

THE HIGH COURT

2019 No. 74 CA

Between:

DOLPH MCGRATH

PLAINTIFF

– AND –

WILLIAM MULROONEY

DEFENDANT

JUDGMENT of Mr Justice Max Barrett delivered on 28th May, 2019.

1. Mr McGrath, a solicitor, has commenced defamation proceedings against Mr Mulrooney. Mr McGrath claims, *inter alia*, that Mr Mulrooney attended at his offices on 31.10.2014 and claimed before various people that Mr McGrath had perpetrated a fraud against Mr Mulrooney. Among the claims in Mr McGrath's Defamation Civil Bill are that "*The said utterances...were untrue, groundless and were defamatory of the Plaintiff...in his calling and possession as a Solicitor and as an individual member of the public*".

2. Counsel for Mr Mulrooney contends that the Defence in the within proceedings is essentially a defence of truth. However, although a defence of truth is offered, it is on a very specific ground, viz. by reference to an allegation that a particular lease dated 01.04.1999 was "*tampered with while in the possession of the plaintiff*". No matter how liberal an interpretation one gives the verb 'to tamper', it does not appear to the court to extend to what was claimed at the hearing of the within application, viz. that Mr McGrath at some time in the past allowed court proceedings to proceed on the basis of a lease that was not stamped and/or in respect of which a necessary consent under s.12 of the Land Act 1965 had not been obtained.

3. By notice of motion of 10 September 2018, Mr Mulrooney has sought discovery of:

"a. All documents, memoranda and/or notes concerning the application to the Revenue Commissioners and concerning the stamping by the Revenue Commissioners of a lease dated 1 April 1999 made between Edward Malone of the one part and John Mulrooney of the other part.

b. All attendances, documents, memorandum and/or notes concerning the recording of all or any instructions received by the plaintiff for the application to the Department of Agriculture, Food and the Marine as successors to the Land Commission for sub-division consent under Section 12 of the Land Act 1965 as amended and the granting of consent by the said Department for the sub-division of the lease dated 1 April 1999 between Edward Malone of the One Part and John Mulrooney of the Other Part".

4. It will be clear from the court's observations in para.2 that it does not consider the documentation referenced in para.3 to be relevant to these proceedings as pleaded. Hence this application fails at the first: unless documentation is relevant it does not fall to be discovered (see, e.g., the judgment of O'Flaherty J. in *Stafford v. Revenue Commissioners* (Unreported, Supreme Court, 27th March, 1996)).

5. The application for discovery is respectfully refused.