

## THE HIGH COURT

[2011 No. 9059 P]

BETWEEN/

MICHAEL O'REILLY

PLAINTIFF

AND

MARIA HALLIHAN

DEFENDANT

**JUDGMENT of Mr. Justice Hogan delivered on the 10th December, 2012**

1. The decision by a defendant to be legally represented and to have an appearance in the proceedings entered by his or her solicitor in accordance with O. 12, rr. 5 and 7 RSC is one of the most routine features of the entire administration of justice. It might, therefore, seem surprising that the implications of such a step have but rarely been judicially considered. This, however, is one such case.

2. The defendant is an executive officer in the Management Information Services Unit of the Collector-General's division of the Office of the Revenue Commissioners. At some stage between 2003 and 2005, Ms. Hallihan was involved in the preparation of a proposal to make the plaintiff, Mr. O'Reilly, bankrupt and, in this regard, provided instructions in subsequent proceedings involving the Collector-General and the plaintiff. The gist of the plaintiff's case is that Ms. Hallihan "knowingly" set out details in a material and substantial fashion in a proposal for bankruptcy. Not surprisingly, these matters may be taken to be very much in dispute so far as these proceedings are concerned. The Revenue Solicitor entered an appearance on behalf of the defendant in these proceedings on the 21st October, 2011.

3. At the heart of the facts giving rise to this present application is the plaintiff's insistence that he is entitled to serve the defendant in person, both at her place of employment and at her home, her nomination of a solicitor to defend the proceedings notwithstanding.

4. Ms. Hallihan maintains his insistence on serving her personally with pleadings and correspondence has given rise to inconvenience in her defence of these proceedings, and is an interference with her entitlement to retain legal representation for the purposes of her defence. One can also immediately understand how insisting on personal service on a litigant in such circumstances would be overbearing and could give rise to embarrassment. Other family members, workplace colleagues and neighbours might well assume that such proceedings related to the defendant's personal affairs and might find assurances that they were concerned with her employment puzzling or even implausible.

5. It is to this end that the defendant seeks a direction from this Court to the effect that the plaintiff be ordered to refrain from endeavouring to serve pleadings on her personally or from otherwise corresponding with her save through her nominated solicitor in relation to this litigation. Subject to an important qualification which I will presently consider, the present state of affairs is not regulated in express terms by any specific rule of court, but Ms. Hallihan nonetheless invokes the inherent jurisdiction of the Court for an order to this effect. It settled law that this Court enjoys an inherent jurisdiction to regulate its own procedures "to ensure that an abuse of the process of the Courts does not take place": see *Barry v. Buckley* [1981] I.R. 306, 308, per Costello J.

6. The method of service of pleadings is, of course, part of the process of the Court. It is quite clear that insisting on personal service in circumstances where a nominated solicitor has entered an appearance is susceptible of abuse. Moreover, even though the Rules of the Superior Courts do not expressly address the situation at hand, it might be thought that it is necessarily implicit in O. 12, r. 6 and r. 7 that it is not permissible for a litigant to effect service other than through a solicitor where an appearance has been entered by such a solicitor.

7. Thus, r. 6 provides that the solicitor of a defendant shall state in the memorandum of appearance his registered place of business. Rule 7 provides that:

"A defendant appearing in person shall state in the memorandum of appearance an address for service within the jurisdiction where summonses, notices, pleadings, petitions, orders, warrants and other documents may be left for him."

8. Certainly, rr. 6 and 7 impliedly proceed on the premise that documents will be served on the solicitor on record once an appearance is entered and contrariwise where the defendant enters an appearance in person. Against that general background, the potential for inconvenience, uncertainty and embarrassment is considerable if one litigant could insist on personal service even though the other had come on record via a solicitor. This would be especially true where the defendant simply did not welcome the presence of the plaintiff at her place of work or home and did not want personal contact with him. In these circumstances, any such endeavour to effect personal service is inconsistent with the defendant's right to obtain legal representation. After all, one dimension of that right is the entitlement to insist that all questions of correspondence and service of pleadings be addressed to the litigant's solicitor of choice.

9. In these circumstances, I am driven to the conclusion that the plaintiff's conduct in serving this defendant after the entry of an appearance by her solicitor of choice was an abuse of the processes of the court. This issue was, of course, also in view in *O'Brien v. Personal Injuries Assessment Board (No.2)* [2008] IESC 71, [2009] 2 I.L.R.M. 22. Here the question was whether the Personal Injuries Assessment Board could insist on by-passing the applicant's solicitor of choice in the context of an application for compensation under the Personal Injuries Assessment Board Act 2003 by refusing to engage with that solicitor of choice.

10. While it should here be recalled that the regime established by the 2003 Act was a purely administrative one which did not in

every respect replicate judicial procedures governing the conduct of litigation, the Supreme Court nonetheless held that the PIAB's practice and policy was unlawful as an interference with the fundamental right to seek legal representation. As Denham J. observed on this point:-

"Therefore, the policy of PIAB is an interference in the solicitor/client relationship, but it has no foundation in the Act of 2003. If the applicant wishes to have a legal representative, or considers that it would be in his interest to have a legal representative, then he is entitled to such representation.

However, PIAB is entitled under the Act of 2003, in the managing of its business, to keep a claimant informed of the process. PIAB is not a court. It is an alternative resolution process. It does not have the formality and rules of a court. Thus PIAB would be entitled to inform a claimant by, for example, sending to him a copy of any letter sent to his solicitor, at the same time as sending that letter. This keeps the claimant informed, is consistent with PIAB's policy, and within its functions under the Act of 2003."

11. In this regard it might also be noted that insofar as the Court held that PIAB were concurrently entitled to send all correspondence to the plaintiff directly as well as to his nominated solicitor, this was because such was expressly authorised by the 2003 Act. While the special statutory regime created by the 2003 Act is *sui generis* and obviously does not apply to the present case, *O'Brien* nonetheless shows how the right to insist that correspondence be conducted directly through a solicitor is of necessity a feature of the right to seek legal representation.

### **Conclusions**

12. For the reasons I have stated, I consider that the right to insist that pleadings and correspondence be delivered directly to a solicitor on record is an integral feature of the right to obtain legal representation. Whatever may be the special circumstances which obtain with regard to the Personal Injuries Assessment Board Act 2003 – where the right of the Board to correspond directly with a claimant is addressed by a specific statutory provision – it is clear that so far as the conduct of litigation is concerned, once a solicitor comes on record and complies with the requirements of O. 12, r. 7 by providing an address for service, a litigant is entitled to insist that all future correspondence and service of pleadings be channelled through that solicitor.

13. In my view, the unwillingness of the plaintiff to acknowledge this in the face of the defendant's clear protestations amounts in the circumstances to an abuse of process. I will accordingly direct that for as long as the defendant retains a solicitor on record whose appearance complies with the requirements of O. 12, r. 7 by providing an address for service, then, without further leave of this Court, all further correspondence and service of pleadings must be sent to that solicitor and not to the defendant personally, whether at her home, place of employment or otherwise.