

BETWEEN**ZABRINA COLLINS AND MICHAEL O'DONNELL****PLAINTIFFS****AND****PETER GRIFFITHS AND JOHN MCGHEE****DEFENDANTS****JUDGMENT of Mr. Justice Noonan delivered on the 1st day of November, 2017**

1. This is an appeal brought by the first defendant, Mr. Griffiths, against an order of the Circuit Court (His Honour Judge O'Donohoe) whereby an injunction was granted against Mr. Griffiths in terms to which I will refer further. The plaintiffs are members of an organisation described as the Church of Scientology ("CoS"). The defendants are former members of this organisation.
2. In 2014, and for some years before that, CoS had its Irish headquarters in Abbey Street in Dublin. The first plaintiff, Ms. Collins, is a chiropractor and carries on her practice from premises at Parnell Square. She appears to be a senior figure in the CoS in Ireland.
3. For a number of years commencing approximately in 2009/2010, a group of people, self styled as "Anonymous" engaged in protest against CoS on Abbey Street by assembling once or twice a month on the far side of the street from the CoS premises and holding various placards with references to CoS on them. Both plaintiffs attended regularly at the Abbey Street premises and witnessed these protests. The first defendant, Mr. Griffiths, who is a disaffected former member of CoS, joined in these protests for a number of years prior to the event complained of.
4. There is some degree of dispute as to when Mr. Griffiths first encountered either of the plaintiffs but I do not think very much turns on this. It is alleged by the plaintiffs that a number of incidents and interactions with the defendants occurred in 2013. Some of these were the subject of videos which I had the opportunity to view. In one incident that appears to have occurred in or about March 2013, Ms. Collins and her husband were having lunch in a restaurant in Abbey Street when they were approached by the defendants who tried to engage them in dialogue about CoS and its teachings. It is quite clear from the video that Ms. Collins and her husband had no interest in engaging in this dialogue and wished not to be disturbed. I have no doubt that the interaction was very unpleasant for Ms. Collins but I do not think it went much beyond what could be described as the defendants making a nuisance of themselves for some minutes. No complaint, however, is made about that or any other incident in the plaintiffs' pleadings save the one that occurred on 20th December, 2014.
5. In her evidence, Ms. Collins alleged that Mr. Griffiths approached her and her eleven year old daughter on at least one and possibly two occasions on Abbey Street which upset her daughter particularly and one can readily understand why. Other incidents are alleged to have occurred in the Ilac Centre in Dublin involving members of Ms. Collins' staff but here again these are not directly relevant to the claim in this case but are a general backdrop to the event that ultimately unfolded.
6. The event of which complaint is made in these proceedings occurred as I said on 20th November, 2014, in the area of Capel Street in Dublin and other surrounding streets in Dublin north inner city. The incident lasted about half an hour and there is no dispute as to what happened, nor could there be since the entire matter was committed to a video taken by Mr. Griffiths. In summary, Ms. Collins and her co-plaintiff Mr. O'Donnell were engaged in distributing leaflets in the area entitled "The Truth About Drugs" which was a perfectly lawful and peaceful activity which they were entitled to pursue.
7. In the course of so doing, however, they were followed at very close quarters, sometimes in physical contact, by the defendants who continuously spoke to them in disparaging terms about their beliefs. As I have said, the entire event was videoed by Mr. Griffiths with a Go Pro camera attached to his chest.
8. I am satisfied from the evidence that the conduct of the defendants on this occasion, and in particular of the second defendant, was unlawful and constituted intimidation and harassment of the plaintiffs. I am also satisfied that the video demonstrates clearly that Ms. Collins was physically assaulted, albeit in a relatively minor way, by the second defendant, Mr. McGhee. There is nothing from the evidence that indicates that there was any physical contact at any time between Mr. Griffiths and either of the plaintiffs. Whilst there appears to have been some suggestion, at least, initially, that Mr. Griffiths was not an active participant in the event doing no more than recording it, I am satisfied that he was complicit in what occurred and condoned the actions of Mr. McGhee.
9. Mr. Griffiths could have withdrawn from the scene at any time and encouraged Mr. McGhee to do likewise but he did not. While the evidence, therefore, establishes that Mr. McGhee assaulted the plaintiff, I am satisfied that Mr. Griffiths did not. This, I believe, is properly reflected in the award of damages made by the learned Circuit Court judge where he awarded the plaintiffs €2,000 damages against Mr. Griffiths and €3,500 against Mr. McGhee.
10. Three days after this incident occurred, the plaintiffs applied ex parte to this Court on 23rd December, 2014, for an interim injunction against the defendants and the court granted that order and ultimately continued it on an interlocutory basis. The order sought by the plaintiffs and granted by the court was very wide ranging in its terms and provided as follows:-

"It is ordered that the defendants and each of them, their servants or agents or otherwise howsoever or any person acting in concert with them or any person having notice of the making of this order be restrained from directly or indirectly door stepping, intimidating, approaching, harassing, communicating, watching, videoing, besetting, picketing, committing assault and battery upon the plaintiffs or person with the plaintiffs whether at the plaintiffs' home, place of work, Church of Scientology premises (including at its premises - 64 Middle Abbey Street, Dublin 1, or in any other public place)..."

And it is ordered that the defendants and each of them, their servants or agents or otherwise howsoever any person acting in concert with them or any person having notice of the making of this order from directly or indirectly interfering with the plaintiffs' access to an egress from public and/or private buildings whether the plaintiffs' home, their place of work, Church of Scientology premises (including at its premises - 64 Middle Abbey Street, Dublin 1)..."

11. Those proceedings initiated in the High Court were ultimately remitted to the Circuit Court and now form the subject matter of this appeal. In addition to awarding the damages I have mentioned, the learned Circuit Court Judge granted a perpetual injunction against the defendants in the same terms as the interim injunction to which I have referred above. As I have already pointed out, the plaintiffs' equity Civil Bill is concerned solely with the incident that occurred on 20th December, 2014, and the injunction sought by the plaintiffs on 23rd December, 2014, sought to prevent a repetition of such incident in the future.

12. It is important to note that the within proceedings were heard in tandem with a claim brought by Mr. Griffiths against Mr. Collins, for defamation, also in the Circuit Court. Those proceedings were commenced in 2014, prior to the within proceedings and arose in the following circumstances. As I have previously noted, interaction between Mr. Griffiths and Ms. Collins began from, at least, March 2013, when the incident in the restaurant occurred. Mr. Griffiths' evidence was that part of his normal daily activities included delivering lectures and talks in schools and other institutions on the subject of Scientology which clearly have as their objective, discouraging people from becoming involved in CoS.

13. Sometime in or around April or May 2013, after the restaurant incident, Mr. Griffiths appears to have given a talk to Leaving Certificate students at St. David's CBS in Artane. It would appear that Ms. Collins became aware of this because Mr. Griffiths recorded the talk and published it on YouTube where it was seen by her. This resulted in her sending an email to the headmaster of the school on 3rd May, 2013, which it is fair to say, makes the most scurrilous imaginable allegations against Mr. Griffiths suggesting, *inter alia*, that he is a paedophile and a criminal.

14. These allegations, which are completely untrue, were the subject matter of defamation proceedings in the Circuit Court by Mr. Griffiths against Ms. Collins which resulted in an award of €5,000 in his favour. That award has not been appealed nor has the award against Mr. Griffiths for damages. Mr. Griffiths' appeal is confined solely to the granting of the perpetual injunction against him in the terms I have identified above.

15. The leading authority on the onus of proof to be discharged in granting a perpetual injunction is that set out by Geoghegan J. in *Szabo v. ESAT Digifone Limited* [1998] 2 ILRM 102. The onus rests upon the plaintiff to show that there is a "proven substantial risk of danger". Obviously the principles applicable to a perpetual injunction are quite different to those that arise in interim or interlocutory applications where a range of factors must be taken into account by the court which do not arise at the trial of the substantive issue. In considering whether or not such a substantial risk of danger exists in this case such as would warrant the grant of a perpetual injunction, it seems to me that there are a number of factors I must take into account.

16. The first is that the incident of which complaint is made in these proceedings occurred on one date only for a period of approximately half an hour. The plaintiffs have recovered damages in respect of that event. Secondly, since the injunction was granted in this case on 23rd December, 2014, the best part of three years ago, there has been no suggestion that Mr. Griffiths has been in breach of it.

17. Thirdly, I am satisfied having heard his evidence that Mr. Griffiths is a truthful witness and by and large a law abiding citizen. He candidly accepted that what occurred on 20th December, 2014, involving the plaintiffs was wrong, unlawful, should not have happened and he has, in his evidence, apologised for it. I must also have regard to the fact that Mr. McGhee was clearly the main protagonist in the event complained of.

18. Taking these matters into account, I am of the view that the likelihood of a repetition of the behaviour complained of is small and certainly does not amount to a substantial risk that it will recur. I sincerely hope that Mr. Griffiths has learnt his lesson from this saga and that in the future, he will stay well away from the plaintiffs. If he does not, he may expect that the court could take an extremely serious view of any potentially unlawful acts that might occur in the future.

19. However, even if I were to be wrong in reaching that conclusion, there is another significant factor which appears to me to be highly material. Injunctive relief, perpetual or otherwise, is, of course, an equitable remedy and the person who seeks equity must come to the court with clean hands. This is well explained in the judgment of the Court of Appeal of England and Wales in *Hubbard v. Vosper* [1972] 2 Q.B. 84, which coincidentally involved the Church of Scientology. The plaintiffs in the action were the founder of CoS, L. Ron Hubbard and the Church of Scientology in California. The defendant, Mr. Vosper, was a former member of the CoS who wrote a book critical of its practices and philosophies. The plaintiffs sought to enjoin its publication on the grounds that it constituted a breach of copyright and a breach of confidence. The injunction application was unsuccessful. One of the grounds for refusal was that the plaintiffs had not come to court with clean hands. This was explained in the judgment of Megaw L.J. as follows at p. 100-101:-

"Having regard to the matters which we have seen and, bearing in mind [counsel for the plaintiff's] observations that he came to this court unprepared to deal with matters of that sort, to my mind it is here sufficiently clear that, whatever explanations may be given, assuming that the words used in relation to 'suppressive acts' mean what they on their face appear to mean, [counsel for the defendant] is more than abundantly justified in his proposition that there is here evidence that the plaintiffs are or have been protecting their secrets by deplorable means such as is evidenced by this code of ethics; and, that being so, they do not come with clean hands to this court in asking this court to protect those secrets by the equitable remedy of an injunction."

20. It seems to me that the conduct of Ms. Collins in writing the letter to which I have referred was a calculated attempt to demonise and discredit Mr. Griffiths and presumably thus undermine any criticism, legitimate or otherwise, he may make of CoS. It cannot be viewed as other than a failure to come to court with clean hands.

21. For that additional reason also, I would allow this appeal and dissolve the injunction granted by the Circuit Court insofar as it relates to Mr. Griffiths.