

Neutral Citation: [2017] NIQB 3

Ref: COL10157

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

Delivered: 13/1/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

J20

-and-

FACEBOOK IRELAND LIMITED

2013 No. 98281

Plaintiff;

Defendant.

COLTON J

[1] I gave judgment in this matter on 19 December 2016.

[2] I awarded the plaintiff £3,000 damages.

[3] At the end of the hearing I asked counsel for the parties to address me on the issue of costs. I now give written reasons for my ruling in relation to this matter.

[4] Mr Ronan Lavery QC who appeared on behalf of the applicant with Mr Paul Bacon asked firstly for an order that the plaintiff be granted costs and secondly that those costs should be High Court costs. In relation to the first submission he argued that as the plaintiff had succeeded in his action costs should follow the event. In relation to the second submission he argued that this case involved complex or novel legal issues which would justify awarding High Court costs.

[5] In response Mr Peter Hopkins who appeared on behalf of the defendant with Mr Anthony White QC submitted firstly that the plaintiff should not be awarded costs because he had failed to establish liability in respect of all of his causes of action. In particular his claim based on harassment had been rejected by the court. As an alternative he submitted that the plaintiff should only be awarded part of the costs of the action. In relation to the second submission made on behalf of the plaintiff he argued that as the plaintiff had been awarded an amount that could have been obtained in proceedings commenced in the County Court then any costs awarded to him should be confined to those that would be awarded in that court.

[6] Section 59 of the Judicature (Northern Ireland) Act 1978 (“the Act”) provides, where relevant, as follows:

“Award of costs

(1) Subject to the provisions of this Act and to rules of court and to the express provisions of any other statutory provision, the costs of and incidental to all proceedings in the High Court ... shall be in the discretion of the court and the court shall have power to determine by whom and to what extent the costs are to be paid.

(2) Save as otherwise provided by any statutory provision passed after this Act or by rules of court, if damages or other relief awarded could have been obtained in proceedings commenced in the county court, the plaintiff shall not, except for special cause shown and mentioned in the judgment making the award, recover more costs than would have been recoverable had the same relief been awarded by the county court.”

[7] Order 62 Rule 17 of the Rules of the Court of Judicature (Northern Ireland) 1980 (“the Rules”), where relevant, provide as follows:

“Save as otherwise provided by any statutory provision passed after the Act and save in cases to which paragraph (3) applies, if damages or other relief awarded could have been obtained in proceedings commenced in the County Court, the plaintiff shall not, except for special cause shown and mentioned in the judgment making the award, recover more costs than would have been recoverable had the same relief been awarded by the County Court.”

[8] Having considered the matter I agreed with Mr Lavery’s submissions and ordered the plaintiff to pay the defendant’s costs and that those costs be High Court costs to include two counsel to be taxed in default of agreement.

[9] In my view the plaintiff clearly was entitled to an award in respect of his costs. Although I rejected the claim based on harassment I found in his favour in respect of the tort of misuse of private information. The fact that the plaintiff relied on the tort of harassment did not add to the length of time taken to hear the case. It was necessary that I heard the plaintiff’s evidence in full in relation to the postings

about which he complained. Whilst obviously the factual context of the case was essential to the judgment of the court the real issues between the parties were essentially legal issues which is clear from the judgment I delivered. The defendant denied liability in full and the plaintiff established a cause of action against the defendant in respect of which he was entitled to damages. In the circumstances of the case and exercising my discretion I came to the view that the plaintiff was entitled to an award against the defendant in respect of the costs of the action.

[10] In relation to the question of whether the plaintiff should be awarded County Court costs as would be the normal practice given the award I came to the view that this was a case in which the plaintiff could show special cause entitling him to recover more costs than would have been recoverable in the County Court. I did so because the issues in this case were clearly complex. This was demonstrated by the lengthy written and oral legal submissions submitted by the parties which in the view of their respective clients justified instructing senior counsel. The issues that arise in relation to the liability for social networking sites in respect of allegations of harassment and misuse of private information is very much a developing field of law involving consideration of complex legislation, European Directives and case law. Indeed many of the issues raised in this action were the subject matter of a Court of Appeal judgment shortly after judgment was delivered in this action. I am satisfied that this is exactly the type of case involving a special cause because of complexity envisaged in the act and rules which justifies making an award of High Court costs to the plaintiff.

[11] Accordingly the plaintiff is to have an order for costs against the defendant and those costs are to be High Court costs to include two counsel to be taxed in default of agreement.