[2018]IEHC 823

THE HIGH COURT

Record No. 2015/7782P

BETWEEN

CHARLES BARRETT AND RICHARD LONERGAN

PLAINTIFFS

AND

PHILIP JOYCE PRACTISING UNDER THE TITLE AND STYLE OF JOYCE AND BARRY SOLICITORS

DEFENDANT

JUDGMENT of Mr. Justice Hunt delivered on the 23rd day of March, 2018

The plaintiffs' claim

1. The plaintiffs in this case are self-represented litigants. They complain that they have suffered "*irreparable reputational loss and damage as a result of …. actions by the defendant*". As a result, the plaintiffs claim the following relief in the general endorsement of claim on their plenary summons:-

> *(i) Damages for reputational loss caused to the Plaintiffs by the actions of the Defendant.*
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> *(ii) Aggravated damages for impugning the good name and reputation of the Plaintiffs.*
>
> *(iii) Damages for negligence, breach of duty incorporating breach of statutory duty, breach of contract including fraudulent misrepresentation arising from the filing of a false and misleading affidavit in the course of High Court proceedings bearing Record No. 2012 No. 517 JR.*
>
> *(iv) Costs.*
>
> *(v) Interest pursuant to the Courts Acts.*

2. In the statement of claim delivered on 21st January, 2016, their claim is set out as follows:-

> *(i) Damages for misrepresentation by the Defendant, in particular in filing an affidavit solely designed to occasion maximum reputational loss to the Plaintiffs.*
>
> *(ii) Exemplary damages for irreparable damage to the Plaintiffs good name and reputation.*
>
> *(iii) Damages for irreparable loss and damage occasioned to the Plaintiffs as a result of the actions of the Defendant.*

3. Although not drafted professionally, the pleadings clearly express the complaint of the plaintiffs, and the basis upon which they seek relief in their proceedings. Their grievance is that their reputations were damaged by the alleged actions of the defendant. Therefore, I am satisfied that the essence of their claim is that the defendant has committed the tort of defamation. This tort is now exclusively governed by the provisions of the Defamation Act 2009. In addition, the pleadings also expressly allege breach of contact and fraudulent misrepresentation by the defendant, and claim for damages on that footing.

The defendant's application

4. By notice of motion dated 11th January, 2016, the defendant sought the following relief:-

> *(i) An Order pursuant to Order 19, Rule 28 of the Rules of the Superior Courts and/or the inherent jurisdiction of this Honourable Court striking out the entirety of the Plaintiffs' claim for failing to disclose a reasonable cause of action and/or is bound to fail and/or is frivolous and/or is vexatious and/or is an abuse of process.*
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> *(ii) An Order pursuant to Order 19, Rule 27 of the Rules of the Superior Courts striking out such parts of the Plaintiffs' claim as this Honourable Court deems fit on the basis that such parts are unnecessary and/or scandalous and/or tend to prejudice and/or embarrass and/or delay the fair trial of the action.*
>
> *(iii) Such further and/or other orders as to this Honourable Court deems appropriate.*
>
> *(iv) Costs.*

5. The motion was heard on 20 February 2018, when the defendant was represented by Mr. Ross Aylward. As already noted, the plaintiffs were self-represented at the hearing.

Background to the claim

6. It is necessary to set the pleadings and the application in context. In March 2007, the plaintiffs issued Circuit Court proceedings against the named defendants damages for breach of contract in respect of a "*finder's fee*" associated with the sale of a property by those defendants. This claim was heard by Her Honour Judge Doyle at Thurles Circuit Court on 25th March, 2009, when all parties were represented by solicitor and counsel. Judge Doyle dismissed the claim of the plaintiffs, with an order for costs in favour of both defendants against the plaintiffs, to be taxed in default of agreement.

7. The plaintiffs did not appeal the order of Judge Doyle within the time provided for by the Rules of the Circuit Court. By notice of motion issued on 23rd July, 2009, they sought an extension of time within which to appeal the decision of the Circuit Court to the High Court. This application was heard by the High Court (Hogan J.) on 7th April, 2011, and was contested by the first-named defendant in the Circuit Court proceedings. Hogan J. extended the time for the plaintiffs to lodge a notice of appeal against the order

in favour of the first-named defendant, on condition that they lodge the sum of €15,000 into court within a period of two months of his order. The costs of the first-named defendant were reserved. Hogan J. refused to extend time to appeal against the Circuit Court order in favour of the second named-defendant, and ordered that the plaintiffs pay the costs of the second-named defendant, to be taxed in default of agreement.

8. The plaintiffs did not avail of the right of appeal facilitated by the order of Hogan J., because they did not lodge the sum of €15,000 in the time specified by him. Understandably, the defendants in the Circuit Court proceedings then proceeded to taxation of the binding order for costs awarded against the plaintiffs by Judge Doyle. This took place before the County Registrar on 27th July, 2009. By notice of appeal dated 4th August, 2009, the plaintiffs then appealed against the order taxing these costs.

9. The appeal against the taxation of costs was heard by His Honour Judge Teehan at Clonmel Circuit Court on 27th March, 2012. Having heard the matter, Judge Teehan struck out the plaintiffs' appeal, and affirmed the order of the County Registrar on the taxation of the costs. The plaintiffs then returned to the High Court, this time by way of a notice appealing the order of Judge Teehan. This notice was filed by them on 2nd April, 2012. However, they did not pursue this appeal. Instead, they then sought the leave of the High Court for judicial review of the order of Judge Teehan.

10. By order made on 11th June, 2012, Peart J. granted the plaintiffs leave to seek an order of *certiorari* in respect of the order of Judge Teehan, and directed that the defendants to the original Circuit Court proceedings be added as notice parties to the judicial review application. Mr. Joyce, the defendant in these proceedings, was retained to act as solicitor on behalf of the first-named notice party in the judicial review application. In this capacity, the defendant issued a notice of motion on behalf of the said first-named notice party on 28th March, 2013, seeking to set aside the leave granted to the plaintiffs by Peart J.

11. The defendant swore the affidavit in support of the application to set aside the leave. The contents of this affidavit are the subject matter of the claim of the plaintiffs in the instant proceedings. Significantly, when the application to set aside the leave previously granted was heard by Charleton J. on 10th June, 2013, the plaintiffs in these proceedings successfully resisted that application, and Charleton J. refused to set aside the leave to seek judicial review. This decision would have inevitably involved consideration by Charleton J. of the affidavit impugned by the plaintiffs in this case.

12. The substantive judicial review proceedings came on for hearing before O'Malley J. on 18th October, 2013. Prior to that hearing, the notice parties had applied to cross-examine the plaintiffs on foot of the affidavits filed by them in respect of their application for judicial review. At the hearing the plaintiffs indicated a corresponding wish to examine the deponents of the affidavits filed on behalf of the notice parties. O'Malley J. suggested that the parties consider taking up the Digital Audio Recording of the hearing before Judge Teehan on 27th March, 2012, in order to resolve any conflict as to what transpired at that hearing, in order to obviate the necessity of cross-examination upon the various affidavits. Mr. Joyce states that the first named notice party instructed him to decline that option, and to pursue cross-examination instead. It appears that the plaintiffs were agreeable to the suggestion of taking up the audio recording of the Circuit Court hearing.

13. When the matter was listed before O'Malley J. on 1st November, 2013, she fixed 25th February, 2014 as the date for cross-examination. Thereafter, the plaintiffs lodged yet another appeal, this time to the Supreme Court against the order of O'Malley J. made on 18th October, 2013. This appeal was transferred to the Court of Appeal following the creation of that court, but has yet to come on for hearing. Accordingly, the cross-examination scheduled by O'Malley J. did not proceed.

14. The only other event of relevance is that the plaintiffs obtained an order from Peart J. on 20th January, 2014, staying the order of Judge Teehan pending determination of the judicial review application. It seems that this order was somehow obtained by the plaintiffs on an *ex parte* basis. The net effect of all this activity is that the successful defendants in the Circuit Court proceedings instituted by the plaintiffs more than a decade ago have yet to see a penny of the costs awarded to them almost nine years ago.

Mr. Joyce's affidavit

15. The impugned affidavit was sworn by Mr. Joyce on behalf of his client on 27th March, 2013, and filed on the following day in support of the application by the first-named notice party to set aside the leave previously obtained by the plaintiffs. The statement of claim delivered by the plaintiffs in these proceedings specifically references paragraphs 9, 11, 12, 13 and 14 of the affidavit as the basis of their claim for damages for defamation, breach of contract and/or fraudulent misrepresentation. Consequently, I will set out the paragraphs complained of by the plaintiffs in this regard.

> *"9. I say that the applicants' application to extent time to appeal the said order of Judge Doyle was heard by His Honour (sic) Mr. Justice Hogan on 7th April 2011. I say that on that occasion Mr. Justice Hogan refused to allow the Applicants bring an appeal as against the First Named Notice Party herein and granted him costs as against the Applicants herein. I say that these costs remain outstanding and are approximately in the amount of €10,000. No attempt has been made to collect these costs.*
>
> *…*
>
> *11. I say that the First Named Applicant, Charles Barrett, falsely and misleadingly states at paragraph 13 of his affidavit dated 11th day of June 2012 that* 'Judge Teehan only heard from counsel for the defendants' *and* 'made no attempt to engage with us'. *I say and believe that the learned trial judge afforded the Applicants every opportunity to argue their case in respect of the taxation order but that at no time did they seek to address any issue concerning the taxation of costs but that they failed to do so and instead sought to revisit the Order of Judge Doyle, dated 25th March, 2009.*
>
> *12. I say that at paragraph 13 of the aforementioned Affidavit the First Named Applicant also misrepresents that the learned trial judge* 'failed to permit us to make any arguments relating to the costs orders which are and were the subject matter of the appeal before him'. *I say and believe that the* 'costs orders' *referred to by the First Named Applicant were not in fact the subject matter of the appeal before Judge Teehan and I further say and believe that the Applicants herein sought to use the said appeal of taxation of costs as a forum to revisit the substantial matter of the Circuit Court proceedings, and in particular the Order for costs made against them by Her Honour Judge Doyle on 25th March, 2009.*
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> *13. I further say, believe and am advised that the assertion by Mr. Barrett at paragraph 14 of his said affidavit concerning* 'the similarity in the level of costs of both defendants despite the variation in their involvement in this case' *is wholly devoid of merit and is unsupported by any proper analysis of the actual costs taxed by the County Registrar of the County of Tipperary on 27th July, 2009.*
>
> *14. I say that in the circumstances outlined above, it is clear that the Applicants failed to observe the principle of*

utmost good faith and have misled this Honourable Court and failed to bring all relevant matters to the Court's attention in the course of their application before this Honourable Court on 11th day of June, 2012."

Statement of Claim

16. The salient paragraphs of the statement of claim in the current proceedings are as follows:-

"6. In the course of the said judicial review proceedings, the Defendant filed an Affidavit on 28 March, 2013. The said Affidavit is untrue in the following material respects:

☐ *At paragraph 9 the Defendant falsely states that the Plaintiffs application to extend time to appeal was refused and wrongly suggests that the first named Notice Party was awarded cost (sic), when no order as to costs was in fact made. This accusation was motivated by malice on the Defendants part to impugn the good name and integrity of the Plaintiffs.*

☐ *At paragraph 11, the Defendant deliberately attempts to besmirch the reputation of the first named Plaintiff.*

☐ *At paragraph 12, the Defendant wrongly contradicts paragraph 10 of the Affidavit with the sole intention of causing maximum reputational damage to the Plaintiff.*

☐ *At paragraph 13 of his Affidavit, the Defendant wrongly and contrary to the facts impugns the reputation of the first named Plaintiff.*

☐ *At paragraph 14, the Defendant maliciously suggests that the Plaintiffs failed to observe the principle of utmost good faith, when the Defendant's Affidavit exhibits mala fides on his part, thereby occasioning loss and damage to the Plaintiffs.*

7. In the course of the judicial review proceedings, the Plaintiffs sought the DAR of the Circuit Court hearing which is the subject matter of the judicial review. The Defendant refused to accede to this request at a hearing before Judge O'Malley in October 2013, in circumstances, where the Defendant knew the DAR would prove the bona fides *of the Plaintiff and expose the nature and extent of the false statements in the Defendants Affidavit of 28 March, 2013.*

8. The Plaintiffs have suffered irreparable reputational loss and damage as a result of the aforementioned actions by the Defendant."

Response of the defendant

17. Mr. Joyce has fairly and openly acknowledged, both by correspondence to the plaintiffs, and by his subsequent affidavit filed in connection with this application, that the contents of paragraph 9 of his grounding affidavit are factually incorrect. His acknowledgment is set out in a letter to the plaintiffs dated 15th December, 2014, which was written by him in response to a letter of complaint from the plaintiffs dated 12th December, 2014. Mr. Joyce wrote as follows:-

"The Affidavit about which you complain was drafted by Counsel and signed by me. It is acknowledged that there were factual inaccuracies in paragraph 9 of that Affidavit which I regret.

I would like to confirm that at no stage was there any deliberate or knowing attempt to mislead the Court in any way and neither was there any intent to tarnish anyone's reputation."

18. By para. 37 of the affidavit sworn in support of the instant application, Mr. Joyce further acknowledges this situation as follows:-

"37. Paragraph 9 of the impugned affidavit was incorrect in respect of the following:

(a) The statement that Mr. Justice Hogan refused to allow the Applicants bring an appeal against the first named Defendant in respect of the Order of Her Honour Judge Doyle of 25 March 2009. In fact, and as averred to above, Mr. Justice Hogan did grant an extension of time as against the first named Defendant but subject to the condition precedent requiring the Plaintiffs herein to lodge the sum of €15,000 into court which was never done. Mr. Justice Hogan did refuse the Plaintiffs' application for an extension of time as against the second named Defendant.

(b) The statement that Mr. Justice Hogan granted the first named Defendant costs against the Plaintiffs. Rather, as averred to above, Mr. Justice Hogan reserved the issue of the first named Defendant's costs. Mr. Justice Hogan did award the second named Defendant her costs as against the Plaintiffs.

(c) The statement that the costs remain outstanding. It is correct that the issue of costs remains outstanding, but it is incorrect to say that the Plaintiffs are liable to the first named Defendant for costs in the approximate amount of €10,000 in respect of the application before Mr. Justice Hogan.

(d) The statement that no attempt has been made to collect the costs is correct.

38. I say that the above inaccuracies were not intentional but arose on foot of the error of Counsel in the drafting of the Impugned Affidavit and your Deponent in the verification of the content of the Impugned Affidavit in advance of swearing same. I apologise for the error but believe it to be entirely innocent and can categorically say to this Court that it was not in any way motivated by malice to impugn the name and integrity of the Plaintiffs as alleged.

39. I think it important to highlight that no prejudice arose against the Plaintiffs in the judicial review proceedings on foot of the Impugned Affidavit. In that regard, I say that your Deponent had sworn an earlier Affidavit on 23 July 2012, which said Affidavit was filed on 23 July 2012. I beg to refer to a copy of the said Affidavit when produced. Your deponent

averred at paragraph 4 of the said Affidavit as follows:

> *'By Order dated 7th day of April, 2011, made in the High Court Mr. Justice Gerard Hogan gave liberty for the plaintiffs to lodge an appeal provided the sum of €15,000 was paid on or before 7th day of June, 2011. No such lodgement was made and no appeal was lodged.'*

I say that averment is an accurate recital of the facts averred to therein. Further, the Order of Mr. Justice Hogan of 7 April 2011 could easily be produced to the Court at any stage in the Judicial Review Proceedings should there be any confusion as to what was decided on that occasion. The Judicial Review Proceedings remain extant and the inaccuracies within para. 9 of the Impugned Affidavit could be easily rectified in the lead up to the substantive hearing and indeed at the substantive hearing.

40. In those circumstances I do not believe it can objectively be said that the Plaintiffs good name and integrity was impugned, or capable of being impugned in the context of the Judicial Review Proceedings."

19. It is worth noting that the impugned affidavit was sworn and filed in March 2013 and the application that it grounded was heard and determined by the High Court in favour of the current plaintiffs in June of the same year. There is no evidence before me of any complaint made to Charleton J. about the contents of the impugned affidavit, or any other reference to these matters until the letter of complaint penned by the plaintiffs in December 2014. The plenary summons was issued in 2015 and a statement of claim followed early in 2016. This level and speed of activity is hardly commensurate with the extent of the reputational damage alleged in the pleadings.

20. Aside from these very proper concessions, Mr. Joyce takes serious issue with the balance of the claims made by the plaintiffs in these proceedings arising out of his earlier affidavit. I cannot resolve the assertions and denials arising in respect of the balance of the affidavits, save to observe that Mr. Joyce's client, in common with any respondent or notice party in judicial review proceedings, was entitled to make a case that the applicant had not made full disclosure at the *ex parte* leave application, and to seek to have leave granted set aside on that basis. The plaintiffs' position in respect of that application was vindicated and upheld by Charleton J. by reason of the dismissal of the application brought by Mr. Joyce's client. The bare fact that an application is unsuccessful could hardly in itself render a litigant or his solicitor liable to the other side, on the basis that their assertions of fact or legal argument did not ultimately find favour with the trial judge. Such is the stuff of adversarial litigation.

21. So far as the issue concerning the Digital Audio Recording of the hearing before Judge Teehan is concerned, this is also not a matter that I can resolve at this juncture in the proceedings. I note that the issue of the DAR transcript arose at the suggestion of O'Malley J., but she was not prepared to order production of the DAR unless this was on consent, because she was not prepared to order any party to pay for it. I agree with Mr. Joyce's observation at paragraph 55 of his affidavit that the pleading in the statement of claim concerning this issue could not conceivably constitute or contribute to any known cause of action.

22. I note his instructions from his client in the judicial review proceedings that he did not wish to adopt the suggested course of action in relation to the DAR because he felt it likely that he would be ultimately left to pay the costs of this course of action. In the light of the protracted and unfortunate history set out above, this strikes me as a reasonable apprehension on the part of his client. In fact, Mr. Joyce also deposes to making inquiries since the hearing before O'Malley J. in relation to the possibility of taking up a copy of the DAR transcript in respect of the appeal hearing before Judge Teehan, and has been informed by the Circuit Court Office that the system was not in operation during the course of the hearing in question. If this is so, and there is no contradiction or other reason to disbelieve this averment, the issue of the DAR is no longer of any relevance to any aspect of this matter.

Order 19, Rule 28

23. As indicated by Clarke J. at p. 308 of the judgment of the Supreme Court in *Lopes v. Minister for Justice* [2014] 2 I.R. 301, in considering an application of this type, the first resort is to "*established procedural law including the rules of the relevant court"*. Clarke J. noted that "*the purpose of any asserted inherent jurisdiction must, therefore, necessarily, involve a situation where the court enjoys that inherent jurisdiction to supplement procedural law in cases not covered, or adequately covered, by procedural law itself".*

24. The application under Order 19, Rule 28 is designed to deal with a case where, assuming that the facts are as asserted in the pleadings, however unlikely such assertions might appear to be, the case is nonetheless frivolous or vexatious. By contrast, dismissal under the inherent jurisdiction arises where it can be established that there is no credible basis for the suggestion that the facts are as asserted in the pleadings, with the consequence that the proceedings are bound to fail on the merits.

25. In this context, the term "*frivolous and vexatious*" simply means that because it has been established that the plaintiffs have no reasonable chance of succeeding, it is frivolous and vexatious for them to bring or maintain such proceedings which have no or no reasonable chance or prospect of success.

26. Therefore, for the purposes of this exercise, I must assume, without so finding, that the plaintiffs can establish the facts as pleaded and set out above. In this regard, the defendant argues that the claims of the plaintiffs are bound to fail because they are:-

(a) barred by virtue of the provisions of the Statute of Limitations;

(b) covered by the defence of absolute privilege; and

(c) based on facts where no duty of care can or did arise as between the defendant and the plaintiffs.

Statute of Limitations

27. I am satisfied that the defendant is correct in his contention that the claim of the plaintiffs based on defamation is bound to fail. By the operation of section 6(1) of the Defamation Act 2009, the previously existing torts of libel and slander are now grouped together as "*the tort of defamation*". By section 6(2) of the Act, this tort consists of the publication, by any means, of a defamatory statement concerning a person to one or more than one person. As set out above, I am satisfied that the pleadings cannot be construed as other than maintaining a claim for damages for defamation of the plaintiffs by the defendant by reason of the contents of the impugned affidavit.

28. The application of the provisions of the Statute of Limitations 1957 to the newly-described "*tort of defamation*" is governed by section 38 of the 2009 Act. In essence, a defamation action within the meaning of that Act must be brought within one year from the date on which the cause of action accrued, unless there is a court direction under sub-section (2)(c)(ii) extending the limitation period to not more than a total of two years after the accrual of the cause of action.

29. Assuming that the statement of which the plaintiffs complain was published for these purposes on the date when the defendant filed his affidavit in court on 28th March, 2013, the cause of action accrued on that date, and any proceedings claiming damages for any defamatory publication contained therein needed to be issued by the plaintiffs by 28th March, 2014, or by the date specified in any court order extending that initial period for up to another year. There is no evidence that they obtained any such extension, and they did not issue their plenary summons in this matter until 28th September, 2015. This is well beyond either the initial limitation period of one year, or any possible extension thereof.

30. Therefore, it is plain that any claim based on defamation is now comprehensively barred by the operation of the amended provisions of the 1957 Act outlined above. Accordingly, even assuming establishment of the facts set out in the plaintiffs' pleadings, I am satisfied that the claims based on the tort of defamation are bound to fail, even though the plaintiffs have asserted facts which, if true, might otherwise give rise to a cause of action. I do not believe that it is necessary in these circumstances to put the defendant to the further expense and delay of waiting to the defence stage to pleading the Statute of Limitations. If the failure to comply with a statutory limitation period is as manifest as it is in this case, with the result that the claim has no prospects of success, such a failure may found an application to dismiss under Order 19, Rule 28.

31. Consequently, I propose to dismiss the claims of the plaintiffs in defamation on the basis they are frivolous and vexatious by reason of being doomed to failure by the application of the relevant provisions of the Statute of Limitations.

Absolute Privilege
32. In this regard, the defendant relies upon the provisions of section 17 of the Defamation Act 2009, in support of the application to dismiss the proceedings under Order 19, Rule 28. Section 17(2) (g) provides that it shall be a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought was made by a party, witness, legal representative or juror in the course of proceedings presided over by a judge, or other person performing a judicial function.

33. I accept that it is beyond argument that the statements complained of in these pleadings were made by a legal representative in the course of proceedings presided over by a judge. Therefore, it inevitably follows that pleadings based on a statement published in these circumstances are bound to fail, and must be regarded as "*frivolous and vexatious*".

34. In this regard, I note the comments of O'Flaherty J. in his judgment in *Looney v. Governor and Company of the Bank of Ireland & another* (Supreme Court, 9th May, 1997), where O'Flaherty J. considered whether the defence of absolute privilege was subject to any limitation or qualification. He stated:-

> *"If someone for a malicious purpose, or in order to abuse what he might have thought was a situation of immunity that he enjoyed in Court simply used that situation to make defamatory or malicious statements against others, in a manner that had nothing to do with the particular proceedings in which he was engaged, then it might well be that he would have no answer in an action for defamation or malicious falsehood, or whatever.*
>
> *However, this case is very far from that. The averment in the affidavit was obviously well within the immunity envisaged by our existing jurisprudence. Accordingly, it is better that these proceedings should not go any further. I agree that there should be an order providing for their dismissal at this stage."*

35. Therefore, even assuming proof of the facts set out in the pleadings, I am satisfied that the inaccurate statement made by the defendant in his affidavit was clearly associated with the particular proceedings with which he was engaged and that there is therefore no prospect that the statement in question could fall outside the very broad boundaries of the statutory defence of absolute privilege. Therefore, I also propose to dismiss the claims based on defamation under Order 19, Rule 28 on the basis that they are frivolous and vexatious by reason of being doomed to failure by the application of the statutory defence of absolute privilege.

Breach of contract/misrepresentation
36. This leaves the claim for damages for breach of contract and misrepresentation as identified above. It is obvious that there is no direct contractual relationship between Mr. Joyce and the plaintiffs, and therefore the breach of contract claim is bound to fail, and must also be dismissed as frivolous and vexatious under Order 19, Rule 28. Equally, I am also satisfied that the claim for damages for misrepresentation is doomed to failure, because the ingredients required to sustain an action for misrepresentation are not present, even on the presumed facts.

37. Actionable misrepresentation arises where an incorrect statement induces a person to enter a contract with the person making the representation. As already indicated, there was no contractual context for any misrepresentation by the defendant arose in this case. Secondly, apart from the absence of any contract induced by reliance upon misrepresentation, the plaintiffs have not pleaded that they sustained any financial or other type of damage which could conceivably attract an award of damages for actionable misrepresentation. Indeed, in the context in which the impugned affidavit was delivered, the plaintiffs suffered no loss whatsoever, in the sense that the misrepresentations complained of were not such as to induce Charleton J. to come to a finding adverse to the plaintiffs.

Conclusion
38. Therefore, I am satisfied that on the basis of the case as pleaded, and assuming proof of all factual matters set out therein, all claims identified in the plenary summons and statement of claim are bound to fail and, therefore, must be dismissed as being "*frivolous and vexatious*" within the legal sense of that term as outlined above. As I am satisfied that the procedural provisions of Order 19, Rule 28 are sufficient to resolve the application in favour of the plaintiff, I do not propose to consider whether to dismiss the proceedings pursuant to the inherent jurisdiction of the court, although I believe that it is highly unlikely that the error made by the defendant in paragraph 9 of the impugned affidavit could be proved by the plaintiffs to have been made with the intent and to the purpose alleged by the them in their pleadings.

39. The plaintiffs are not devoid of any remedy in respect of the obviously incorrect statement made in paragraph 9 of the impugned affidavit. If nothing else, it has been publically established that an inaccurate suggestion was made about the plaintiffs in that affidavit, and this has been unequivocally corrected in correspondence, during the hearing of this application, and by this judgment. Furthermore, as Mr. Aylward correctly observed, the judicial review proceedings instituted by the plaintiffs remain extant, and in that context, it is open to the plaintiffs to have the offending paragraph struck out of the affidavit by application in those proceedings.

The jurisdiction of the court to deal with such matters was recently considered and set out in detail by Ní Raifeartaigh J. in *Dowling v. Galway County Council & Coshla Quarries Limited* [2018] IEHC 50, a judgment delivered on 11th January, 2018.

40. It is necessary and desirable that the judicial review proceedings relating to the taxation of the order for costs made in the Circuit Court now proceed to a speedy conclusion one way or the other. The underlying fact remains that the plaintiffs have at all times been liable to pay the costs of the successful parties in the original Circuit Court proceedings. It is most unsatisfactory that it has not yet been possible to have the final level of those costs ascertained so that the bill may be presented to the plaintiffs for payment, who must ultimately address this remaining consequence of the unsuccessful litigation that they chose to prosecute in the Circuit Court.