

## THE HIGH COURT

2007 No. 5496P

BETWEEN

**THOMAS EVANS, ROSEMARY EVANS, RENAISSANCE PRODUCTS LTD.  
AND RENAISSANCE HOUSE MANAGEMENT COMPANY LIMITED**

PLAINTIFFS

**AND  
THOMAS CARLYLE**

DEFENDANT

**Judgment of Mr. Justice John Hedigan delivered the 8th day of May, 2008.**

**The Parties**

1. The first and second named plaintiffs are directors of Renaissance House Management Company Limited which is the fourth named plaintiff herein and is the registered owner of the property known as Renaissance House, Church Street, Howth, Co. Dublin, formerly St. Mary's Church. They are also directors of the third named plaintiff. The premises has been converted into apartments and a beauty therapy and education centre and the third named plaintiff, of which the first and second named are also directors, conducts its business from a part thereof. The forecourt of the premises is used for parking to the benefit of the apartments, the plaintiffs and their customers.

2. The defendant holds himself out as the owner and controller of an adjoining property whose gable wall abuts directly onto this forecourt. Apparently the property is actually owned by a company known as Pasture Properties Limited which I am informed was dissolved on the 7th January, 2000.

**The background**

3. The parties are adjoining land holders and, as is common case, have a fractious history between themselves. This history involves bitter conflict centred upon a long running boundary dispute. On the 5th February, 1999, in proceedings taken by the defendant against the first named plaintiff, his application for an injunction was refused. On the 8th November, 2004, on the application of the fourth named plaintiff, the defendant was restrained from carrying out works or entering on the fourth named plaintiff's lands. The present dispute arises from the defendant's belief that the planning permission for the development of the plaintiffs' premises at St. Mary's Church was obtained through fraudulent means and, as he put it, is not a proper permission. In his affidavits he outlines very elaborately the planning history of the site as he sees it. In his analysis of events he is convinced he has a strong case to make to support his allegation of corruption in the planning process in relation to this property. He acknowledges the time for challenging the permission by way of judicial review or appeal is long expired as the same was granted in 1996. His actions following that and which have given rise to this application are born, he says, of his upset and frustration at being left without a legal remedy.

4. The plaintiffs herein strenuously deny any wrongdoing. The first named plaintiff argues the permission was obtained with the assistance of well established and well respected professional architects. He objects that the defendant's allegations are mere bald assertions unsupported by any evidence of fraud. He avers that the defendant was a competitor at auction when the premises of St. Mary's was bought by him. He maintains that the defendant is motivated by spleen and ill will. He further alleges that the defendant has harassed both him and his staff and has engaged in shouting verbal abuse and making nasty telephone calls to the plaintiff's architects. The first named plaintiff further alleges that the defendant has damaged borders and flower beds on the site in question.

5. At some time in 2007, apparently before June 9th, the defendant herein commenced writing on the gable wall of his property which overlooks the forecourt of the plaintiffs' premises. This writing was added to throughout 2007 and by the commencement of these proceedings covered a large part of this gable wall. In its position, the gable wall enjoys a high level of visibility. As a result, replete with its current graffiti written thereon by the defendant, it has become a major talking point for locals and passers by.

6. The writing in essence accuses a broad range of persons of participating improperly in the obtaining of planning permission for the plaintiff's property. It is also drafted in a very personal and deliberately insulting way, in particular with reference to the first named plaintiff. One notable phrase among many is "Thomas Evans beauty queen writes bogus reports for dummy planning applications". In his oral submissions herein the defendant said that he referred to the first named plaintiff as "beauty queen" just to wind him up as he put it.

7. On the 21st June, 2007, the first named plaintiff's solicitors herein on his instructions wrote to the defendant. This letter called upon him to remove this writing and to undertake not to write further material relating to the first named plaintiff. The defendant's response to this letter was to admit he was the one who had written the statements appearing on the wall, that he had a right to do so, that he would write more and also put this information on the internet. He maintained and he has continued to maintain that his intention was, as he put it, "to force these jokers into court". By this he means, as he has made clear in his affidavit and at the hearing of this application, that he will not remove the writing on the gable wall and that he wants to be brought to court where he will plead that all that he has written is true.

8. The first named plaintiff avers that when the graffiti first appeared his instinct was to ignore it. However, while it started as quite a small phenomenon, it gradually began to fill most of the gable wall. The first named plaintiff came to the conclusion that he should act and, as noted, instructed his solicitors in June, 2007. An application was made ex parte to the High Court on the 24th July, 2007. Laffoy J. ordered that the defendant be restrained from:-

*"...writing text defamatory of the plaintiffs on exterior walls of premises in the occupation and/or control of the defendant, his servants, agents or otherwise in the immediate vicinity of the plaintiff's place of business and/or residential premises let by the first and/or second plaintiffs as landlords at or in the vicinity of Renaissance House (formerly St. Mary's Parochial Hall, formerly St. Mary's Church) Church Street, Howth, Co. Dublin, for the purpose of wrongfully interfering with the plaintiffs in their conduct of his/her/their/its business as beauty product distributors, consultants, property managers and landlords of residential accommodation at Church Street, Howth, Co. Dublin."*

9. The Court did not grant an order requiring the defendant to remove the text on the wall.

10. The Court gave leave to serve short notice of motion for the 27th July, 2007. This notice of motion has been adjourned to various dates and finally came for hearing before me on the 2nd April, 2008. The plaintiffs were represented by solicitor and counsel. The defendant represented himself, having served notice of change of solicitor on the 1st October, 2007.

## The application

11. The plaintiffs herein have issued proceedings for, inter alia, defamation and have delivered a statement of claim dated the 20th February, 2008, in which they seek:

(1) A permanent injunction to restrain the defendant, whether by himself, his servants, agents or otherwise howsoever from:

(a) Writing text defamatory of the plaintiffs on exterior walls of the premises in the occupation and/or control of the defendant, his servants, agents or otherwise in the immediate vicinity of the plaintiffs place of business and/or residential premises let by the first and/or second named plaintiffs as landlords, at or in the vicinity of Renaissance House, (formerly St. Mary's Parochial Hall, formerly St. Mary's Church, Church Street, Howth, Co. Dublin) for the purpose of wrongfully interfering with the plaintiffs in the conduct of his/her/their/its business as beauty product distributors and consultants, property managers and landlords of residential accommodation, at Renaissance House, Church Street, Howth, Co. Dublin.

(b) Inducing, procuring or persuading members of the public not to engage the services of the plaintiffs as distributors of skincare products and beauty consultants, property managers and landlords of residential accommodation;

(2) An order requiring the defendant, his servants, agents or otherwise howsoever forthwith to remove from the gable wall between the plaintiffs premises known as Renaissance House and Carlyle House, Church Street, Howth, Co. Dublin, all offensive text appearing thereon being libellous of the first named plaintiff.

12. The plaintiffs also claim damages for interference with the plaintiffs' business, conspiracy, wrongful enticement, wrongful procurement and such other relief as is deemed appropriate together with costs.

13. The matter that has come before me is the application for an interlocutory injunction to continue the prohibition already imposed by the order of Laffoy J. upon the defendant and further for a mandatory order requiring the defendant to remove the text in question from the defendant's gable wall.

## The applicable law

14. The Court's jurisdiction to grant interlocutory relief in the form of an injunction may be exercised where it is just and convenient to do so under Order 50, Rule 6 of the Rules of the Superior Courts. As has been decided in *Campus Oil v. Minister for Industry* (No. 2) [1983] I.R. 88, the court before exercising this jurisdiction must consider whether the plaintiff has raised a fair or serious issue to be determined at the trial of the action. If it considers that such a question has been raised, it must then consider whether damages would be adequate to compensate the plaintiff in respect of any wrong or damage suffered. If not, then it must further consider whether on the balance of convenience an interim injunction should be granted.

15. In defamation cases, special rules apply. The jurisdiction of the court in this area has been described as "*of a delicate nature*" which "*ought only to be exercised in the clearest cases*". (See Lord Esher M.R. in *Coulson v. Coulson* (1887) 3 T.L.R. stated at p. 846.)

16. This description of the jurisdiction was approved by the Supreme Court in *Sinclair v. Gogarty* [1937] I.R. 377. Sullivan C.J. delivering the judgment of the Court stated (at p. 384):-

*"The principle upon which the Court should act in considering such applications was stated by Lord Esher M.R. in Coulson v. Coulson, and his statement of the principle was approved of and adopted by the Court of Appeal in Bonnard v. Perryman. The principle is this, that an interlocutory injunction should only be granted in the clearest cases where any jury would say that the matter complained of was libellous, and where if the jury did not so find the Court would set aside the verdict as unreasonable."*

17. I have been referred to the recent judgement of Clarke J. in *Cogley v. Radio Telefis Éireann* [2005] 4 I.R. 79 at page 535.

18. Dealing with the granting of injunctions in defamation cases and reviewing the decisions to date, he observed (at p. 86):-

*"It seems clear, therefore, that the first question that needs to be addressed in any interlocutory application in which a plaintiff seeks prior restraint on the publication or broadcast of material, on the grounds that it is defamatory is whether, on the evidence available at the interlocutory stage, it is clear that the plaintiff will ultimately succeed at a trial."*

*For reasons which have been fully explored in the context of interlocutory injunctions generally, from the decision of the Supreme Court in Campus Oil v. Minister for Industry (No 2) [1983] I.R. 88 onwards, it does not seem to me to be appropriate to ask this court at an interlocutory stage and where it will, necessarily, have available to it only a limited opportunity to consider the merits of a case, to attempt to weigh the likelihood of a plaintiff succeeding or failing. Similarly, it does not seem to be appropriate to invite the court to weigh the likelihood of the defendant succeeding in maintaining any defence in defamation proceedings. Thus the plaintiff will fail to cross the first hurdle if, on the basis of the argument and materials before the court, it appears that there is any reasonable basis for contending that the defendant may succeed at the trial of the action."*

19. Referring to the decision of Kelly J. in *Reynolds v. Malocco* [1999] 2 I.R. 203 Clarke J. continued (at p. 86):-

*"I am satisfied that the reference in the authorities to a clear case means a case where it is clear that the plaintiff will succeed and where, therefore, it is equally clear that none of the possible lines of defence which may be open to a defendant could reasonably succeed. Kelly J. in Reynolds v. Malocco did not depart from that principle. He rejected the proposition that a mere assertion of an intention to justify was, of itself, sufficient."*

20. Kelly J. in *Reynolds v. Malocco* indicated that the defendant should set out the grounds upon which he might succeed in successfully defending the case.

21. Applying these principles to cases of prior restraint it would seem clear that where the defendant in such an application can

satisfy the court that there is at least a reasonable basis for contending that he may successfully defend the case at the hearing of the action, the court ought not to prohibit the publication.

22. This case, however, is not one of prior restraint but of a continuing restraint. It must be noted that in the case of a book, a film or a TV programme there may be cases of a continuing publication so the context of a continuing restraint after publication is not unique to this case. However, there are aspects of this case which are unique. It does seem that in *Bonnard v. Perryman* [1891] 2 Ch. 269, Lord Coleridge did contemplate the possibility that even in cases of libel where free speech is at issue, there may well be cases where the court should prohibit publication. He observed (at p. 284):-

*"...the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions."*

23. The clear implication is that there may be cases where the court should act. It should do so, however, warily and cautiously. It should bear in mind the importance and centrality of freedom of expression in the democratic process. The right to freedom of expression is protected both by article 10 of the European Convention on Human Rights and by Article 40.6.1. of the Irish Constitution. The court, therefore, should be very slow to restrict, either prior to or after publication, the continuing exercise of this right.

### Conclusion

24. In this case there has already been publication. The defendant has had his say. This is significant in the sense that there is a strong public interest in ensuring that a citizen can have his say and call attention to the possibility of corruption in the planning process. There are also his Constitutional and Convention rights to freedom of expression. He has had the opportunity to exercise these rights and has taken it in the most dramatic manner. His freedom of expression, therefore, has already been exercised in an immediate sense. What is sought by the plaintiff is a restraint on his continuing to maintain this "banner" publication until the trial of the action. The wall has, I am informed, become something of a local "sight". I can readily believe that this is so and indeed that was the clear intent of the defendant. The tone and contents of the publication in this case is something which I think should be considered by the court. The tone of the message seems vengeful and deliberately abusive. He himself admits to the desire to "wind up" the plaintiff. Moreover, he has defaced the gable wall of his premises in the heart of the historic town of Howth, no doubt to the dismay of local inhabitants. At the very least there appears to be a strong element of illegality attendant upon this use of a gable wall. Defacing a wall with graffiti is normally regarded as an act of vandalism when it is someone else's wall. It can hardly be far removed from vandalism where it is one's own and visible to the public. The defacing of this gable wall must at the very least do violence to the visual environment to the detriment of the public interest. Moreover, it seems designed to create a continuing humiliation and embarrassment to the plaintiffs in the use of their premises.

25. Against the defendant's freedom to express himself, protected by Article 40.6.1 of the Constitution, the first named plaintiff claims his right to have his good name protected and vindicated as the State is required to do under Article 40.3.2. It is the difficulty of balancing or harmonising these sometimes conflicting rights that has given rise to the description of this particular jurisdiction as one "of a delicate nature". Nowadays this rather quaint description might better be expressed as "of a particularly difficult nature".

26. I have carefully considered the case made by the defendant in his affidavits in this case. It is of course not for the Court at this stage of the proceedings to decide the case between the plaintiffs and the defendant. It is simply for the Court to determine whether there exists any reasonable basis for success by the defendant in pleading justification at the trial. In this case it seems to me that were the defendant able to prove to the balance of probability all the allegations he makes, he would succeed in establishing a defence of justification. Examining the voluminous affidavits he has filed, I think there is just about a reasonable basis for contending that he may succeed. The complexity of the case he seeks to make is, however, daunting.

27. To summarise I conclude the following:

- (a) The words published are clearly defamatory of the plaintiffs unless the defendant can successfully plead justification.
- (b) The defendant wrote these words on the gable wall of his premises in Howth and will continue to do so if not restrained.
- (c) The defendant intends to plead justification and his aim is to force the plaintiffs to sue him and bring him to court where he will, he argues, prove their truth. To this extent he has succeeded in his purpose because the plaintiffs have issued proceedings and the case will now go to court for hearing.
- (d) There is a reasonable basis for his plea of justification as seen from the limited vantage point of an interlocutory application but the defendant faces a daunting task.
- (e) There is a clear element of vengeance and malice in the manner in which the defendant has published his allegations.
- (f) There is also an element of damage to the visual environment by the use of his gable wall as an unauthorised "billboard".
- (g) The continued publication is a daily affront and humiliation to the plaintiffs in their use and enjoyment of their premises and a continuing attack on their good name.

28. I approach this application with the care and caution that is required where it is proposed to interfere with the right to freedom of expression. I also bear in mind the duty of the Court to vindicate the good name of the plaintiffs. I acknowledge that their right to vindicate their good name cannot, save in very exceptional cases, entitle them to prior restraint or to prohibit a continuing publication. I note, however, the dicta of O'Connor J. in *Cullen v. Stanley* [1926] I.R. 73 where he referred to the rule in *Bonnard v. Perryman* (at pp. 84 and 85):-

*"I do not think that the Court of Appeal intended to lay down a rule which should be rigidly applied to every case, because the judgment of Coleridge C.J. wound up with the observation that, on the whole, the Court thought that it was wiser in that case, as is generally, and in all but exceptional cases, must be, to abstain from interference until the trial of the plea of justification."*

29. I consider the facts of this case to be quite exceptional. I share the reluctance that Irish Courts have always shown to intervene in such cases. Nonetheless in the circumstances herein as summarised above, it seems to me that the justice of the case requires me

to make the orders sought, including the mandatory order to remove or paint over the offending graffiti in such a way as to obliterate it. My decision therefore is that the order of Laffoy J. be continued and that further the defendant, his servants or agents remove from the gable wall between the plaintiffs' premises known as Renaissance House and Carlyle House, Church Street, Howth, Co. Dublin, all offensive texts appearing thereon the subject matter of these proceedings and that these orders should continue until the hearing of this action.