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Ex Tempore Judgment : approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 06/02/13

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

AB LIMITED, JW, SM AND CM

Plaintiffs;

-v-

FACEBOOK IRELAND LIMITED

First Defendants;

and

A PERSON OR PERSONS ADOPTING THE PSEUDONYMS ANN DRIVER
AND ALAN DRIVER

Second/Third Defendants;

McCLOSKEY J

[1] The Plaintiffs claim damages for alleged libel and sundry other torts. I begin with the extant anonymity order. This was part of a combined order made by the High Court at the outset of these proceedings, on 17 August 2012. The various components of this order were an injunction, anonymity for the plaintiffs and substituted service. As regards anonymity the court ordered as follows. The reporting and listing of the proceedings in respect of the plaintiffs should be ordered to be anonymous in respect of the naming of the plaintiffs until further order of the court. I consider that an order anonymising the true identities of the plaintiffs in these proceedings is fully justified, having regard to the factual matrix of their claims and the related principles, which are discussed in Re A Police Officer's Application for Judicial Review [2012] NIQB 3 and illustrated recently in XY - v - Facebook Ireland [2012] NIQB 96. Without such an order, the plaintiffs' constitutional right of access to the Court would be thwarted. The overarching test, which is whether a carefully tailored departure from the principle of open justice is warranted, is clearly satisfied. The import and scope of this order are, in my view, clear. Everything that has been transacted in the public domain in these proceedings remains in the public

arena and can, accordingly, be disseminated. However the plaintiffs have the protection of anonymity. This means that their true identities will not be disclosed in any way and that publication of anything that might tend to identify them should be avoided. Plaintiffs' counsel did not dissent from any part of this analysis, which I ventilated at the hearing. I hereby affirm the anonymity order, which now becomes permanent.

[2] Next I address the identity of the defendants. The proceedings in this case have been brought by four plaintiffs against Facebook Ireland Limited and a person or person adopting the pseudonyms Ann Driver and Alan Driver. This case is no longer continuing against Facebook Ireland Limited. By order of 23 October 2012, the High Court ruled that the proceedings against Facebook Ireland Limited be dismissed. Accordingly, the case proceeds only against the other defendant or defendants [it being unclear whether there is one or are two of them].

[3] At the outset of the trial, I raised with Mr Girvan, counsel on behalf of the plaintiffs, an issue regarding the constitution of these proceedings. This arises out of the plaintiffs' pursuit of a defendant or defendants described as a person or persons adopting the pseudonyms Ann Driver and Alan Driver. In response, Counsel referred to the following passage in Halsburys Laws of England (4th Edition Re-Issue), volume 35, paragraph 1272, under the rubric "Liberty to change name":

"An individual acquires his original name when his name is registered at birth. Subject to certain requirements of notification imposed in the law of aliens, the law prescribes no rules limiting a person's liberty to change his name. He may assume any name he pleases in addition to, or in substitution for, his original name

The law concerns itself only with the question whether he has in fact assumed and has come to be known by a name different from that by which he was originally known."

I consider that the principle expressed in this passage applies fully to the familiar phenomenon of adoption of pseudonyms, irrespective of their possibly transient character. This practice has, for many decades, been manifest in a variety of publication contexts - newspaper commentaries, magazine articles and letters to the press, to highlight but three. As a matter of judicial notice and based on the evidence in the present case and in others, this has become an increasingly established feature of publications on social networking sites. Indeed it would appear that, in this particular context, this is becoming the norm. I consider the principle articulated in Halsbury fully applicable to this discrete context. Also belonging to this equation are the previous orders made by the Court, in particular

those relating to substituted service. Giving effect to this principle and having regard to such orders, I am satisfied that the proceedings are properly constituted. Accordingly, these defendants are properly are sued. They are, of course, hiding behind the mask of pseudonyms. However, as this case demonstrates, in the modern era our legal system, mainly through the media of increasingly flexible procedural rules and practices, resorts to the inherent jurisdiction of the High Court where appropriate and a progressive emphasis on substance in preference to form adopts a robust and realistic approach to issues of this kind. As a result, the defendants' attempts at concealment and evasion have been thwarted. I am satisfied that they are properly before and, hence, are subject to the jurisdiction of this court.

[4] The defendants have chosen not to defend these proceedings. In making this choice they have foregone their right to be heard. As a consequence of this the court has already made a further order, on 16 November 2012 whereby it was adjudged that the second named defendant or defendants do pay to the plaintiffs' damages to be assessed and costs. The effect of that order is not that all of the plaintiffs are entitled to damages. Rather, I consider its correct construction to be that the plaintiffs will become entitled only to such damages as this court considers are properly to be awarded. While the defendants have made the elective choice of not participating in these proceedings, they have not waived their entitlement to fairness. This is an inalienable and indefeasible right. It is embedded in the common law and reflected in the Court's duty of impartiality. In the present context, in the discharge of this duty I have adopted the approach that, notwithstanding the aforementioned order, the plaintiffs bear the onus of proving their respective claims to the requisite standard, i.e. on the balance of probabilities. In considering whether this onus has been discharged, I have taken into account also that the evidence in the trial has been adduced by the medium of affidavits. This is a reflection of both the normal practice in cases where an order under Order 13, Rule 2 of the Rules of the Court of Judicature is made and the power conferred on the Court by Order 38, Rule 2. I have also balanced the desirability of trying this action on the basis of affidavit evidence in preference to conducting a different type of hearing which, in order to give effect to the anonymity order, would inevitably have had to encroach markedly on the principle of open justice by proceeding in private.

[5] I now turn to the plaintiffs' claims. In the writ of summons, it is alleged that the second named defendants have pursued a campaign of public vilification and harassment of the second, third and fourth named plaintiffs by way of publications made upon the Facebook website. It is alleged further that they have been guilty of publishing libel and malicious falsehoods in respect of the plaintiffs and that the tort of misuse of private information has been committed. In brief compass, the plaintiffs invoke, first of all, the statutory tort of harassment; secondly, the tort of malicious falsehood; thirdly, the tort of defamation, specifically libel; and, fourthly, the tort of the misuse of private or confidential information. These torts, in the abstract, share certain common features. In the present context, they give rise to significant elements of overlap and duplication. In substance and reality I consider the central pillar of the plaintiffs' case to be that each of them has been defamed by the

publication of a series of statements and images on the social networking site known as Facebook. Libel is plainly the dominant cause of action. It is clearly proved that the second and/or third defendant/s is/are the publisher. A person is defamed in law if the tendency of the offending statement and/or image is to damage such person's reputation. As has frequently been said, a defamatory statement is one which tends to lower a person's standing and reputation in the estimation of right thinking members of society generally.

[6] I have considered all the evidence contained in the affidavits and fairly voluminous exhibits. I have scrutinised this with appropriate rigour, bearing in mind that the hearing conducted did not have the usual adversarial trappings and, in particular, did not entail cross examination of the plaintiffs. Having done so, I hold that the plaintiffs have established to the civil standard of proof viz on the balance of probabilities that they have been defamed by the second defendant or defendants. I elaborate on this briefly as follows. The defendant/s has/have made a series of libellous statements about the plaintiffs on the Facebook site. These specifically identify two of the plaintiffs at least, while the others identify the plaintiffs by reference and by implication. This identification is readily made. The offending representations, which consist of both words and images, take the form of a series of gratuitous and malicious slurs against the character and reputations of the plaintiffs. They attack the marital fidelity, morality, integrity and honesty of the plaintiffs. In the most extreme of the four cases, they accuse one plaintiff [JW] of an unbridled licentious lifestyle and practices. They do so without subtlety or restraint of any kind. They are awash with malice. The test for libel is amply satisfied and damages are recoverable in consequence.

[7] I now turn my attention to the question of damages. It is well established that the heads of compensatable damage for libel are, firstly, injury to reputation; secondly, injury to feelings; and, thirdly, vindication. I have subjected the averments in the plaintiffs' affidavits to appropriate and circumspect scrutiny. Having done so, I am satisfied that compensatory damages will be adequate redress, while noting that the claim for aggravated damages has not been pressed. I find no mitigation of any kind in favour of the defendants, who have acted with demonstrably malicious intent.

[8] I next consider the issue of extent of publication. I find that as a matter of probability there was extensive publication of the offending statements and images through the Facebook medium. I find that these were widely read and digested, relayed, debated and discussed. These findings are readily and realistically made by reasonable inference. No more precise finding is either necessary in principle or possible on all the evidence. I must juxtapose this kind of publication with the publication of comparable material on a leading page of a major newspaper with extensive circulation or in a popular television programme. The two contexts are different though, arguably, decreasingly so. It is essential to bear in mind the factor of context at all times.

[9] I must view the publication of the offending statements and their impact on the plaintiffs in the particular overall context. This includes personal, commercial and publicly visible and accessible elements. In light of the anonymity order I decline to elaborate on this. In considering the issue of context I also take into account that there is no clear allegation of criminal conduct on the part of any of the Defendants and, on the evidence, there has been no involvement of the Police Service or any other external agency. I further record the absence of any medical evidence, a factor which I take into account and, similarly, the absence of any evidence of incapacity to work. While neither of these is a requisite in a claim for damages for libel, they are both factors which I weigh in the present context. I also take into account the duration of the offending conduct. In my view this is properly described as a campaign of vilification and abuse which ebbed and flowed during a period of some few months. I further weigh the factor of repetition: the offending statements were repeated, especially vis a vis the plaintiff JW, who was the main target. I find that this plaintiff in particular suffered substantial stress, anxiety and distress, albeit falling short of any compensable injury. For the avoidance of any doubt, I add that an injury of this kind is not a prerequisite to an award of damages for libel.

[10] I assess damages as follows. In the case of the plaintiff JW I award £20,000. In the case of the plaintiff SM I award £10,000. In the case of the plaintiff CM I award £5,000. This, in each of the individual plaintiffs' cases, is a global award in respect of all of their causes of action which, as I have already observed, contain clear elements of duplication and overlap.

[11] I now turn to consider the position of the first named plaintiff, AB Limited, the corporate litigant. I take into account that two of the other plaintiffs, SM and CM, are, in effect, officers of this plaintiff. I conclude that the company's reputation, which did suffer some damage, will be sufficiently vindicated by the awards that I am making to its officers SM and CM.

[12] Accordingly, bearing in mind that this is a composite action brought by four plaintiffs, there will be judgment for the plaintiffs in the total sum of £35,000, with the breakdown that I have indicated, against the defendants described as a person or persons adopting the pseudonyms Ann Driver and Alan Driver. There will be a stay of execution of six weeks. I award costs to the Plaintiffs. The anonymity order of the court is affirmed. The interim injunction is hereby discharged, it having been made clear on behalf of the plaintiffs that they are not pursuing the remedy of a permanent injunction. The issue of enforcement and any possible future complications on this front are not matters for this court.

[13] These cases, in tandem with certain other recent cases, illustrate an evidently growing trend of a disturbing nature and proportions, involving the abuse of social networking sites. This is reflected in the escalating litigation graph experienced in this Court, illustrated by the decision in XY - v - Facebook Ireland [2012] NIQB 96, applications for interim injunctive relief in other cases and two forthcoming hearings

scheduled in the near future. It is indisputable that social networking sites can be a force for good in society, a truly positive and valuable mechanism. However, they are becoming increasingly misused as a medium through which to threaten, abuse, harass, intimidate and defame. They have become a source of fear and anxiety. So-called “trolling” appears to be increasingly commonplace. There is much contemporary debate about evils such as the bullying of schoolchildren and its potentially appalling consequences. Social networking sites belong to the “wild west” of modern broadcasting, publication and communication. They did not feature in the Leveson Inquiry and, in consequence, are not addressed in the ensuing report (for a respectable recent commentary, see the UK Human Rights Blog, a source of much valuable material and analysis). The misuse of social networking sites and the abuse of the right to freedom of expression march together. Recent and pending litigation in Northern Ireland confirms that, in this sphere, an increasingly grave mischief confronts society.

[14] The solution to this mischief is far from clear and lies well beyond the powers of this Court. Self-regulation and/or statutory regulation may well be necessary. In the meantime, this unmistakably pernicious evil is repeatedly manifest. Recourse to the courts for appropriate protection and remedies is an ever expanding phenomenon. The courts in Northern Ireland have demonstrated their availability and willingness to protect the interests of those whose legal rights are infringed by the cowardly and faceless perpetrators of this evil. As the present cases demonstrate, the law, through the courts, penetrates the shields and masks of anonymity and concealment. Effective remedies are available and will be granted in appropriate cases. The courts will continue to play their part as the vehicle for the protection and vindication of legal rights and interests, where violated, in a society governed by the rule of law and belonging to a supranational legal order in which human rights have been placed at the centre, as a result of the Lisbon Charter of Fundamental Rights, a dynamic, revolutionary and directly effective measure of EU law.