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Judgment: approved by the Court for handing down | *Delivered:* **17/10/08**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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2008 No. 69921

MARK HADDOCK

Plaintiff;

-v-

MGN LIMITED AND OTHERS
(NO. 1)

Defendants.

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DEENY J

[1] In these proceedings Mark Haddock seeks an injunction against the first defendant, the owner of Mirror Newspapers and a number of other defendants including the publishers of the Irish News, The British Broadcasting Corporation and Ulster Television Limited restraining them and any of them from publishing or causing to be published or broadcast any recent photograph, image or depiction of the plaintiff. Six other reliefs were sought in the writ and statement of claim but counsel abandoned the relief sought at paragraph 11(f) of the statement of claim at the hearing of this application. Mr Frank O'Donoghue Q.C. appears with Mr Mark Farrell for the plaintiff. Mr John Larkin Q.C. leads Mr Bernard Fitzpatrick for the Irish News and Mr Sayer for the BBC and UTV. They appeared before me in relation to an interlocutory application by the plaintiff to be screened at the hearing of the civil action before me. I will attempt to deal with this interlocutory application as expeditiously as possible, partly because there is pressure of time from outside events.

[2] The plaintiff's claim arises in this way. He is currently serving a sentence of ten years imprisonment imposed by the Crown Court for an offence of causing grievous bodily harm to another individual, upon his

conviction in October 2006. He currently anticipates release from that sentence in or about January of 2009, having been disappointed in a possible release earlier this year. The release date reflects both the provisions in force at the time of his offence and the fact that he served some time in custody prior to his conviction.

[3] On 30 May 2006, while on bail, the plaintiff was shot seven times and seriously wounded. Since then he says the effects of that shooting, from which he has not fully recovered, have altered his appearance. Furthermore he has taken steps, but falling short of plastic surgery, to alter his appearance so that he now asserts that it is possible that persons who previously knew him may not recognise him. His contention in the main action is that as he has been in custody there is no recent photograph or other image of him and he wishes to prevent such an image being taken, published or broadcast in case it would materially increase the risk to his life by making him more potentially identifiable to potential assailants.

[4] That there is such a risk to his life is evidenced not only by the fact of the shooting of him in 2006 but by some other relevant factors which can be briefly stated. It has been publicly alleged in The Oireachtas that he was guilty of a number of terrorist murders in the north Belfast area and that he was protected from prosecution because he was a police informant. The defendants say in their defence that he is Informant I referred to in a report of the Police Ombudsman for Northern Ireland, Dame Nuala O'Loan, relating to circumstances of alleged police collusion with Loyalist terrorists in that area. The plaintiff exhibited to an affidavit of 3 July 2008 in these proceedings, at MH1, a confidential police message, Form PM/1 dated 24 June 2008 and signed by a police constable and addressed to the plaintiff. The message read as follows:

> "There remains a high level of threat to the life of Mark Haddock. An attack on Mark Haddock's life would be inevitable should he decide to reside anywhere in Northern Ireland upon his release from prison."

This form apparently arose from the possibility that he might be released about that time.

[5] I am therefore satisfied that there is evidence, sufficient for the purposes of this interlocutory application, to show that he will be at real risk of attack in the near future when released from prison. If he appears in a public court to pursue his action, without special order, any member of the public, including persons bearing ill towards him, would be able to come in and study his appearance over a period of time while he was examined and cross-examined. (It is conceivable that the parties will agree his evidence but on the

submissions before me it seems most unlikely.) The relief sought here by Mr O'Donoghue on his behalf is properly described by him as being a limited relief ie not anonymity which would now be futile nor some of the more extreme measures of voice modulation seen, for example, in R v Davis [2008] 3 AER 461; [2008] UKHL 36. There is no objection to the plaintiff being seen by not only the judge but by court officials and the lawyers on both sides. (He is already seen by prisoners and prison officers). Mr O'Donoghue relied on the decision of Lord Carswell in the House of Lords in Re Officer L 2007 4 All ER 965. I have carefully taken into account the helpful oral and written submissions of counsel for the defendants, as well as those of the plaintiff but subject to one point am not persuaded they are such as to lead to a rejection of this limited application on the part of the plaintiff. I do note that the plaintiff while an accused before Mr Justice Weatherup was not screened but he was in Her Majesty's Prison, following his shooting and visible only on a video screen. His counsel says that early release was not then imminent. I note, with interest to the main application, Mr Larkin's contention, as yet not proven before me, that the plaintiff knew those who had shot him in 2006 and named them to the police leading to the arrest and charging of some individuals. However, Mr Larkin says, he later withdrew that complaint and those persons were released. His actions in that regard may be relevant to the issues of whether it was equitable, or, in European Law terms, proportionate to make an order in his favour ultimately but it does not seem to me that they affect the issue of screening for the trial sufficiently to refuse the application.

[6] However it does seem to me that one of his submissions does need to be addressed at this stage. He informs the court that the defendants wish to have the plaintiff observed by some people who may be able to identify him, not by name but by his appearance, as participating in serious crime some years ago. The defendants would then wish to call those people, if indeed they do recognise the plaintiff as a person involved in such serious crime, at the hearing of the civil action and rely on any evidence against him as a ground to put forward to the court for refusing relief for him. He therefore wished to avoid screening so that these persons could remain in the body of the court, wholly unidentified, to observe the plaintiff. The difficulty with that is that the refusal of screening at the hearing would go some way to denying to the plaintiff the very relief he seeks by these proceedings. Although it was not put this way by his counsel it seems to me that as well as rights he enjoys under Article 2 of the European Convention, he has a right to a fair trial under Article 6. It may be that he would go ahead despite being unscreened for this application but it may be that it would be a deterrent to him or interfere with his rights to a free trial. Obviously there are other issues under Article 8 and Article 10 of the sort considered by the House of Lords in Campbell v MGN Limited (2004) 2AER 995.

[7] It seems to me that the solution to these difficulties is as follows. I will grant the plaintiff the application sought that he be screened at the hearing of

this civil action, save that he be visible not only to the judge and court officials but to the legal advisors on both sides and to a very small number of persons chosen by Mr Larkin QC on behalf of the defendants. This very small number of persons could sit close enough to the witness box to see the plaintiff. At least one of them, and I do not specify more exactly, will be a potential witness against him but one or more of the others may not be. This addresses the point made by Mr Larkin that the plaintiff will be able to see these potential witnesses and that as he has been described as a dangerous man by Mr Justice Weatherup and convicted of a serious offence, the court should address the legitimate concerns of these witnesses. I consider that in the circumstances there should be an assurance to the court that none of the people with a view of the plaintiff has served any custodial sentence. I say that because it is a matter which would go a considerable degree to reassuring the plaintiff that these people were not likely themselves to become assailants in the future. I will hear counsel for the plaintiff, if necessary, on the precise wording of any such assurance and on whether it should be given by the defendants' solicitors or by counsel, and if so how.

[8] I make this condition on granting the application despite the forcibly put argument of Mr O'Donoghue QC in reply to Mr Larkin. His submission was that where, as here, appearance in court would materially increase the risk to the plaintiff, the court was not carrying out a balancing exercise. The plaintiff had the right and the court had a duty to take these steps because of the material increase in risk. No balancing exercise was involved. I reject that submission on two grounds. Firstly if the court has the assurance of leading counsel, properly instructed, that these are not persons with any custodial record, or meeting some similar test, it does not seem to me that their observation of the plaintiff would lead to a material increase in the risk to him, particularly as they will neither photograph nor sketch him and many people could have seen him on video at his trial and sentencing after his shooting although before any intentional alteration in his appearance. Secondly I am not prepared to rule, at least not ad limine, that the fact that the court heard evidence of a serious criminal offence committed by the plaintiff, but for which he had not been tried, might not be relevant to the making of an order by the court. It will be borne in mind that this point did not arise in the decision of the House of Lords in Re Officer L as the persons seeking anonymity there were not criminals but serving or retired police officers. The point was not therefore directly addressed by their Lordships. But in any event reading the judgment of Lord Carswell, and particularly at paragraph 21, I am satisfied, certainly for these purposes, that even in the discharge of the court's duties under Article 2 of the European Convention the court should do that which, as he put it, "was reasonably to be expected of them to avoid the risk of life. The standard accordingly is based on reasonableness, which brings in considerations of the circumstances of the case, the ease or difficulty of taking precautions and the resources available." I am not satisfied that the conduct of the parties seeking anonymity is a matter to be

excluded from reasonableness. It may be one of the circumstances of the case to be considered. My provisional view is that it is likely to be a relevant factor. If a person, released from prison, came before the court judicially reviewing a decision of the police not to provide him with bullet proof glass and similar protective measures at his home, the police reasons for their decision would be admissible. If their reasons were that the applicant, having been released from custody, had resumed his previous illegal activities and that was what was exposing him to risk that would clearly be relevant to the exercise of a discretion by the police and the approach subsequently adopted by any court reviewing the exercise of that discretion. It seems to me that past conduct on the part of the applicant, including a failure to co-operate with the police in apprehending offenders might at least be relevant as to whether any order should issue here. In saying that I believe that such an approach would be consistent with the decision of the European Court in Osman v The UK (1998) 5 BHRC 293. To put it another way I do not accept Mr O'Donoghue's submission that even if his client was the biggest rogue in the world that would be irrelevant to the court's decision. I would point that the granting of an injunction is a discretionary remedy at law. Furthermore this is a court of equity and those seeking equity must come with clean hands. That might extend to somebody who has served a sentence for a previous offence and I believe that it does i.e. that they have paid their debt to society and are entitled to the full rights of a citizen. It is a more open question as to whether it extends to somebody who is shown to have committed other serious crimes which have not been dealt with in the courts or who has not assisted the police to apprehend offenders as they are in law obliged to do. Without in any way ruling on the point at this stage it seems to me possible that they are relevant factors in the judgment of the court here. I will therefore make an Order as indicated at paragraph 7 above.