002 – 16, 24th October, 2002 – 15, 30th November, 2002, - 13, 30th April, 2003 – 14, 9th July, 2003 – 13, 30th July, 2003 – 13 and 28th August, 2003 – 13.

I find on the evidence that the return of this number of score cards by the plaintiff and the making of this number of adjustments in his playing handicap by the handicap sub-committee were both quite out of the ordinary.

By a letter dated the 24th October, 2003, to the then honorary secretary of the Club written, I infer, in compliance with the provisions of rule 23 of the Club rules which provide that all complaints be made in writing to the honorary secretary of the Club, the plaintiff expressed dissatisfaction with these many adjustments to his playing handicap. Following the further reduction of his handicap on the 30th November, 2002, the plaintiff complained by telephone and by a letter dated the 27th March, 2003, to each individual member of the handicap sub-committee at his residence and at his place of employment. Grave exception was taken to the language of this letter and to the nature of these contacts. The executive committee of the Club, by letter dated the 11th April, 2003, demanded a withdrawal of this letter and a written apology to the members of the handicap sub-committee. This was done by letter dated the 23rd April, 2003.

The plaintiff continued to challenge the cuts to his playing handicap. Letters in this regard dated the 10th May, 2003, 20th May, 2003, 26th May, 2003, 3rd June, 2003, 25th June, 2003, 5th July, 2003, 15th July, 2003, 17th July, 2003, 22nd July, 2003, 23rd July, 2003, and 27th July, 2003, were exchanged between the plaintiff and Mr. Paddy McDermott the then honorary secretary of the Club.

A minute of a meeting of the handicap sub-committee held on the 30th July, 2003, was proved in evidence. At Item 1, under the heading, "Matters Discussed" the following is noted, -

> "1. Thirteen further cards received from Tom Talbot – clearly for handicap building purposes. It was agreed that these would be placed through his handicap details and then cut back to thirteen. This was done and a note left for him to play off thirteen. A printout of his handicap details was also made available for Mr. Talbot."

The third defendant gave evidence that he believed that this minute was typed by Mr. Dick Clery who was a member of the handicap sub-committee at that time. This membership is borne out by the other minutes of the sub-committee. The minute of the meeting held on the 30th July, 2003, records that Mr. Clery was not present at that meeting and sent his apologies for his inability to be present. The fact that Mr. Clery was not at the meeting does not mean that the recollection of the third defendant that Mr. Clery typed the minute stands discredited. It does mean that if he prepared the typed minute he must have worked from a note taken by some other member of the sub-committee who was present at the meeting. The plaintiff had himself in the past been a member of this sub-committee and he did not put it to the third defendant or to Mr. Eoin Buckley who also gave evidence and, who is recorded in the minute as having been present at the meeting, that such note would have been taken and/or the typed version of the minute prepared by a stenographer or a secretary. In these circumstances, I am prepared to accept the recollection of the third defendant with regard to this matter as true and accurate.

The third defendant and Mr. Eoin Buckley both gave evidence, which was not challenged by the plaintiff, that the minutes of the meetings of the Club handicap sub-committee are kept in folders in a drawer, which is located in a desk in the men's competition room. They told me, and were again not challenged by the plaintiff on this, that the men's competition room is generally kept locked and that only members of the Club handicap sub-committee have access to these minutes.

The plaintiff gave evidence, which I accept, that on or about the 30th August, 2003, he received a handicap certificate signed by the third defendant and dated the 30th July, 2003. The plaintiff, - though he was not prepared to be emphatic on this point, - felt that he had received this document by ordinary prepaid post in a sealed envelope addressed to him. It was the recollection of the third defendant, - and he also was not prepared to be categoric on the point, - that he had left this document in a sealed envelope addressed to the plaintiff in a slot on the notice board in the men's locker room of the Club. Having regard to the terms of the minute dated the 30th July, 2003, to which I have adverted, the recollection of the third defendant is more probably correct.

The third defendant accepted that all the writing on this certificate was done by him and he acknowledged his signature on the document. This documents states as follows:-

> "This is to certify that,
>
> Talbot, Tom
>
> Is a playing member of
>
> Hermitage Golf Club
>
> With a current handicap of
>
> 13 (13.0)
>
> Signed
>
> (Signature)
>
> Eddie Murphy.
>
> Date: 30th July, 2003."
>
> Under this date the third defendant accepts that he wrote the following:-
>
> "General Play (Handicap Building)."

The plaintiff claims that these words are false and, are defamatory of him as imputing that he cheated at golf.

The third defendant gave evidence that he did not intend to suggest by the words "Handicap Building" that the plaintiff was cheating at golf. What he intended and what he claimed these words conveyed was that the plaintiff's handicap had automatically built up because of the large number of score cards submitted by him prior to the 30th July, 2003, and, in the opinion of the handicap sub-committee. did not therefore reflect his true playing ability. The third defendant was here referring to the provisions of the Standard Scratch Score and Handicapping Scheme effective from the 1st January, 2001, to the 31st January, 2004, when it was replaced.

Clause 16.3 of this scheme provided that if a player returned a score with a net differential above his Buffer Zone or, recorded a "no return", his exact handicap was increased by 0.1 of a stroke. A "playing handicap" is this "exact handicap" calculated to the nearest whole number. On the evidence the plaintiff's Buffer Zone was 0 to plus 3. "Net differential" was defined as the difference between the net score returned by a player in a Qualifying Competition and the Competition Scratch Score.

Clause 19.1 of this scheme provided that whenever the handicap committee of a player's Home Club considered that his Exact Handicap was too high and did not reflect his current playing ability the handicap committee must (this emphasis is mine), reduce his Exact Handicap to the figure it considered appropriate. In Ireland fractional reductions of less than one whole stroke are permitted. Clause 19.4 of the scheme provided that in effecting such an adjustment the handicap committee, "shall" consider all available information regarding the player's golfing ability and in particular, the frequency of Qualifying Scores recently returned by the player to or below his Playing Handicap and his achievements in various types of Non-Qualifying Competitions. Clause 19.9 of the scheme provided that decisions made by the handicap committee under Clause 19, "shall be final".

At Appendix K5(f) of this Scheme it was stated that Clause 17(suspension and loss of handicap) and Clause 19 (alteration of handicap relating to general play), gave the Clubs a discretion to deal with players who persistently submitted incomplete cards or made "no returns", if they considered that these members were attempting to "build a handicap". I am satisfied on the evidence and I find that neither of these circumstances applied to this plaintiff. "Building a handicap" is not otherwise defined or considered in this Scheme.

This Scheme was replaced as and from the 1st February, 2004, by the C.O.N.G.U. Unified Handicapping System, which was itself replaced as and from the 1st February, 2008, by a new C.O.N.G.U. Unified Handicapping System.

In considering whether the words "Handicap Building" were defamatory of the plaintiff the task of the Court is to determine the sense in which they would reasonably be understood by a hypothetical reasonable member of the class of persons interested in the playing of the game of Golf. The intention of the third defendant or of the other members of the handicap sub-committee in writing these words on the handicap certificate or in recording these words in the minute of the 30th July, 2003, is not relevant to that consideration. In this context, for the same reason, the presence, - direct or indirect - or the absence of a definition of "Handicap Building" in the Standard Scratch Score and Handicapping Scheme effective between the 1st January, 2001 and the 31st January, 2003, both inclusive, is also irrelevant.

In this case no innuendo meaning supported by extrinsic facts is relied upon by the plaintiff. He claims that the defamatory meaning, that he cheated at golf, arises by inference from the words "Handicap Building", without the need for any added facts to render them defamatory, - that the words were defamatory in their natural and ordinary meaning. As was pointed out in *Lewis v. Daily Telegraph Limited* [1964] A.C. 234, cited by Kearns P. in *Griffin v. Sunday Newspapers Limited* [2012] 1 I.L.R.M. 260 at 267, this involves two elements: the words themselves and, the meaning which the hypothetical ordinary, reasonable and well informed person, without any special knowledge, would reasonably draw from these words.

In *McGrath v. Independent Newspapers (Ireland) Limited* [2004] 2 I.R. 425, Gilligan J. held as follows:-

"At the trial it is for the judge to decide as a matter of law whether the words are capable of bearing a defamatory meaning on the principle that it is for the court to say whether the publication is fairly capable of a construction which would make it libellous and for the jury to say whether in fact that construction ought, under the circumstances, to be attributed to it. In determining whether the words are capable of a defamatory meaning the court is obliged to construe the words according to the fair and natural meaning which would be given to them by reasonable persons of ordinary intelligence and will not consider what a person setting themselves to work to deduce some unusual meaning might extract from them. The court should avoid an over elaborate analysis of the article because the ordinary reader would not analyse the article in the same manner as a lawyer or accountant would analyse documents or accounts."

I am satisfied that the words "Handicap Building" are fairly capable of a construction which would render them defamatory. I find as a fact that this construction ought to be attributed to them in the circumstances of this case. I am satisfied that any hypothetical, ordinary, reasonable and well informed member of the class of persons interested in the playing of the game Golf would reasonably and fairly conclude from these words that the addressee was being accused of consciously and deliberately inflating his playing handicap so as to give himself an unfair and improper advantage against other players by misrepresenting his true playing ability. I find that the words "Handicap Building", written by the third defendant and recorded in the minute of the meeting of the handicap sub-committee of the 30th July, 2003, in their natural and ordinary meaning meant that the plaintiff was cheating at golf. I do not accept the construction contended for by the first and third defendants that the words meant only that the plaintiff's playing handicap had automatically built up by reason of the operation of Clause 16.3 of the Scheme on the large number of score cards he had returned and consequently needed to be adjusted downwards under the provisions of Clause 19.1 to reflect his current playing ability. I do not accept that a hypothetical reasonable member of the class of persons interested in the playing of the game of golf would reasonably put such a construction on these words.

An accusation of cheating in amateur sport and games has for over 150 years been held to be seriously defamatory of the person accused of such behaviour. I find that this is especially likely to be so in the case of the game of Golf which the evidence established depends in a most particular way on the personal trustworthiness of the players: several witnesses described the game of Golf as an "honesty game". Such a person, to a high degree of probability, will be shunned, socially excluded and, held in contempt by reasonable and right thinking persons. This scarcely requires any further explanation or amplification.

The fact that the words, "Handicap Building" were defamatory of the plaintiff does not however mean that he has been defamed by the defendants or any of them. Without the publication of those words to some third party or parties there can be no libel. The plaintiff must prove such publication in order to succeed in his action. Publication to himself will not suffice. However, publication to one other person is all that requires to be shown, (see *Capital and Counties Bank v. Henty* [1882] 7 A.C. 741 at 765 per. Lord Penzance). I am satisfied on the evidence to which I have already adverted that the handicap certificate dated the 30th July, 2003, on which the third defendant had written the words, "General Play (Handicap Building)" was not published by the third defendant to anyone other than to the plaintiff himself.

Discovery of Documents was sought in writing by the plaintiff in this action. However when this was opposed by the Solicitors for the first and third defendants, the plaintiff did not persevere in seeking discovery. I am satisfied on the evidence that the plaintiff was very anxious to obtain the minutes of the handicap sub-committee of the Club. However, being a litigant in person the plaintiff confused a Notice to Admit Documents with an application for Discovery of Documents on Oath and did not therefore continue to seek the latter.

The computer generated handicap record sheet printed on the 8th December, 2011, to which I have already adverted, contains the following notation:-

> "28/08/2003 28/08/2003 G.P. Handicap Building GPA 13.0 13"

I am quite satisfied on the evidence, that such a printout will be made available to the subject member on request but is otherwise only available to members of the handicap sub-committee of the Club in the performance of their delegated handicapping function. I therefore find that such communication of the words, "Handicap Building" as is evidenced by this computer printout was only published to whoever programmed the software database from which it is derived.

The minutes of the handicap sub-committee dated the 31st July, 2002, and 25th August, 2002, under the heading, "NEW HANDICAP SYSTEM" record that the handicap sub-committee were then obtaining demonstrations of two different computer software handicapping systems to be used on the Club P.C. The first reference to the Genesys Convenor system is in the minute of the 30th September, 2002. The minute of the meeting of the handicap sub-committee on the 23rd October, 2002, contains the following record:-

> "The Committee agreed to make contact with Genesys for them to install their handicap system in Hermitage and to handle the conversion of our existing data."

Following from this, the minute of the 28th November, 2002, records the following:-

> "Eddie Murphy, Dick Clery and Gerry Hogan met Mike from Genesys on the 18th November, in Hermitage. The new handicap system was installed on the P.C. and set up in the competitions and handicap room. The terminal in the men's locker room was also changed to accommodate the new system. The members' handicap details were converted from the (former) system to Genesys.
>
> Arrangements were made for Eddie Murphy and Dick Clery to input the member's individual numbers in Genesys and to verify that each member's handicap was correctly converted before downloading the entire file to GUI."

Finally, in the minute of the 2nd April, 2003, it is recorded that, "a representative from Genesys recently provided training on the handicap system to committee members". Eddie Murphy, the third defendant was chairman of the handicap sub-committee in the year 2002 and in the year 2003 and Dick Clery was a member of the sub-committee in both years. The third defendant gave evidence that since in or about 2001 it was a requirement of the second defendant that complete details of the handicap of each member of the Club be entered on the computer record. The plaintiff does not have to prove that the defamatory words were actually seen and read by a particular third party. If, on the evidence adduced, it is a reasonable inference that this occurred, a *prima facie* case of publication will be established. From these minutes of the 23rd October, 2002, and 28th November, 2002, I am satisfied that it is reasonable to infer that the defamatory words were published to an employee or agent, employees or agents of Genesys and, though it is unnecessary to go this far, also to some member or agent of the second defendant, by the members of the handicap sub-committee of the Club including the third defendant.

Counsel for the first defendant and third defendant objected that this database had not been specifically identified by the plaintiff as a document in which he claimed to have been defamed, nor had he identified these third parties as persons to whose attention the defamatory words had come. By order of the Supreme Court made on the 29th February, 2008, following a judgment of that Court given on the same date, the plaintiff was ordered to list each and every document in which he claimed he had been defamed and state to whose attention each such document had come. In the first Schedule annexed to the Order of McMahon J. made on the 3rd November, 2010, the plaintiff identified six documents as follows; Handicap Certificate dated the 30th July, 2003, letter 16th December, 2004, Mr. Gerry O'Donnell to third defendant, letter 18th December, 2004, Mr. Seán Óg O'Ceallacaháin to third defendant, letter 11th January, 2005, Mr. David Cullen to third defendant, letter/notice 26th August, 2003, Mr. John Ferriter to third defendant and, letter/notice 10th June, 2004, Mr. John Ferriter to Captain of the Club. In the second Schedule annexed to the Order of McMahon J. the plaintiff identified the following persons as those to whose attention the defamatory words had come, - the Committee and Staff of the Club, all members of the Club who received a circular letter and a Report dated respectively 14th May, 2007 and 26th November, 2007 from Mr. John Corcoran, then Honorary Secretary of the Club, all members of the public to whom such members, "disseminated gossip" about this matter, a "Golfing Union of Ireland man in Cavan", the plaintiff's brother to whom this man spoke and, three other members of the plaintiff's family with whom his brother discussed the matter.

Throughout the hearing of this case many pleading issues arose in which Counsel for the first defendant and third defendant objected that matters were being canvassed by the plaintiff and evidence was being led by him which fell outside the parameters of the pleadings in the case and especially outside these schedules. However, conscious of the fact that the plaintiff is a litigant in person and drew his own pleadings, and, mindful of the reproach of Lord Diplock in *Boston v. Bagshaw* [1966] 1W.L.R. 1126 at 1135 that:-

> "Lawyers should be ashamed that they have allowed the law of defamation to have become bogged down in such a mass of technicalities..."

I determined, in the interests of justice, to permit very considerable latitude to the plaintiff in making his case. I allowed this latitude to the plaintiff provided he did not depart altogether from what he had pleaded and so long as I was fully satisfied that the defendants were not thereby prejudiced in dealing with the evidence or in making their defence.

Even where a plaintiff proves that defamatory words have been written and published of and concerning him, there are occasions, in the public interest where the Law relieves a defendant from what would otherwise be the consequences of that publication. Such and occasion, to borrow the well know definition of Lord Atkinson in *Adam v. Ward*, [1917] A.C. 309 at 334, arises where the person who makes the communication has an interest, or duty, legal, social or moral to make it to the person to whom it is made and that person has a reciprocal interest or duty to receive it. The reason why such qualified privilege is allowed is explained in the following equally well-known passage from the judgment of Willes J., in *Henwood v. Harrison* [1872] L.R.7. C.P. 606 at 622:-

> "The principle on which these cases are founded is a universal one, that the public convenience is to be preferred to private interests, and that communications which the interests of society require to be unfettered may freely be made by persons acting honestly without actual malice, notwithstanding that they involve relevant comments condemnatory of individuals."

The third defendant and the other members of the handicap sub-committee of the Club clearly had no moral, social or legally enforceable duty to make this communication to any employee or agent of Genesys. This leaves the issue of whether he or they had an interest to make the communication and whether Genesys had a reciprocal interest to receive it.

The evidence established that there are over one thousand members in the Club and that the handicap sub-committee was solely responsible for ensuring that the playing handicap of each such member was constantly reviewed and validated in accordance with the requirements of the Standard Scratch Score and Handicapping System then in force. The work of the sub-committee was subject to random audit by the second defendant. In the performance of this exacting and onerous task, the handicap sub-committee needed to constantly refer to the individual records of each playing member of the Club. The evidence established that a failure on the part of the handicap sub-committee to carry out their task efficiently and accurately could result in serious consequences for the Club, including the suspension or loss of handicaps so that members could no longer participate in the game of golf within the CONGU system.

In these circumstances I find that the third defendant and the other members of the handicap sub-committee had a reasonable and a genuine interest in seeking out the computer software system which they considered was best suited to assist them in their task. For this purpose, the third defendant and the other members of the handicap sub-committee of the Club had an interest in communicating with Genesys and, having chosen that particular system, he and they had an interest in ensuring that a complete and accurate database was set up. This, as the minute's record, necessarily involved transferring all existing handicap details of members, including the details relating to the plaintiff, to this new system.

I am satisfied that the correct inference to be drawn from the minutes of the meetings of the handicap sub-committee held on 30th September, 2002, 28th November, 2002 and 2nd April, 2003, there being no evidence whatsoever to the contrary, is that this information was made available by the third defendant and the other members of the handicap sub-committee of the Club to employees or agents, employee or agent, of Genesys who then effected the transfer of information to the new database. I am satisfied that each and every such person to whom these communications, including the defamatory words of and concerning the plaintiff, were made, had a reciprocal interest in receiving those communications. I find that the inclusion in the communicated material of the defamatory words, - "G.P. Handicap Building.", - was part of and, was not, "obviously and wholly unconnected with and extraneous to", the material needed to be communicated to the employees or agents, employee or agent, of Genesys.

I therefore find that the publication of the defamatory words by the third defendant and the other members of the handicap sub-committee of the Club to this third party or these third parties was on an occasion of qualified privilege. This, "rebuts the inference of [malice] prima facie arising from a statement prejudicial to the character of the plaintiff and puts it upon him to prove that there was malice in fact, that the defendant was actuated by motives of personal spite or ill will, independent of the occasion on which the communication was made." (per Parke B. in *Wright v. Woodgate* [1835] 2 C.M.R. 573 at 577 followed in *Harris v. Arnott* (No. 2 [1890] 26 L.R.Ir. 75).

Throughout the hearing of this action the plaintiff attributed the many reductions in his playing handicap between the 30th June, 2002 and the 28th August, 2003, inclusive and, the publication of the words, "General Play (Handicap Building)" to dislike, vindictiveness, ill will and spite on the part of the third defendant towards him. The Law presumes that the third defendant and the other members of the handicap sub-committee honestly believed the truth of the words published, that the plaintiff was "Handicap Building". The onus is therefore on the plaintiff to show that the third defendant and the other members of the handicap sub-committee did not honestly believe the truth of what was written and recorded or were indifferent to its truth or falsity, (*Horrocks v.*

Lowe [1975] A.C. 135 at 149-151, Lord Diplock). In this regard no Reply was delivered by the plaintiff to para. 4(e) of the Defence of the first defendant and third defendant that, -

> "... if the said term was published, such publication occurred only on an occasion of qualified privilege and without malice".

During the hearing of this action the plaintiff did not seek to demonstrate that the third defendant and the other members of the handicap sub-committee of the Club did not honestly believe in the truth of the words. His position was that whatever their belief the sole purpose of the third defendant and the other members of the handicap sub-committee in publishing the words was, to borrow the words of Lord Diplock in Horrocks v. Lowe, (above cited) at page 150, "to give vent to personal spite and ill will towards him". The plaintiff contended that the other members of the handicap sub-committee of the club acted under the influence of the third defendant who in 2002 and 2003 was Chairman of that committee. The following is a summary of the evidence offered by the plaintiff which he claimed indicated actual malice or improper motive on the part of the third defendant and the other members of the handicap sub-committee of the club in communicating the defamatory words to the employee or agent, employees or agents, of Genesys. There was no evidence before the court from which I could be satisfied or from which I could draw a proper inference that the same material was downloaded to the second defendant.

His playing handicap had been reduced by the handicap sub-committee six times in a two year period, - 2002 and 2003. No other member of the Club had suffered a similar handicap reduction in the period 1962 to 2006.

In the same period no other member of the Club had been accused of a "handicap building" by the handicap sub-committee of the club and, so far as he was aware, this had never happened either before or since.

At their meeting on the 30th July, 2003 the handicap sub-committee, under the chairmanship of the third defendant, concluded that the number of cards returned by him was, "clearly for handicap building purposes". This conclusion was entirely unreasonable because of the failure of the handicap sub-committee to make any enquiries from him, a long time member and a past officer of the Club.

Some of his score cards where sent by the handicap sub-committee to Mr. Paddy Maguire, who was the then General Manager of the Club, "to decide as to what action to take". Mr. Maguire had no function whatsoever in the operation of the handicapping system which was solely the function of the handicap sub-committee.

The third defendant accepted that the plaintiff was consistently scrupulous in returning score cards and had never returned an "incomplete card" or made a "no return".

There had been only two audits of the Club by the second defendant in the period 2002 to 2009 inclusive; one in 2003 in respect of the 2002 playing year and, the other in 2004, in respect of the 2003 playing year. The 2002 audit was carried out by an officer of the Leinster Branch of the second defendant who was and remains a member of the Club, was a former office holder and president of the Club and, is the father of a member of the handicap sub-committee of the Club in 2002 and 2003. In 2003, the third defendant had discussed the plaintiff's score card returns and handicap with this officer of the Leinster Branch of the second defendant. The plaintiff contended that these audits were arranged by the third defendant to, "whitewash", his victimisation of the plaintiff through the use of Clause 19.1 of the Standard Scratch Score and Handicapping Scheme 2001 and 2003 inclusive.

By a letter dated 26th August, 2003, the second defendant through Mr. John Ferriter wrote to the third defendant stating, *inter alia*, with regard to the 2002 Audit carried out in 2003 that, "the Handicap Scheme is being fairly applied and records kept by the handicap committee". A similar letter was received from Mr. Ferriter by the Captain of the Club with respect to the 2003 Audit carried out in 2004 by a different officer of the Leinster Branch of the second defendant, but one who was also a member of the Club.

The plaintiff's handicap had been suspended. A letter of apology addressed to the plaintiff was left in a slot on the notice board in the men's locker room explaining that someone in error had ticked an incorrect box in the computer system which had resulted in this suspension. The plaintiff contended that if this explanation and apology was genuine it would have been communicated to him in the most expeditious manner possible which was not done.

The plaintiff contended that the origin of the personal spite and ill will directed against him by the third defendant lay in the fact that for some time, culminating in the exchanges at the Annual General Meeting of the Club in December 2003, and on the 10th December, 2004, he had been challenging the officer board of the Club, including the third defendant, on a number of issues including, expenditure which he regarded as wasteful, withdrawal of age and long-membership concessions, the necessity for external auditors, the treatment of entrance fees in the accounts, the movement of funds between the current trading account, the capital account and the trust account, the condition of the playing facilities and, the levies paid to the second defendant.

Commencing with the letter dated 27th October, 2002, the plaintiff challenged the reductions by the handicap sub-committee of the Club in his playing handicap. He contended that he was selected for these reductions by the third defendant because of this opposition to the decisions of the officer board of the Club.

On the 8th November, 2004, in the Club car park, the plaintiff was explaining to a fellow member the difficulties he was experiencing with the handicap sub-committee. The third defendant passed by. The plaintiff admits that he said, "its all his f_____ fault" but claims that this was provoked by the victimisation he was experiencing from the third defendant and the handicap sub-committee. The third defendant lodged a complaint with the executive committee of the Club and the plaintiff's membership was suspended for the months of February, March and April 2005. On only two other occasions since 1962, had the use of club facilities been temporarily withdrawn from a Club member: where a Club member had caused damage to Club property and, where a Club member had sung inappropriate songs in the Club lounge in mixed company.

The plaintiff contended that following the Annual General Meeting of the Club on 10th December, 2004, the third defendant had persuaded three fellow members of the Club to write letters, (16th December, 2004, 18th December 2004, and 1st January, 2005), to the Executive Committee of the Club through him in accordance with Club Rule 23, claiming that the conduct of the plaintiff at this meeting had been totally unacceptable and suggesting that he be severely punished. The plaintiff contended that the third defendant had done this with the intent of having him dismissed from the

Club, although in fact he had only received a warning.

When the letters of complaint were received by the third defendant in breach of Club Rule 23 the third defendant did not seek to remove the cause of the complaint as required by the rule but, immediately, put those letters of complaint before the Executive Committee of the Club.

Neither the third defendant nor Mr. Eoin Buckley, both members of the handicap sub-committee of the Club in 2003, nor Mr. Paul Harmey, who was captain of the Club in 2003, could offer the court any explanation as to why the handicap sub-committee sent some of the plaintiff's score cards to the General Manager of the Club, Mr. Paddy Maguire, "to decide on what action to take". The third defendant accepted that he had spoken informally in 2003, to Mr. Fintan Buckley in his capacity as a council member of Leinster Branch of the second defendant, about the problems the handicap sub-committee were having with regard to the plaintiff's playing handicap. In my judgment these matters together with the minutes of the meetings of the handicap sub-committee in 2002 and 2003 and the correspondence with the plaintiff from 27th October, 2002 to 9th July, 2003, demonstrate that the members of the handicap sub-committee, including the third defendant were genuinely endeavouring to confront and were becoming somewhat desperate in seeking to resolve the divisive issue of the plaintiff's playing handicap. I do not accept that by involving the General Manager of the Club and Mr. Fintan Buckley in the matter the members of the handicap sub-committee showed themselves to be actuated by malice towards the plaintiff so that it may be inferred that they published the defamatory words to the employee or agent, employees or agents of Genesys for the purpose of injuring the plaintiff. In my judgment this evidence demonstrates that the third defendant and the other members of the handicap sub-committee were seeking a solution to an escalating and intractable problem.

I am satisfied on the evidence and, I so find, that the third defendant had no involvement whatsoever in the decision of the Leinster Branch of the second defendant to carry out an Audit of the Club in 2003 in respect of the 2002 playing season and, in 2004 in respect of the 2003 playing season. I accept the evidence of Mr. John J. Ferriter, corroborated by that of Mr. Seamus Smith, General Secretary of the second defendant in 2002 and 2003, Mr. Oliver Finn now General Secretary of the second defendant and Assistant General Secretary of the defendant in 2002 and 2003 and, Mr. Fintan Buckley, a council member of the Leinster Branch of the second defendant, that the decision to carry out these audits of the Club was taken solely by Mr. John Ferriter as Handicap Convenor of the second defendant for the Leinster Area. I am satisfied on the evidence that a golf Club cannot invite such an audit. In reaching a decision as to which clubs to audit in a particular year Mr. Ferriter told me in evidence that he employed four criteria:-

"(a) The level of success which a Club enjoyed in inter-club competitions in the previous year.

(b) The number of members of a club who had success in non-qualifying competitions in the previous year.

(c) The number of scratch players in a club playing away who had not returned score cards.

(d) The fact that a club had been recently set up."

Mr. Ferriter told the court that Mr. Fintan Buckley was designated by him alone to carry out the audit of the first defendant and four other golf clubs in the Leinster area in 2003. Mr. John Joe Maher, a council member of the Leinster Branch of the second defendant, was designated by him alone to carry out the audit of the first defendant and a number of other clubs in the Leinster area in 2004. In the interests of consistency every audit is carried out by the audit officer working through set lists of questions in a questionnaire formulated by Mr. Ferriter in 1998 or earlier. A copy of such a questionnaire was produced in evidence by Mr. Ferriter. None of the questions raised in this questionnaire would give rise to a consideration of the plaintiff's handicap issues with the handicap sub-committee of the Club. I am satisfied on the evidence of Mr. Ferriter and Mr. Smith that it is not all unusual for a member of a club who is also a council member of the Leinster Branch of the second defendant to carry out the audit of his own club. This is done in order to save time and travel expenses because the persons carrying out these audits receive no remuneration whatsoever. Mr. Ferriter told the court that if a problem in a club is disclosed by the return made to the questionnaire and the Club does not correct that problem within the time allowed by the second defendant, the Club is disaffiliated and all playing members in that club lose their handicaps.

I accept the evidence of Mr. Eoin Buckley, a member of the handicap sub-committee of the Club in 2002 and 2003, that the suspension of the plaintiff's handicap occurred in error. Perhaps it would have been better had the explanation and apology been sent by post or, if the option presented, by email to the plaintiff. However, I am quite unable to find any evidence of malice or improper motive in the decision of the handicap sub-committee to leave the explanation and apology in a sealed envelope addressed to the plaintiff in a slot on the notice board in the men's locker room in the reasonable expectation that the plaintiff would call into the Club in the very immediate future.

I am satisfied that the proper inference to be drawn from the minutes of the meeting of the handicap sub-committee dated 28th November, 2002 and 2nd April, 2003 is that the Genesys database had been established by the latter date, at the very latest and that therefore the defamatory words had been published to the employee or agent, employees or agents of Genesys prior to that to date. I find that the events which occurred in the Club car park on 8th November, 2004, and the events which followed the Annual General Meeting of the Club on 10th December, 2004, could not in any way have influenced the decision of the third defendant and the other members of the handicap sub-committee of the Club to publish the defamatory words to the employee or agent, employees or agents of Genesys.

In my judgment it was legitimately opened to the third defendant if, as he stated in evidence, he felt abused, insulted and threatened by the words and actions of the plaintiff on the 8th November, 2004, to make a complaint to the executive committee of the Club. This is essentially a subjective decision for the third defendant himself. I find on the evidence that the third defendant did nothing whatever on that occasion to provoke the plaintiff. His decision to complain cannot be judged by the objective standard of what a hypothetical reasonable man might reasonably have done in the situation. The third defendant accepted that he had subsequently spoken to Mr. Peter Casey, the other member of the Club present on the occasion, who had agreed to and did write a letter, (dated 17th November, 2004) to the executive committee of the Club setting out his recollection of the events. The executive committee of the Club by its decision in the matter communicated to the plaintiff by letter dated 1st February, 2005, considered that the complaint of the third defendant was both justified and serious and found that the plaintiff had been seriously abusive towards the third defendant on the occasion and that his conduct amount to serious misconduct without justification. In such circumstances it could not reasonable be contended that the decision of the third defendant to complain to the executive committee was evidence of spite and ill will towards the plaintiff and of an intention to cause him prejudice.

I am satisfied on the evidence and I find that the third defendant did not invite or induce any of the three members of the Club, Mr. Gerard A. O'Donnell, Mr. Seán Óg O'Ceallacaháin and Mr. David Cullen to write their respective letters of complaint dated 16th December, 2004, 18th December, 2004, and 11th January, 2005. Of these three gentlemen only Mr. O'Donnell gave evidence at the

hearing of the action. Mr. O'Ceallacaháin was unable to attend court for reasons certified on affidavit, made on 13th January, 2012, by his attending general medical practitioner. The court indicated a willingness to have the evidence of Mr. O'Ceallacaháin taken on commission but the plaintiff indicated that he did not wish to pursue that course. Mr. David Cullen no longer resides in this jurisdiction.

Mr. O'Donnell told me, and I accept his evidence, that he was not asked to write his letter dated 16th December, 2004, by anyone. He told me that he had written this letter independently and entirely on his own initiative because of his concern regarding the manner in which he considered the plaintiff had "hogged the floor and turned the meeting into a shambles" and, because of the plaintiff's "cutting and inappropriate remarks to the officers of the Club, in particular the outgoing and incoming captains". He said that he had written the letter not to discredit the plaintiff but solely because he wished to prevent a recurrence of such behaviour at any future meetings of the Club. He did not, he said, write this letter out of any ill will towards the plaintiff. It was significant that during the examination by the plaintiff of this witness, the plaintiff chose to comment to him that he regarded his letter as the least damaging of the three adding, "it was like being attacked by a dead sheep as was said at Westminster". Other than pointing to the fact that all three letters were addressed to the third defendant as Honorary Secretary of the Club, the plaintiff led no evidence in support of his contention that the third defendant had procured these letters to be written out of "dislike and jealousy" in order to injure him by having him expelled from the Club. Rule 23 of the Rules of the Club provides that, -

> "All complaints shall be made in writing to the Honorary Secretary who, if unable to remove the cause shall submit same to the Committee".

Given the nature of these complaints and the fact that they are really addressed to the executive committee of the Club and were calling upon that committee to take a particular action, I accept the evidence of the third defendant that there was no "cause" which he could have removed and he had no option but to place these three letters before the executive committee of the Club.

I am satisfied that the plaintiff has not discharged the burden which falls on him of proving that the third defendant and the other members of the handicap sub-committee of the Club were actuated by motives of spite and ill will towards him or, by some other improper motive. Accordingly, the occasion of publication in this case, untainted by malice, remains a privileged occasion. Throughout the hearing of this action the plaintiff constantly made reference to "malicious prosecution" on the part of the first defendant and third defendant. However, no legal proceedings of any kind, - civil or criminal, - were instituted, continued or carried on by the first defendant or by the third defendant against the plaintiff.

For completeness, though the issue was not raised by the plaintiff in his pleadings, I am satisfied on the evidence that the third defendant and the other members of the handicap committee of the Club did not publish the defamatory matter entered in the Genesys database recklessly without caring whether it was true or not. I am satisfied on the evidence, to which I have already adverted, that the third defendant and the other members of the handicap sub-committee applied themselves most conscientiously to the task and went to very considerable lengths to insure that correct adjustments were made in the plaintiff's playing handicap in accordance with the provisions of Clause 19.1 of the then applicable Standard Scratch Score and Handicapping Scheme. There can be no doubt from the evidence that the plaintiff regarded this clause as unjust, unreasonable and irrational because it applied an entirely subjective test to the determination of whether a player's existing handicap was too high and did not reflect his or her then current playing ability. Perhaps he was correct in this view and, indeed this clause was modified in the 2004 CONGU Unified Handicapping System and replaced entirely in the CONGU Unified Handicapping System 2008 – 2011, which provided for an annual review for all handicaps with power to the handicap committee of each Club to make adjustments between annual reviews, but only in case of exceptional circumstances as defined. However, in 2002 and in 2003, Clause 19.1, whatever its shortcomings, was binding on the plaintiff and on the handicap sub-committee of the Club who were obliged to apply it. Even if the third defendant and the other members of the handicap sub-committee of the Club acted hastily or impulsively or even foolishly in concluding that the plaintiff was "Handicap Building", this does not show recklessness as to the truth or falsity of that conclusion. I am satisfied that the plaintiff has not discharged the burden, which lies on him, of showing that the third defendant and the other members of the handicap sub-committee of the Club were indifferent to the truth or falsity of these words which they published of and concerning him.

In compliance with the judgment and order of the Supreme Court of the 29th February, 2008, to list each and every document in which he claimed he was defamed and to identify those to whose attention each such document was brought by any of the defendants, the plaintiff identified these three letters to the third defendant to which I have already referred, viz, 16th December, 2004, Gerry O'Donnell, 18th December, 2004, Seán Óg O'Ceallacaháin and 11th January, 2005, David Cullen. At the hearing of the action, the plaintiff contended that these letters were libellous of him because they stated that he was mentally ill and were published to the third defendant and to the members of the executive committee of the Club.

In the letter dated the 18th December, 2004, from Mr. Seán Óg O'Ceallacaháin the plaintiff identified the words "on the grounds of ill health" as being defamatory of him. At the hearing of this action the plaintiff failed to identify any part of the letter dated the 11th January, 2005, from Mr. David Cullen to the third defendant or any part of the letter dated the 16th December, 2004, from Mr. Gerry O'Donnell to the third defendant as stating that he was ill nor was this put to Mr. O'Donnell when giving evidence. During the course of the evidence, reference was made to a statement by Mr. Cullen with regard to the events which he witnessed at the Annual General Meeting of the Club on the 10th December, 2004, furnished to a disciplinary committee established by the executive committee of the Club to investigate his complaint of the three members, which contained the suggestion that the plaintiff, "might not be a well man". The plaintiff contended that this was libellous of him. The plaintiff contended that as his physical health was obviously not in any manner impaired on the 10th December, 2004, and as this must have been obvious to every member of the Club who attended the meeting, the proper inference to be drawn from this expression in the letter of Mr. Seán Óg O'Ceallacaháin and in the statement of Mr. David Cullen was that he was mentally ill.

I do not accept that any hypothetical reasonable, intelligent and fair minded man could reasonably construe that the words complained of, - "on the grounds of ill health" and, "might not be a well man" – as imputing in their natural and ordinary meaning that the plaintiff was mentally ill. The plaintiff did not rely on legal innuendo in this action. In addition, it is not open to the plaintiff to separate these words from their context. It is therefore essential that I set out the text of the letter from Mr. Seán Óg O'Ceallacaháin to the third defendant in full:-

> "Re. Tom Talbot
>
> May I add my voice to those with similar views in condemning the disgraceful behaviour of Tom Talbot at last Friday's (Dec. 17th) AGM. I do so in case there is any softening of committee attitude towards member Talbot on grounds of ill health. I have not witnessed a worse display of ignorance and bad manners in my 51 years membership of the Club. His insulting behaviour towards outgoing captain Tony Hatton and incoming captain Andy Brennan during the course of the meeting was not alone inexcusable but totally unacceptable for a club of Hermitage's stature.

> There is no case here for leniency of any kind in dealing officially with Tom Talbot over his conduct last Friday night. His comments regarding the club auditors were disgraceful, but to apply them also to the Hon treasurer Fergus Malone was beneath contempt. Tom Talbot's track record at Hermitage, either at an AGM of EGM levels in recent years, and again last Friday, cannot be allowed to go unpunished. I would point out that member Talbot is already under a cloud over two recent incidents involving the club Hon. Secretary and a prominent member of the Leinster Branch of the GUI, serious matters in themselves. How many more incidents has the Club to endure before positive action has to be taken.
>
> Can I conclude by stating, if Tom Talbot is not seriously and severely dealt with under the present rules on Discipline and Behaviour or other relevant rules, he will only be encourages [sic] to mount similar attacks in the future, thus setting a dangerous precedent. I will be satisfied to accept any punishment imposed by your committee."

When these words, "on the grounds of ill health" are considered in their context, the only natural and ordinary meaning to be placed upon them is that the Executive Committee of the Club should not deal leniently with the plaintiff even if he should make the case that he was suffering from some health problem on the 10th December, 2004. Conversely, Mr. Cullen seems to be considering that the plaintiff's conduct at that Annual General Meeting on the 10th December, 2004, was so extraordinary that he may have been suffering from some health problem. I find that these words were not defamatory of the plaintiff. Even if they were, I am satisfied on the evidence, that each of these three members of the Club had a separate interest in making their complaint and the third defendant had a reciprocal interest in receiving that complaint so that occasion of publication was one of qualified privilege. I find that the plaintiff adduced no evidence of any malice on the part of any of these three members towards him other than to suggest that they wrote the letters at the instigation of the third defendant, with a view to having him expelled from the Club. I have already found that this did not occur. Further, I find that there was no unconnected or extraneous material in any of these complaints such was would negative the privilege. In addition, Mr. O'Donnell, Mr. O'Ceallacaháin and, Mr. Cullen were not joined as defendants in this action. I am satisfied on the evidence and I so find, that none of these three letters nor the statement of Mr. David Cullen was libellous of the plaintiff.

The plaintiff claims that the two letters/notices from the second defendant, one sent to the third defendant and the other sent to the then Captain of the Club following the audits of the Club carried out in 2003 and 2004, confirming the cooperation of and, assistance received from the third defendant and the Club on the occasion of the visits of the audit officers and expressing approval of the records maintained by the Club and their operation of the Handicapping Scheme were defamatory of him. The text of each of these two letters is as follows:-

> "26th August, 2003,
>
> Dear Mr. Murphy,
>
> The handicap records of your Club, were examined on the 4th February, 2003, in accordance with THE STANDARD SCRATCH SCORE AND HANDICAP SCHEME 1983 – Amended Edition 2001.
>
> In our opinion the records give a true and fair view of the Club's application of the above HANDICAPPING SCHEME at 4th February, 2003.
>
> Having obtained all the information and explanations requested for the purposes of our examination we are of the opinion that the "HANDICAPPING SCHEME" is being fairly applied and records of the "HANDICAPPING SCHEME" as required, have been kept by the Handicapping Committee.
>
> May I take this opportunity to thank you sincerely for your cooperation and assistance on the occasion of the review.
>
> Yours sincerely,
>
> John Ferriter
>
> Handicap Convenor Leinster Branch"

That letter carried a heading, - "HANDICAP RECORDS REVIEW – TO THE MEMBERS OF HERMITAGE GOLF CLUB". The second letter dated the 10th June, 2004, is headed Re: HANDICAP REVIEW 2004 and is addressed to the Captain of Hermitage Men's Golf Club. Apart from the difference in dates and the reference to, "The CONGU Unified Handicapping System Effective 1st February, 2004", the text of both letters/notices are identical.

As already indicated the plaintiff claims that these Audits and therefore these letters/notices were solicited by the third defendant and were knowingly furnished by the second defendant in order to "whitewash" the victimisation of the plaintiff by the third defendant out of dislike and jealousy, by availing of Clause 19.1 of the Scheme to repeatedly reduced his playing handicap. I have already found that this did not occur. These letters do not in any way refer to the plaintiff. Legal innuendo is not pleaded by the plaintiff in this case. Even if it were, in my judgment it would be impossible to impute any meaning defamatory of the plaintiff to any of the words used in either of these letters. Significantly, Mr. Ferriter who, as an agent of the second defendant, published these two letters is not joined as a defendant in these proceedings. During the course of the hearing of this action, the plaintiff contended that the second defendant facilitated the libel of him by the first defendant and the third defendant by creating Clause 19.1 of the Standard Scratch Score and Handicapping Scheme effective from the 1st January, 2001, which he claimed was "unjust, stupid and provocative" and by permitting it to remain operative and unchanged until a new System was adopted on the 1st February, 2004. This argument is based upon an entirely false premise. This Scheme was created by The Council of National Golf Unions and, was only administered in Ireland by the second defendant. In addition, Clause 19.1 only relates to the adjustment of exact handicaps. It does not and could not in any way "facilitate" the publication of the defamatory words nor even their composition.

In addition, I find that these letters/notices were published by Mr. John Ferriter on what was clearly an occasion of qualified privilege and, I find that the plaintiff has failed to prove that either Mr. Ferriter or the second defendant was motivated by malice in publishing either of these letters/notices.

On the 14th May, 2007, Mr. John Corcoran, the then Honorary Secretary of the Club, sent a circular letter in the following terms to all members of the Club:-

> "Dear Member,

> Members should be aware of a High Court action being taken by a member of the Club, Mr. Tom Talbot alleging defamation and other "torts" against Hermitage Golf Club, the Golfing Union of Ireland and Eddie Murphy. The Club is defending the action and lodged a defence on its own behalf and on behalf of Eddie Murphy on the 30th March last. In addition, the Club has appealed, to the Supreme Court a decision of a High Court judge not to oblige the plaintiff to reply to a request for particulars in relation to the claim. Members will be kept informed of developments."

In his "Secretary's Report" to the Club members, dated the 26th November, 2007, Mr. John Corcoran included the following paragraph:-

> "In my letter of 14th May, 2007, I drew the attention of members to the High Court action being taken by Mr. Tom Talbot alleging defamation and other Torts against Hermitage Golf Cub, the Golfing Union of Ireland and Eddie Murphy. As indicated the Club lodged its defence to the action on the 30th March. The case continues and I will keep members informed of developments."

The plaintiff claims that the publication of these two documents, not marked "private" or "confidential" had the effect of, "affording disseminating gossip with third parties by the members circularised". The plaintiff claims that the reference to "Defamation and other Torts" would inevitably give rise to enquiries about the defamation alleged and the type of torts claimed. He produced in evidence a letter from his brother, which included the following paragraph:-

> "Recently I spoke to a friend of mine in Cavan who is involved in the Golfing Union of Ireland and he asked me had I a relative named Tom who played golf in Hermitage. When I said I did he told me that you were taking legal action against Hermitage and the G.U.I. over your handicap. Is this true?
>
> I mentioned all the above to (other named family members) and they were very surprised and concerned, as am I. . . ."

Mr. John Corcoran is not a defendant in this action. There is no repetition or republication of the alleged libels or any part of them in either of these documents, nor, did Mr. Corcoran make any comment whatsoever with respect to them. These documents published by Mr. Corcoran impute nothing more to the plaintiff than that he has taken a High Court action against the first defendant, the second defendant and, the third defendant for Defamation and other Torts. In my judgment, it is not defamatory of the plaintiff to publish that he has taken such action and, that it is being defended, where there is no reference whatsoever, either directly or indirectly to the basis of the claim. I am also satisfied that the publication of these documents does not amount to a republication of the original defamatory words by reference. In my judgment Mr. Corcoran, as Honorary Secretary of the Club had an interest in communicating this information, and perhaps even a duty to communicate it, to the members of the Club. They as members of this incorporated association which might have to indemnify the third defendant in respect of any award of damages made to the plaintiff against him or, might themselves have to meet that claim should the assets of the Club prove insufficient for the purpose, had a reciprocal interest to receive that information. No evidence whatsoever to establish malice on the part of Mr. Corcoran was offered by the plaintiff during the course of this action. The fact that these documents probably led to a certain amount of speculation by members of the Club as to the nature of the plaintiff's claim does not amount to the publication of a libel which is the essence of the actionable wrong.

Even if I had come to the conclusion that the protection of qualified privilege which I found attached to the publication of the defamatory words in this case had been negatived by proof of malice, the plaintiff could still not succeed in this action against the first defendant. It has long been decided that an action will not lie against an unincorporated association in its collective name for libel because it has no capacity to publish a libel or to authorise it to be published, (see: *Mercantile Marine Service Association v. Toms* [1916] 2 K.B. 243). Of the handicap sub-committee of the Club the plaintiff has opted to name only the third defendant as a defendant in this action.

The plaintiff's claim based on libel against all three defendants fails and is dismissed.

The plaintiff claims that there was a conspiracy between unidentified officers of the Club and members of the handicap sub-committee of the Club spearheaded by the third defendant and unidentified members of the second defendant, but including Mr. John Ferriter, Mr. Fintan Buckley and Mr. John Joe Maher to cause him injury or damage. The plaintiff never established the nature of the alleged conspiracy either in pleadings or in the course of his evidence during the hearing of this action. On some occasions he appeared to contend that the conspiracy was to have him expelled from the Club by the executive committee as a result of frequent complaints being made against him. At other times the alleged conspiracy appeared to be to so harass and victimise him by repeatedly reducing his playing handicap as to coerce him into resigning from the Club. On yet other occasions the alleged conspiracy appeared to be to, "give him, an evil reputation as regards handicaps", so that no other Club member would play golf with him and he would choose to leave the Club.

In compliance with the judgment and order of the Supreme Court directing him to state precisely the overt acts which he alleges had been done by the alleged conspirators in pursuance to the alleged conspiracy, the plaintiff pleaded as follows:-

> "I hereby present in written form the identifiable indications of conspiracy.
>
> (i) Aforementioned G.U.I. notices confirming audit meeting cooperation and assistance on the occasion of reviews authorised by G.U.I. handicap convenor.
>
> (ii) The aforesaid three letters [from Messrs O'Donnell, O'Ceallacaháin, and Cullen], that came about design to collude in injuring me.
>
> (iii) The collusion in both John Ferriter, G.U.I. 5th June, 2005, and Ian O'Herlihy, member of and Solicitor to Hermitage and Murphy 3rd June, 2004, coming to exactly the same conclusion and explanation."

I have already set out in full the text of the two letters/notices from Mr. Ferriter on behalf of the second defendant and I have also set out in its entirety the letter dated the 18th December, 2004, from Mr. Seán Óg O'Ceallacaháin to the third defendant. The full text of the letter from Mr. Gerry O'Donnell to the third defendant dated the 16th December, 2004, is as follows:-

> "Re: Hermitage Golf Club
>
> ANNUAL GENERAL MEETING

10th December, 2004.

Dear Mr. Murphy,

I am writing to protest in the strongest possible manner about the behaviour of our member, Mr. Tom Talbot at last week's A.G.M. of the Club. The non stop barrage of abuse, discourtesy, incoherence etc, was totally unacceptable and most insulting, not alone to the Officers and to the various committee members but also the general body of members. The outgoing and incoming Captains showed enormous patience and forbearance in their efforts to facilitate free-speech but Mr. Talbot crossed the line to such an extent, on this occasion that I feel the time has come when serious consideration will have be given to preventing any recurrence in future. Several members mentioned to me that they had points to raise, as would be normal at any A.G.M. but were so disgusted at Mr. Talbot's performance that they refrained from saying anything at all. This is not good for our Club and I earnestly request that the new officer board and/or Executive Committee will give this letter appropriate attention in due course."

The full text of the letter dated the 11th January, 2005, from Mr. David Cullen to the third defendant is as follows:-

"Dear Eddie,

I have just received my annual subscription request from the Club and as usual, all is in order.

As a result of Tom Talbot's contributions at our Annual General Meeting I was moved to check the amount of the GUI levy. At €15 or a little over 1% of my total bill, it is insignificant and indeed represents, contrary to Tom Talbot's tirade, excellent value, given the amount of work that the GUI undertakes to administer the game at all levels.

In addition, Tom Talbot's request to re-write minutes, failure to heed the Chairman's requests for quite, general truculence and indeed his criticism of member accountants and lawyers were all unbecoming. I feel compelled to let you know my views, and would wholeheartedly support the Committee in any actions it deems necessary to take, to curb this behaviour and ensure the proper conduct at future meetings.

While, this is not the only recent instance of former Officers acting in an aggressive manner at meetings (I refer in particular to the Information Meeting held on 23rd November), to have the AGM "hijacked" by someone who sadly has some form of agenda, ruined the event for others."

The letter dated the 17th June, 2004, from Arthur O'Hagan, Solicitors for the first defendant, under the signature of Mr. Ian O'Herlihy, partner in that firm, to Neil M. Blayney and Company, then Solicitors for the plaintiff and, the letter dated the 5th June, 2005, from Mr. John Ferriter on behalf of the second defendant, (Leinster Branch) to the plaintiff, undoubtedly make a number of similar points. Both letters state that handicap adjustments are a matter for the home club handicap committee. Both letters note that the handicap adjustments of which the plaintiff complains were affected by the handicap committee of the Club pursuant to the provisions of Clause 19.1 of what the Arthur O'Hagan letter incorrectly describes as the, "Handicapping Scheme of the Golfing Union of Ireland" and Mr. Ferriter equally incorrectly describes as "the CONGU Unified Handicapping System". The correct title is, "the Standard Scratch Score and Handicapping Scheme of the Council of National Golf Unions, administered in Ireland by the Golfing Union of Ireland". Both letters set out the provisions of Clause 19.1. The Arthur O'Hagan letter sets out correctly and in full the text of Clause 19.1 of the relevant Scheme effective from the 1st January, 2001, while Mr. Ferriter cites the relevant part of Clause 19.1 of the CONGU Unified Handicapping System effective from the 1st February, 2004, which, while it is in all material respects the same as the previous Clause 19.1 yet post-dated the events at issue in this case. Mr. Ferriter in his letter refers to the provisions of Clause 19.9, (of the 1st February, 2004, System) which is in the same terms as Clause 19.9 of the 1st February, 2001, Scheme, while the Arthur O'Hagan letter does not. Clause 19.9 provides that:-

"Decisions made by a Handicap Committee, Union or Area Authority under this clause shall be final."

There are further paragraphs in both letters which have nothing in common with each other.

I have already found that the Audits of the Club in 2003 and 2004, were decided upon, initiated and completed by the second defendant acting through Mr. John Ferriter, Mr. Fintan Buckely and Mr. John Joe Maher without any involvement whatsoever of the third defendant or any other member of the first defendant, that is, apart from agreeing a date and time and cooperating fully with the audit officers in carrying out of the audits. Mr. Ferriter gave evidence, which I accept, that he was entirely unaware of the plaintiff's handicap disputes with the handicap sub-committee of the Club until the plaintiff himself telephoned him in connection with those disputes during 2004. He told the court in the course of his evidence that he knew nothing about a specific member of Hermitage Golf Club called Tom Talbot when he wrote the letters/notices dated the 26th August, 2003, and 10th June 2004, certifying the results of the audits as fully satisfactory and thanking the Club for its cooperation and assistance during the reviews. I am satisfied on the evidence that there was no conspiracy of any sort to injure the plaintiff between the third defendant and any other member of the first defendant and the second defendant or any council member, officer of agent of the second defendant including Mr. Ferriter, Mr. Fintan Buckley and Mr. John Joe Maher.

I have further found that Mr. O'Donnell, Mr. O'Ceallacaháin and Mr. Cullen wrote their letters, dated respectively the 16th December, 2004, 18th December, 2004, and 11th January, 2005, spontaneously and entirely of their own volition. I am satisfied that the author of each of these letters was solely motivated by his own sense of outrage at what he perceived to be the unacceptable and disruptive behaviour of the plaintiff at the Annual General Meeting of the Club on the 10th December, 2004 and his concern that this should not be permitted to become a feature of future meetings of the Club. From the opening sentence of Mr. O'Ceallacaháin's letter it would appear that he was aware that other members of the Club were making or intending to make similar complaints. The evidence established that Mr. O'Ceallacaháin during the course of the Annual General Meeting on the 10th December, 2004, voiced strong exception to the plaintiff's conduct and that many other members expressed similar disapproval by expressions of censure and other forms of interjection. I am satisfied that it is reasonable to infer from this that other members of the Club during or after the meeting had indicated an intention of making written complaints to the Executive Committee of the Club to or in the hearing of Mr. O'Ceallacaháin.

I have no reason to doubt the evidence of Mr. John Ferriter that he knew nothing of what the plaintiff had said at the Annual General Meeting of the Club on the 10th December, 2004. He gave evidence that he did not know that the plaintiff had been complaining at Club meetings that the second defendant was "ripping off club members" to pay for over expenditure on the Cartan project despite the sale of the premises on Eglinton Road for €4 million. Mr. Fintan Buckley, who carried out the 2003 audit, told the court that he had attended the Annual General Meeting of the Club on the 10th December, 2004, as an ordinary member of the Club. At that date both

audits had been completed and the results notified to the Club by Mr. Ferriter. Mr. Fintan Buckley told me in evidence that he had heard about the three letters of complaint concerning the plaintiff following the Annual General Meeting of the Club on the 10th December, 2004. He stated that he did not know what was in these letters but the fact that they had been sent was the talk of Club. I am quite satisfied and I find that there was no conspiracy between the third defendant and/or any other member of the Club and/or any member, officer or agent of the second defendant to send these three letters of complaint to the executive committee of the Club. In the events which occurred, the only action taken by the disciplinary committee established by the executive committee of the Club to investigate these complaints was to issue a warning to the plaintiff.

I have already found that the complaint made by the third defendant to the executive committee of the Club following upon the incident in the car park of the Club on the 8th December, 2004, was not actuated by malice. Despite the particulars given as ordered by the Supreme Court of the overt acts done by each of the alleged conspirators in pursuance of the alleged conspiracy, during the course of the action the plaintiff contended that this complaint was also part of a conspiracy to injure or damage him by having him expelled from the Club. The evidence established that at the meeting of the disciplinary committee on the 12th January, 2005, the plaintiff sought to justify this incident by alleging that his handicap had been mishandled and he had been subjected to a campaign of harassment and victimisation. I am satisfied that the sole and predominant purpose of the third defendant in making this complaint was not to injure the plaintiff. As honorary secretary of the Club and as a fellow member of the Club, he was fully entitled to complain about this breach of the Club rules and about the serious abuse of himself by the plaintiff even if this resulted, as it did, in some detriment to the plaintiff. No nexus has been shown between this event and the second defendant. I find that the plaintiff has not adduced any evidence to support a finding of conspiracy between the third defendant and any other person or persons whatsoever in relation to the making of this complaint. I am satisfied that this was the sole decision and act of the third defendant.

In my judgment, there is nothing in the fact of, or in the text of the letters dated the 17th June, 2004, from Arthur O'Hagan, Solicitors for the first defendant to the plaintiff's then solicitors and the letter dated the 5th June, 2005, from Mr. John Ferriter to the plaintiff indicative of any collusion or conspiracy between Mr. Ferriter and Mr. O'Herlihy or between their respective principals, the first defendant and the second defendant. In each case the letter was a reply to a communication received from the plaintiff and from his then Solicitors. As I have demonstrated, the texts of the letters are only superficially similar. It is scarcely surprising that the authors of these letters made similar points and came to exactly the same conclusions and explanations. The issue in both cases was the plaintiff's expressed very great dissatisfaction with the many adjustments downwards of his playing handicap. In each case the only possible reasonable and rational reply was that this had been effected by the handicap sub-committee of the Club pursuant to Clause 19.1 of the Scheme and, that under the Scheme the determination of the handicap sub-committee of the Club was final. It would have been highly irresponsible in Mr. Ferriter to have made any response other than that which he did make and, it would have been almost incredible if Mr. Ian O'Herlihy of Arthur O'Hagan Solicitors had replied in terms different from those in which he did reply.

I am therefore satisfied that the plaintiff has failed to prove conspiracy on the part of the defendants or any of them, their members, officers or agents and I dismiss this claim also.