

BETWEEN

MICHAEL GLADNEY

PLAINTIFF

AND

GARETH RAYMOND

DEFENDANT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 29th day of May, 2017

1. Where unsuccessful attempts have been made to effect personal service of a summons, following local inquiries as to a defendant's whereabouts, how specific must a plaintiff's affidavit evidence be in relation to the precise details of local enquiries made, when applying to the court for substituted service? This somewhat quotidian question has important practical ramifications.

The plaintiff's efforts to serve

2. The plaintiff is the Collector-General of the Revenue Commissioners with an address at Sarsfield House, Francis Street, Limerick. The plaintiff claims the sum of €184,545.68 alleged to be due by the defendant to the Minister for Finance for the benefit of the Central Fund. A summary summons was issued on 21st December, 2016.

3. Attempts at personal service were made on 20th March, 2017, 29th March, 2017, and 8th April, 2017, at the address which the plaintiff has available to him for the defendant. There was no answer to the door on any of those occasions.

4. As is normal in relation to this type of application, the summons server who is engaged on behalf of the plaintiff has also averred to having made local enquiries as to the question of whether the defendant is in fact residing at the address in issue.

5. The plaintiff has now applied by ex parte docket *"for an order for substituted service of the Summary Summons herein giving leave to the Plaintiff to serve same on the Defendant by ordinary prepaid post addressed to the Defendant"* at the address in question.

Are detailed particulars of local inquiries necessary or appropriate?

6. In the course of the application, moved on behalf of the plaintiff by Ms. Una Cassidy B.L., an issue arose as to whether it was necessary or appropriate for a party seeking substituted service to give precise particulars, by reference to exact addresses or by way of identifying geographical information, of which precise neighbours had been spoken to for the purpose of gathering information about the defendant. Ms. Cassidy submitted that it would be beneficial if this issue could be clarified formally.

7. One possible objection to not specifying the exact neighbours with which enquiries were made might be the question of hearsay. O.40, r.4 of the Rules of the Superior Courts provides that *"[o]n interlocutory motions ... statements as to [a deponent's] belief, with the grounds thereof, may be admitted."* Much depends on context. In the context of general local inquiries with informants as to a defendant's address, it seems to me that the requirement to state *"grounds"* of a belief as to whether a defendant is residing at a particular location is satisfied by reference to having made enquiries with neighbours, without the need to particularise which exact neighbours were spoken to.

8. A further possible objection is that an averment that neighbours have been contacted, without specifying who, could be regarded as lacking in weight. However, I would respectfully suggest that such concerns are somewhat theoretical. Specifying or not specifying the precise persons spoken to does not really make any difference because the court dealing with an application for substituted service is not normally in a position to do anything differently at the *ex parte* stage on foot of an affidavit which contains such granular information, as opposed to one that refers generally to having made local enquiries or spoken to neighbours. True, if an issue arose, the summons server will have been pinned down on what exact enquiries were made. But in what sense is this detail necessary at this stage of an *ex parte* interlocutory application? In the unlikely event that a defendant subsequently suggests that the summons server did not in fact make local enquiries, that fact of having sworn an affidavit even in general terms will render the summons server open to cross-examination as appropriate subject to any claim of privilege. There is minimal actual gain for the court in having the granular detail put before it at the stage of an application for substituted service.

9. One then turns to the more fundamental difficulty with specifying which precise neighbours the summons server has spoken to, namely the difficulty that is potentially created for the neighbours long after judges and lawyers have departed from the scene. While the application is *ex parte*, the affidavit is potentially available to the defendant after the event. It is a feature of the system that a percentage of defendants decline to engage with their potential legal responsibilities, and a minority of these have been known to go to extraordinary lengths in this regard, including to threaten or use aggressive tactics against plaintiffs or those co-operating with plaintiffs. Neighbours who in good faith provide assistance to summons servers in tracking down runaway defendants should not be exposed to even the risk of this sort of possible blowback. Even one incident of such co-operation averse to a sufficiently ill-intentioned defendant could be enough to permanently poison a relationship with a next-door neighbour. An anachronistic 19th century attitude of hostility to informants can be appealed to in order to provide a bogus veneer of credibility for a thoroughly 21st century form of anarchic repudiation of legal responsibilities.

10. It seems to me that information as to the identity of neighbours who are providing information of this kind is potentially covered by privilege and that it is appropriate if not necessary for that privilege to be claimed on behalf of plaintiffs if precise details of the neighbours are sought. It is appropriate for grounding affidavits to simply refer to having made local enquiries or enquired with neighbours without being more specific.

11. I should say in this context that any form of threatening words, gestures or behaviour or a *fortiori* any assault against either summons servers or those providing information to them in the course of attempts to serve a process of court is, in my view, a contempt of court and should be dealt with accordingly, either by the prosecuting authorities or directly by the court.

12. In fairness to the present defendant there is absolutely no suggestion that he falls into this category. This general discussion should not in any way be taken as a reflection on him specifically. But the general point holds that the possibility of blowback, or even

lasting ill-will or suspicion, is sufficiently proximate in applications of this kind for it to be generally inappropriate to identify particular neighbours as informants regarding a defendant's whereabouts.

Order

13. Having regard to the material before me and submissions of counsel I will grant the relief sought in the present application.