THE HIGH COURT

[2015 No. 10429 P.]

BETWEEN

SEAN CORRIGAN

PLAINTIFF

AND

KEVIN P. KILRANE AND COMPANY SOLICITORS

DEFENDANT

JUDGMENT of Mr. Justice Robert Eagar delivered on the 26th day of July, 2017

1. This is a judgment on the notice of motion in which the defendant seeks the following reliefs:-

> (i) An order pursuant to the provision of O. 19, r. 28 of the Rules of the Superior Courts dismissing the above entitled proceedings on the grounds that the statement of claim discloses no reasonable cause of action against the defendant.
>
> (ii) An order pursuant to s. 34(2) of the Defamation Act 2009, dismissing the above entitled proceedings on the grounds that the statement in respect of which the action was brought in the email of 25th November, 2015, is not reasonably capable of being found to have a defamatory meaning.
>
> (iii) In the alterative, an order pursuant to the inherent jurisdiction of this Court dismissing the above entitled proceedings on the grounds that the proceedings are bound to fail.
>
> (iv) In the alterative, an order pursuant to s. 14 of the Defamation Act 2009, ruling whether the statement in respect of which the action is brought is reasonably capable of bearing the imputations pleaded by the plaintiff and in the event that this Honourable Court rules that the statement is reasonably capable of bearing those imputations, a ruling as to whether these imputations are reasonably capable of bearing a defamatory meaning.
>
> (v) Such further and other relief as this Court deems fit.
>
> (vi) An order providing for the costs of the motion of the proceedings.

2. The notice of motion was grounded on the affidavit of Emma Brennan, a solicitor of Kevin P. Kilrane & Co. Solicitors. She says she makes this application in support of the application to dismiss the proceedings pursuant to s. 34 of the Defamation Act 2009, pursuant to the rules of the court and pursuant to court's inherent jurisdiction. She refers to proceedings entitled *Eamon Corrigan* [plaintiff] *v. Sean Corrigan and Eoin Corrigan* [defendants] [2006 No. 64 S.P.].

3. The action involved the construction of the will dated 23rd September, 1997 of Christopher Corrigan, deceased, who died on 5th March, 2000. The plaintiff in those proceedings and the two defendants were the sons of the deceased. The plaintiff was a legal personal representative. Sean Corrigan was devised 21 acres to be held in trust "until there is an acquisition of my lands" in which case, the proceeds were to be divided equally between all of the children. Eoin Corrigan, the second named defendant was entitled to the residuary estate.

4. Difficulties arose in the construction of the bequest to Sean Corrigan and in particular what was meant by the 'acquisition of the lands'. The plaintiff (the legal personal representative) brought the construction by special summons. The matter was determined by McGovern J. who delivered judgment on 2nd of November, 2007. In the course of his judgment, he stated:-

> "I am satisfied that Clause 1 of the bequest contains a lack of clarity and that there is an ambiguity contained therein. I am also satisfied that the admission of extrinsic evidence is permissible in this case. There is extrinsic evidence to be found in the notes taken by the testator's solicitor from taken instructions for the drafting of the will."

He continued later in his judgment to say:-

> "I am satisfied that the determining event specified in Clause 1 of the bequest is void for uncertainty and it follows therefore, that on this basis, the entire limitation and bequest fails."

He further concluded that the farmlands fell into the residuary estate of the testator.

5. The plaintiff in these proceedings has indicated that the estate of his late father was substantial, and involved considerable sums of money.

6. The plaintiff in these proceedings served a notice of appeal on 6th December, 2007.

7. The plaintiff, who is a practising barrister was originally represented by Michael F. Butler & Co. Solicitors. Kevin P. Kilrane & Co. acted on behalf of Eoin Corrigan, and Groarke & Partners acted on behalf of Eamon Corrigan in those proceedings.

8. The proceedings in this present case relate to email correspondence sent by Emma Brennan, Solicitor, of Kevin P. Kilrane & Co. Solicitors which were sent to the plaintiff and to the Supreme Court office.

9. On 25th November, 2015, the plaintiff received an email from emma.brennan@kpk.ie to scorrigan@lawlibrary.ie. The said email was carbon copied to the supremecourt@courts.ie and contained the following:-

> "Dear Sean
>
> I refer to your below email of even date.

Just to clarify there is no uncertainty around our client's booklet of pleadings. We were never served with a booklet of appeal as required in circumstances where this is your appeal and I have advised you, the appellant, of same. I await hearing with your book of appeal by return.

Regards

Emma Brennan."

The Affidavit of Emma Brennan

10. Ms. Brennan stated that the action involved the construction of the will of the 23rd of December, 1997 of Christopher Corrigan deceased. She set out that the plaintiff and the two defendants were sons of the late Christopher Corrigan. She described the application being determined by McGovern J., who delivered judgment on the 2nd of November, 2007.

11. Ms. Brennan in her affidavit stated that the plaintiff served a notice of appeal on the 6th of December, 2007, however, the plaintiff did not progress the appeal. The personal representative, Eamon Corrigan, sought to expedite the appeal as the plaintiff remained in possession of the lands. At that time, Michael F. Butler & Co. acted for the plaintiff. Groarke & Partners wrote on behalf of Eamon Corrigan on the 12th of March, 2008 complaining that they had heard nothing since the service of the notice of appeal on the 5th of December, 2007 and asking whether the books of appeal had been lodged. A motion to dismiss the appeal was threatened unless the books were lodged within 21 days.

12. Michael F. Butler & Co. wrote on the 14th of March, 2008, stating there was a delay of 27 months in hearing Supreme Court appeals, so there was no prejudice in the delay in supplying the books.

13. On the 3rd of April, 2008, Michael F. Butler & Co. wrote to Groarke & Partners to say they had received their client's specific written instructions to prepare the books of appeal and would revert with service in the normal way within the coming days. Groarke & Partners wrote on the 23rd of April, 2008, making complaint that unless the books of appeal were served on the 30th of May, 2008, an application would be made to strike out the appeal.

14. Ms. Brennan stated that the plaintiff in the proceedings asserts that a letter was sent by Michael F. Butler & Co. on the 3rd of May, 2008. She averred that this letter was never received in her office. She states that it was clear from other correspondence that the letter referred to by the plaintiff was a draft which was never sent. It could not have been sent because Michael F. Butler & Co. did not have a full set of pleadings from which they could prepare books of appeal at the time.

15. The letter which Ms. Brennan avers was never received by her office was said to be drafted in the following terms:-

> **"Re: Eamon Corrigan v. Sean Corrigan and Eoin (Owen) Corrigan Supreme Court Appeal**
> We refer to the above matter and enclose herewith the copy booklet of appeal with confirmation that the booklets have now been lodged in the Supreme Court office.
>
> I kindly acknowledge receipt.
>
> Yours faithfully
>
> Michael F. Butler & Co."

The content of this letter was sent by Michael F. Butler & Co. to the plaintiff on the 24th of November, 2015. However, Ms. Brennan said that Michael F. Butler & Co. could not have had a full set of pleadings from which they could prepare books of appeal and this is evidenced by the fact that Michael F. Butler & Co. wrote to Groarke & Partners on the 9th of May, 2008 stating:-

> "I have partly prepared the books of appeal for lodging in the Supreme Court office. Unfortunately, my own papers are incomplete in that I have had to furnish some of same to George Brady for the hearing. Could I trouble you to make a complete set of the pleadings available to me, I will copy and return to you without delay.
>
> My client is extremely anxious to ensure that the papers are lodged and that thereby obviate the need for any motion!!"

16. Groarke & Partners replied on the 12th of May, 2008 enclosing the book of pleadings as requested. On the 14th of May, 2008 Michael F. Butler & Co. wrote:-

> "We are now lodging the books of appeal and enclose herewith a copy of the index to these books and you will note that additions (sic) thereto. We will, of course, however, furnish a fully paginated book to you in due course. We thank you for your courtesy (sic) afforded us."

At the same time of sending an index to the books of appeal to Groarke & Partners, Michael F. Butler & Co. sent a letter of the 14th of May, 2008 to Kevin Kilrane & Co. stating "copy index of documentary books of appeal have now been lodged", and they further stated that "we will furnish you with a fully paginated booklet in due course".

17. Ms. Brennan states that Mr. Butler probably copied the pleadings received from Groarke & Partners, prepared indexes to the books of appeal, and sent the indexes to Groarke & Partners and to her firm under cover letter of the 14th of May, 2008. She states that their intention seemed to be to follow up with books of appeal. However, no further correspondence was received from Michael F. Butler & Co. - at some stage after the 14th of May, 2008 Michael F. Butler & Co. ceased acting for the plaintiff and the plaintiff then commenced acting for himself.

18. The appeal for the Supreme Court was listed for the 9th December, 2014 but had to be put back to the 26th January, 2015. Trish Cuddihy of the Supreme Court office sent an email on the 25th of November, 2015 to the plaintiff (Sean Corrigan) and Groarke & Partners and Kilrane & Co. The email stated:-

> "Dear All,
>
> I write to confirm recent telephone call you/your office in the above referenced matter – it is with regret that this matter

will not now proceed for hearing on the 9th of December next. The appeal instead will be heard on the alternative date of Tuesday the 26th of January.

The matter will also be listed for call over in the Chief Justice's case management list on Thursday the 14th of January – list commences at 10:00am.

Please note that this matter will not now be listed in the Chief Justice's list tomorrow the 6th of November.

You might please revert if there is a difficulty with listing this matter for hearing on 26th of January next.

Regards

Trish Cuddihy

Supreme Court Office"

19. Ms. Brennan states that the plaintiff replied by email to Ms. Cuddihy, copied to Groarke & Partners and Kilrane & Co. in the following terms:-

"Dear Trish,

Further to our conversation this morning I will appear at the Supreme Court call over list on the 14th of January, 2016 after I have contacted Theresa Pilkington S.C. and James Dwyer S.C. regarding how long their oral submissions and replies on behalf of the respondents may take.

I would imagine that this appeal will take two days and most likely three because the legal arguments are considerably detailed with numerous authorities. I still await both respondents' booklets of authorities, there is also some uncertainty as to the whereabouts of the second respondent's book of pleadings. They can advise your office in this regard.

Yours Sincerely

Sean Corrigan"

20. On receipt of this email, Ms. Brennan replied to the plaintiff copied to Ms. Cuddihy of the Supreme Court office in an email on the following terms:-

"Dear Sean,

I refer to your below email of even date.

Just to clarify there is no uncertainty around our client's book of pleadings. We were never served with an [sic] booklets of appeal as required in circumstances where this is your appeal and I have advised you the appellant of same.

I await hearing with your book appeal by return.

Regards,

Emma Brennan"

21. Ms. Brennan avers that she sent this email because she was concerned that Kilrane & Co. had not yet received books of appeal from the appellant and the appeal was due to be heard shortly. She said she copied the email to Ms. Cuddihy so that the Supreme Court office was not left with the impression that the books of appeal had been served.

22. She said that she received a further email some hours later from the plaintiff confirming that a letter on that date had been sent by document exchange to her office. The plaintiff followed with a letter of the 25th of November, 2015 in which he sought confirmation that first she had received his book of pleadings on the 3rd of May, 2008 and secondly, that she would retract the email sent to the Supreme Court office, in wording approved by the plaintiff. Enclosed with that letter was a letter from Michael F. Butler & Co. of the 24th of November, 2015. Mr. Butler states that he was surprised because he furnished a "copy of the book of appeal" on the 3rd of May, 2008 and that a copy of that booklet was also served on Groarke & Partners on same date "with such further copy directed to you at that time".

23. However, Ms. Brennan avers as set forth above no such book of appeal was sent to Groarke & Partners. Mr. Butler did not have a full set of pleadings at the time.

24. The plaintiff followed up with letters dated the 25th and 27th of November and an initiating letter was sent on the 3rd of December, 2015.

25. Ms. Brennan said that she wrote on the 13th of April, 2016 to the plaintiff explaining that Michael F. Butler & Co. had promised to send books of appeal on the 14th of May, 2008, indicating that they could not have sent books of appeal on the 3rd of May, 2008. She asked the plaintiff to discontinue the proceedings. An application would have to be made to dismiss the proceedings for failure to disclose a reasonable cause of action. The plaintiff replied by complaining that he had been humiliated by the correspondence, before legal professionals and the Supreme Court office. These were people with whom he claimed that he had developed a trust worthy relationship as a plaintiff/appellant.

26. The plaintiff complained that he had been clearly identified as a legal practitioner by the correspondence and that he had been "publically discredited". The plaintiff said that an application to dismiss would be opposed and that the procedure is now a matter for jury hearing following the ruling of the Court of Appeal in *Lennon v. HSE* [2015] IECA 92.

27. Ms. Brennan states that the defence was delivered on the 23rd of June, 2016 in which the defendant claimed *inter alia* the defence of qualified privilege.

The Plaintiff's Claim
28. Ms. Brennan states that the statement of claim makes complaint that the defendant had engaged in "public chastisement of the plaintiff" which is "unwanted and unqualified – for in circumstances where it can only be characterised as humiliation of the plaintiff/appellant in front of the Supreme Court".

29. Ms. Brennan says that she believes and is advised that the complaints made in the statement of claim are wholly misconceived. The plaintiff has not been defamed. There is no basis to his assertion that he is being "chastised or permanently undermined" or humiliated. Even if the court was to accept that the books of appeal were served by Michael F. Butler & Co. in 2008, which could not be the case, evidenced by the subsequent correspondence, this would not give rise to a cause of action.

30. She says and believes that the email published to Ms. Cuddihy was so published on an occasion of qualified privilege. The statement and email was made by the defendant to a person who had a duty to receive, or had an interest in receiving the information contained in the email. The defendant at all material times believed on reasonable grounds that the recipient of the email, in respect of which the complaint is made, had such duty or interest, such that the defendant had a corresponding duty to communicate, or an interest in communicating the information to that person. The defendant pleaded the defence of qualified privilege pursuant to s. 18 of the Defamation Act 2009.

31. In the alternative, a statement sent to the Supreme Court office as to the logistics of an appeal can be said to be made "in the course of proceedings". As such, the statement will receive the benefit of absolute privilege under s. 17(2)(g) of the Defamation Act 2009.

32. Ms. Brennan says that the defendant is desirous of dealing with these proceedings as expeditiously as possible. The action is misconceived, and she respectively submits that it would be unfair and oppressive to require the defendant to defend this case by raising particulars, delivering a defence, seeking discovery and briefing counsels in circumstances where the plaintiff's claim, taken at its height, disclosed no cause of action against the defendant and in the circumstances is bound to fail.

33. She then deals with the statement of claim in the proceedings of the plaintiff, which is set out below:

> "(i) The plaintiff had mischievously stated in an email of even date that "there was some uncertainty as to the whereabouts of the defendant's book of pleadings" when he knew the defendant had not served a book of pleadings.
>
> (ii) The plaintiff set out to deceive and to all mislead the defendant.
>
> (iii) The plaintiff set out to deceive and/or mislead the Supreme Court.
>
> (iv) The plaintiff was dishonest and/or underhanded and should not be believed or trusted.
>
> (v) The plaintiff was an unfit appellant in failing to deliver a book of pleadings to the plaintiff.
>
> (vi) The plaintiff misrepresented the facts and was in default of his duty.
>
> (vii) The plaintiff published a lie.
>
> (viii) The plaintiff was an unfit person within his chosen professional.
>
> (ix) The plaintiff was unprincipled.
>
> (x) The plaintiff was dishonest."

34. Ms. Brennan says that the email, the subject matter of these proceedings, is not capable of bearing these imputations.

35. On the 2nd of May, 2012 a motion on behalf of Eamon Corrigan was brought seeking to strike out the claim for want of prosecution on the grounds of inordinate and inexcusable delay in the appeal of the plaintiff in this case. On the 20th of April, 2012 the Supreme Court directed that unless a certificate of readiness was filed within two weeks from the 20th of April, 2012 the appeal would be struck out.

36. Prior to the establishment of the Court of Appeal in 2014, appeals and references to the Supreme Court were governed by O. 58 of the Rules of the Superior Courts. This is well known by all practitioners, in particular solicitors. Rule 11 and 12 of these Rules are particularly relevant:-

> "11. All appeals to the Supreme Court shall be entered in the Office of the Registrar of the Supreme Court within seven days of service, or of the last service, if more than one, of the notice of appeal. The appellant shall lodge with the Registrar of the Supreme Court an attested copy of the judgement or order appealed from and shall leave with him a copy of the notice of appeal (indorsed with sufficient particulars of service) to be filed and as soon as the necessary papers are in order and ready such officer shall thereupon set down the appeal by entering the same in the proper list of appeals and it shall come on to be heard according to its order in such list, unless the Supreme Court shall otherwise direct.
>
> 12. The appellant shall without delay (this Court's emphasis) lodge in the Office of the Registrar of the Supreme Court five books of appeal each containing copies of the pleadings and all other documents required for the hearing of the appeal with a sufficient index, a true copy of which index shall have been previously furnished to every other party affected by the appeal; provided that in any appeal within rule 2 three books of appeal shall be lodged initially, unless the court shall otherwise require."Prior to the establishment of the Court of Appeal in 2014, the delays for hearing cases in the Supreme Court was consistently at a minimum of nearly three years. This is reflected in a letter written by Michael Butler, the plaintiff's then solicitor, where he wrote saying that there was a delay of twenty-seven months in hearing Supreme Court appeals.

37. In the context of correspondence which passed between the three firms of solicitors in 2008, it is relevant to note:-

> (1) Groarke & Partners wrote on behalf of Eamon Corrigan on the 12th of March, 2008 complaining that they had heard nothing since the service of the notice of appeal on the 5th of December, 2007 and they asked whether the books of appeal had been lodged.

(2) Michael Butler wrote on the 14th of March, 2008 stating that there was a delay of twenty-seven months in hearing Supreme Court appeals so there was no prejudice in the delay in supplying the books.

(3) On the 3rd of May, 2008 Michael Butler on behalf of the plaintiff wrote to Kevin Kilrane & Co. re: Eamon Corrigan v. Sean Corrigan and Eoin (Owen) Corrigan, Supreme Court appeal:-

"We refer to the above matter and enclose herewith copy booklet of appeal with confirmation that the booklets have now been lodged in the Supreme Court office. You might kindly acknowledge receipt."

38. The court understands that a booklet of appeal is not a book of appeal, it refers to a list of documents.

Affidavit of Sean Corrigan
39. The plaintiff avers and he says that the defendant had no proper cause, duty or legitimate reason to send the email in question to the Supreme Court office. He further says and believes that the defendant either knew that the statements were not true or were reckless as to whether they were true or not. He says that "substantial truth" set out by the defendant in their defence is a term that he is not familiar with, and he does not believe the term could be allied to the defence of truth or honest opinion.

40. He further says that the impugned email was more than mere truculence or bad manners. The email sent was particularly dreadful as it implied that falsehoods were concocted by a legal practitioner. Later on the day of publication, he wrote to the defendant asking them to agree to retract the email. The defendant did not reply. He said that over the following days, he again wrote to the defendant asking them to agree a retraction. Eventually he sent an initiating letter by registered post on the 3rd of December, 2015. All of his communications to the defendant went unanswered until after he served his plenary summons on the 15th of December, 2015.

41. Ms. Brennan relies on genuine mistake, miscommunication, misunderstanding and a purported letter from his previous solicitors in 2008 as justification for the defendant's behaviour. He emphasises that his cause of action only concerns the defamatory words published by the defendant on 25th November, 2015. Nevertheless, the plaintiff states that it now appears that since the 2008, the defendant neglected or failed to follow up on a misplaced booklet of pleadings with his previous solicitor. He said he was totally unaware of this until the defendant notified him of same on 19th November, 2015. He said he immediately wrote to his previous solicitors and they replied on 24th November, 2015. His previous solicitors categorically stated to him that they had furnished a book of pleadings to the defendant and they referred to other correspondence sent at the same time.

42. By letter dated 9th May, 2008, Messrs. Groarke Solicitors were written to by Michael Butler in the following terms:-

"I have partly prepared the books of appeal for lodging in the Supreme Court office. Unfortunately, my own papers are so incomplete that I had to furnish some to George Brady for the hearing. Could I trouble you to make a complete set of the pleadings available to me and I will copy and return to you without delay.

My clients are extremely anxious to ensure the papers are lodged and thereby obviate the need for any motion."

43. It is quite clear to this Court that on 9th May, 2008, whatever had been purported to have been served on behalf of the appellant by Michael Butler was not a book of appeal.

44. On 14th May, 2008, Michael Butler wrote to the defendant's solicitors stating that he enclosed "copy index, books of appeal have now been lodged" and stated "we will furnish you with a full paginated booklet in due course". However, no further correspondence was received by the defendant from Michael Butler. Certainly there is no correspondence which the court has seen enclosing a copy of the book of appeal to Kevin Kilrane Solicitors in relation to the Supreme Court appeal.

Purported Defamation
45. The plaintiff states that he failed to understand why the defendant delivered an email containing false, disparaging statements to the Supreme Court office. He said that he believed that the words chosen in the email were calculated to harm him. They could not by any stretch of the imagination be upheld under the defence of absolute and/or qualified privilege. There were no serious concerns for the Supreme Court Office to address, in fact, the defendant was aware or should have been aware that the Supreme Court office could not interfere with the proceedings, other than to convey the defendant's allegations to the Chief Justice. He states that if the matter were to go to a jury trial, in the aggravation of damages, a jury would have to consider whether or not the "defendant, for some obscure reason seize[d] upon the opportunity to maliciously libel him in a deliberate or negligent fashion while shutting their mind off to the truth".

46. He said the jurisprudence in this area indicates that the jurisdiction of the High Court to strike out defamation proceedings is one to be exercised sparingly, with caution and only in clear cases where a plaintiff fails to show a reasonable cause of action. He says that he has a reasonable cause of action and he firmly believes that the defendant's publication lowers in him the eyes of its recipient, the Supreme Court Office.

47. The plaintiff asks the court to be mindful of the following:-

(a) the status of the parties and recipients;

(b) the tone and choice of language used in the publication;

(c) the author's failure to outline the facts as they knew them;

(d) the defendant's refusal to deliver a reply to particulars which would advance his case;

(e) the nature and gravity of the allegations with regard to his livelihood;

(f) the vexatious reprimand in the publication which goes to show the author's state of mind;

(g) the calculative effect of the publication that the allegations might be brought to the attention of the Chief Justice; and

(h) the extent of circulation, the importance of his professional reputation.

He asks the court to refuse the motion.

Discussion
48. The background to these proceedings relate to the estate of the father of the plaintiff. The deceased died on 5th March, 2000, having executed his last will and testament on 23rd September, 1997. The executor of the will, Eamon Corrigan, sought directions from the High Court which were heard by McGovern J. on 11th October, 2007 and judgment was then delivered on 2nd November, 2007.

49. The plaintiff in this case appealed the decision of McGovern J. It was suggested at the hearing of the motion that as a result of the decision of McGovern J., the plaintiff lost the benefit of a substantial bequest. The plaintiff appealed the order of McGovern J. by serving a notice of appeal on the Supreme Court on 6th December, 2007. The appeal was subsequently heard by the Supreme Court in January, 2016, with judgment delivered by Laffoy J. on behalf of the court on 5th October, 2016.

50. On the 29th April, 2012 the Supreme Court heard a motion on behalf of Eamon Corrigan. The Supreme Court ordered that unless a certificate of readiness was filed within two weeks of that date, the appeal would be struck out.

51. It is also noted that at that time, counsel for Michael F. Butler & Co Solicitors sought and was granted leave to come off record on behalf of the Sean Corrigan.

52. The court is satisfied that Michael F. Butler & Co. sent correspondence to Messrs. Kevin Kilrane & Co. dated the 3rd May, 2008 enclosing what is described as "the copy booklet of appeal - the confirmation that the booklets have now been lodged in the Supreme Court office". It appears to this Court that the 'booklet of appeal' Michael Butler referred to was an index and not a book of appeal. This is evidenced by the subsequent correspondence with Messrs. Groarke & Partners dated 3rd April, 2008, and the letter sent by Michael F. Butler & Co. to Groarke & Partners on 9th May, 2008 stating:

> "I have partly prepared the books of appeal for lodging in the Supreme Court office. Unfortunately, my own papers are incomplete in that I have had furnished some of same to George Brady for the hearing. Could I trouble you to make complete set of the pleadings available to me and I will copy and return to you without delay.
>
> My client is extremely anxious to ensure that the papers are lodged and therefore obviate the need for any motion!"

The court also notes correspondence sent from the defendants to the plaintiff in relation to the case dated the 19th November, 2015 saying:

> "Dear Mr. Corrigan,
>
> We refer to the above matter and previous correspondence herein.
>
> We note we do not appear to have ever received an (*sic*) booklet of appeal from you in relation to this matter, we confirm we did indeed receive an index however you might kindly let us hear by return with the booklet."

In responding correspondence, the plaintiff sent a letter to Kevin P. Kilrane & Co. Solicitors dated 20th November, 2015:

> "Dear Sir,
>
> Further to your correspondence of the 19th inst. which I received today my sincerest apology, I was not aware that Michael Butler & Co. of Main Street, Longford did not send you a booklet of appeal. They lodged my appeal and when I received your client's legal submission, I was under the impression that you had a copy especially as your counsel did not raise any issues during the plaintiff's motion to have my appeal struck out.
>
> In any event I sincerely apologise and will forward a copy of this letter to Michael Butler & Co. and ask them to send on a book of appeal to you as they still hold my complete file and they prepared the index which you refer."

By letter dated the 24th November, 2015 Michael F. Butler replied to the correspondence from the plaintiff:

> "I must confess that I am more than surprised with the statement of Kevin P. Kilrane & Co. and attach a copy of my letter to them of 3rd May, 2008 which clearly furnished a copy of the booklet of appeal with confirmation that the same had been lodged. A copy of the booklet was also served on Groarke & Partners on the same date as the further copy directed to you at that time."

53. The court is satisfied that the only documents that were furnished by letter of the 3rd May, 2008 were an index.

54. The court notes the emails of the 25th November, 2015, the first of which was from Patricia Cuddihy of the Supreme Court office. It was addressed to the plaintiff, Messrs. Groarke & Partners, and Kevin Kilrane and Company Solicitors, the defendants. The subject matter was the appeal in the Supreme Court *Corrigan v. Corrigan*.

> "Dear All,
>
> I write to confirm recent telephone call you/your office in the above referenced matter – it is with regret that this matter will not now proceed for hearing on the 9th of December next. The appeal instead will be heard on the alternative date of Tuesday the 26th of January.
>
> The matter will also be listed for call over in the Chief Justice's case management list on Thursday the 14th of January – list commences at 10:00am.
>
> Please note that this matter will not now be listed in the Chief Justice's list tomorrow the 6th of November.
>
> You might please revert if there is a difficulty with listing this matter for hearing on 26th of January next.
>
> Regards

Trish Cuddihy

Supreme Court Office"

The first response to that was from the plaintiff fourteen minutes later at 11.40.

"Dear Trish,

Further to our conversation this morning, I will appear at the Supreme Court call over list on the 14th of January, 2016 after I have contacted Theresa Pilkington S.C. and James Dwyer S.C. regarding how long their oral submissions and replies on behalf of the respondents may take.

I would imagine this appeal will take two days and most likely three because the legal arguments are considerably detailed with numerous authorities. I still await both respondents' booklets of authorities, there is also some uncertainty as to the whereabouts of the second respondent's book of pleadings, they can advise your office in this regard.

Yours sincerely,

Sean Corrigan."

In answer to these emails at 11:53, the email, the subject matter of these proceedings was sent by Emma Brennan of Kevin Kilrane & Co. This was sent to the plaintiff carbon copied to the Supreme Court office.

"Dear Sean,

I refer to your below email of the even date. Just to clarify there is no uncertainty about our client's booklet of pleadings. We were never served with an [sic] booklets of appeal as required in circumstances where this is your appeal and I have advised you the appellant of same.

I will await hearing with your book of appeal by return.

Regards

Emma Brennan."

Decision

55. Section 6(2) of the Defamation Act 2009 states:-

"The tort of defamation consists of the publication, by any means, of a defamatory statement concerning a person to one or more than one person (other than the first-mentioned person), and "defamation" shall be construed accordingly."

56. There is no definition of defamation provided in legislation, however, Gatley, *On Libel and Slander*, 12th Edn. (2013) states as follows. 'Defamatory' implies a harm being caused to a person's reputation, however:-

"there is no wholly satisfactory legal definition of the term. Three formulae have been particularly influential:-

(1) Would the imputation tend to lower the plaintiff in the estimation of right ` thinking members of society generally?

(2) Would the imputation tend to cause others to shun or avoid the claimant?

(3) Would the words tend to expose the claimant to "hatred, contempt or ridicule?"

57. Order 19, rule 28 of the Consolidated Superior Court Rules provides:-

"The court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

58. Section 34(2) of the Defamation Act 2009 provides:-

"The court in a defamation action may, upon the application of the defendant, dismiss the action if it is satisfied that the statement in respect of which the action was brought is not reasonably capable of being found to have a defamatory meaning."

59. Section 14 of the Defamation Act 2009 states:-

"(1) The court, in a defamation action, may give a ruling—

(a) as to whether the statement in respect of which the action was brought is reasonably capable of bearing the imputation pleaded by the plaintiff, and

(b) (where the court rules that that statement is reasonably capable of bearing that imputation) as to whether that imputation is reasonably capable of bearing a defamatory meaning, upon an application being made to it in that behalf.

(2) Where a court rules under subsection (1) that—

(a) the statement in respect of which the action was brought is not reasonably capable of bearing the imputation pleaded by the plaintiff, or

(b) that any imputation so pleaded is not reasonably capable of bearing a defamatory meaning, it shall dismiss the action in so far only as it relates to the imputation concerned."

60. The court also has regard to the decision of *McCauley v. Aer Lingus Ltd., Frank Feeney & Serena Wyse* [2014] 3 I.R. 383. In the course of that judgment Hedigan J. stated:-

> "For the purposes of considering whether to accede to an application based on O. 19, r. 28, the court must proceed on the basis that the statements of fact contained in the pleadings sought to be struck out are true and can be proved by the party."

61. The plaintiff's central allegation is that the email sent by the defendant's carbon copied to the Supreme Court Office on the 25th November, 2015 is defamatory.

62. The court is satisfied that there is nothing in the email of Emma Brennan sent at 11:53 on the 25th of November, that is any way defamatory of the plaintiff. At its highest, the email could be described as terse. Correspondence between parties after a lengthy appeals process can understandably at times be terse.

63. The court is satisfied that the plaintiff may genuinely have believed what Mr. Butler had informed him about the books of appeal, but Ms. Brennan's email did not suggest that he was dishonest in asserting that belief.

64. Legal practitioners and litigants commonly dispute who sent what document to whom in the context of litigation, particularly after waiting for three or more years for an appeal to be heard.

65. In this case, the appeal had been initiated as far back as 2nd of November, 2007 to the appeal hearing in January 2016, a period of nine years. In this Court's view the email does not carry any imputation that one or other of the parties is a liar, is dishonest or unprofessional, it just implies there is a disagreement between the parties as to who is in possession of what documents. In her affidavit, Ms. Brennan suggests that the imputations as pleaded are unreasonable and hyperbolic and the court agrees with this characterisation of the claims in this case.

66. Further s. 18(2) of the Defamation Act 2009 says:-

> "Without prejudice to the generality of subsection (1), it shall, subject to section 19, be a defence to a defamation action for the defendant to prove that—
>
> (a) the statement was published to a person or persons who—
>
> (i) had a duty to receive, or interest in receiving, the information contained in the statement, or
>
> (ii) the defendant believed upon reasonable grounds that the said person or persons had such a duty or interest, and
>
> (b) the defendant had a corresponding duty to communicate, or interest in communicating, the information to such person or persons."

67. It is clear that Ms. Cuddihy of the Supreme Court office had a duty to receive the information contained in the email, in circumstances where she had initiated the email correspondence. It is clear that Ms. Brennan must have believed that she had a corresponding duty to communicate the information to such person or persons.

68. Section 19(1) of the Defamation Act 2009 provides:-

> "In a defamation action, the defence of qualified privilege shall fail if, in relation to the publication of the statement in respect of which the action was brought, the plaintiff proves that the defendant acted with malice."

69. The court is satisfied that the onus is on the plaintiff to prove that the defendant acted with malice, and the court is satisfied that the plaintiff must fail in this action.

Summary

(1) The decision of the court is that the words contained in the email and the email from Ms. Brennan to the plaintiff and carbon copied to the Supreme Court office did not contain any information which was false and that what was stated in the email was true.

(2) The court is satisfied that defence of qualified privilege is established by the defendant in relation to the statement which is claimed to be defamatory.

Decision

70. The court will dismiss the proceedings on the grounds that the statement of claim discloses no reasonable cause of action against the defendant. The court also will dismiss the proceedings on the grounds that pursuant to s. 34(2) of the Defamation Act 2009 that the statement in respect of which the action was brought in the email of the 25th of November, 2015 is not reasonably capable of being found to have a defamatory meaning.

71. The court also finds that pursuant to s. 18(2) of the Defamation Act 2009 the court finds that the statement was published to a

person (namely Trish Cuddihy of the Supreme Court office) who had a duty to receive or interest in receiving the information contained in the statement and that the defendant had a corresponding duty to communicate or interest in communicating the information to such person or persons.