Neutral Citation No: [2025] NIMaster 2 *Judgment: approved by the Court for handing down (subject to editorial corrections)*	**ICOS Nos: 23/099882** ***Delivered: 22/01/25***

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

AB

Plaintiff;

and

META PLATFORMS IRELAND LIMITED

Defendant.

Mr Lavery KC with Mr Bassett (instructed by KRW Law) for the Plaintiff
Mr Hopkins KC (instructed by A& L Goodbody) for the Defendant

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MASTER HARVEY

I have adopted a cipher for the plaintiff's name and have anonymised this judgment to protect the identity of the plaintiff.

Introduction

[1] These proceedings arise out of publications on a Facebook page entitled "Parents Against Predators NI". The plaintiff claims he featured in a video on this page which was available for viewing from January 2022 until December 2022.

[2] I have not viewed the video as I was told it is no longer available. The precise content is unclear and in dispute. The plaintiff asserts it consists of a video of him in his car when he was confronted by third parties at two separate locations and his name, address, vehicle registration and relationship circumstances were mentioned. His movements in Belfast were apparently discussed and he was insulted

repeatedly. Given the modus operandi of the operators of the particular Facebook page, the clear inference was that the plaintiff was an alleged paedophile. The material led to a police investigation against him, but no criminal charges were brought. A similar video was posted on the YouTube platform but removed relatively promptly after they were notified of its nature.

The current application

[3] In short, by summons issued on the 15 October 2024, the plaintiff is applying for leave to serve a writ of summons on the defendant outside the jurisdiction. The defendant's registered offices are in Dublin. The application is pursuant to Order 11 of the Rules of Court of Judicature (Northern Ireland) 1980 ("the Rules"). This is the second application, for the reasons I will set out below. The plaintiff also seeks to amend the writ pursuant to Order 20 Rule 5 of the Rules to focus his claim solely on two grounds, namely, misuse of private information and a data protection claim. At hearing, the defendant stated it had no objection to such amendments. I considered they serve to clarify the real issues in dispute between the parties and granted this Order accordingly.

[4] There are voluminous papers and multiple affidavits in this case as well as numerous authorities cited, all of which I have considered even if not expressly referred to in this judgment. Counsel filed helpful skeleton arguments and made excellent oral submissions which assisted the court, I am grateful to them both.

Background

[5] The plaintiff's case focuses on the defendant's failure to remove the video in question. He states that his first request to the defendant to remove it was made via its online reporting tool and then on 24 January 2022 in a letter from his solicitor. He claims the defendant declined to do so and no action was taken. The plaintiff applied for an injunction on 6 December 2022. The parties are in dispute as to the circumstances in which the material was eventually removed from the Facebook page. The defendants claim it was voluntarily removed on 7 December 2022, after interim relief was sought. The plaintiff asserts it was taken down by the publishers after a dispute between them.

[6] In the initial writ the plaintiff also claimed in respect of negligence, intentional infliction of emotional harm and cited a breach of the Protection from Harassment (Northern Ireland) Order 1997, none of these originally pleaded causes of action are now being pursued.

The initial ex parte application

[7] The plaintiff first issued a writ of summons against the defendant on 20 September 2022 which was discontinued. On the 14 November 2023 the plaintiff applied for ex parte leave to serve a new writ (seeking identical relief to the 2022 version) on the defendant outside the jurisdiction. The application was granted by

Master Bell on the same date, pursuant to Order 11, Rule 1. The plaintiff then proceeded to issue and serve this new writ on the defendant.

[8] The defendant's legal representatives applied for and were granted leave to enter a conditional appearance on 22 January 2024. They then issued an application on the 10 May 2024 seeking to set aside Master Bell's ex parte order of 14 November 2023. This eventually proceeded to an inter partes hearing before me on the 9 October 2024 after which I set aside the ex parte Order pursuant to Order 32 Rule 8. I determined the plaintiff's ex parte application was flawed for a number of reasons, including but not limited to the failure to satisfy any of the requirements for service as set out at paragraph 41 of *Galloway –v- Fraser* [2016] NIQB 7 and it was apparent the applicant had not brought this authority to the attention of the court. The recommendations from this judgment are at paragraph 12 below.

Legal principles

[9] Order 11, Rule 1 of the Rules sets out certain gateways through which service out of the jurisdiction is permissible. Order 11, Rule 4 provides that an application for grant of leave must be supported by an affidavit stating:

> "a. The grounds on which the application is made,
>
> b. That, in the deponent's belief, the plaintiff has a good cause of action,
>
> c. in what place or country the defendant is, or probably may be, found, and
>
> d. where the application is made under Rule 1(1)(C), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ or notice of writ has been served a real issue which the plaintiff may reasonably ask the court to try."

[10] Order 11, Rule 4(2) states leave may not be granted unless it is made sufficiently apparent to the court that the case is a proper one for service out of the jurisdiction. Finally, Order 11, Rule 4(4) states that any order granting leave must limit a time within which the defendant to be served must enter an Appearance.

[11] The requirements for service out are summed up at paragraph 41 of the aforementioned decision in *Galloway*, quoting from *Duncan and Neill on Defamation* (4th Edition) at 9.09 which states that to obtain permission, the claimant must satisfy the court:

> "(1) There is a good arguable case that one of the grounds in (O11 R1(1)) is made out;
>
> (2) There is a serious issue to be tried; and
>
> (3) (Northern Ireland) is a proper place in which to bring the claim."

[12] In *Galloway*, Horner J also made certain recommendations as to an application for leave to serve outside the jurisdiction, including that it is "good practice" that there is a draft statement of claim as part of the application which is "focused and highlights both the relevant causes of action and the material facts relied upon." Moreover, counsel for the plaintiff should "if possible" in a skeleton argument set out the gateways relied upon by the plaintiff under Order 11 Rule 1(1) and demonstrate that there is a good arguable case in respect of each cause of action relied upon as to each such gateway and why there is a "serious question to be tried" in respect of each cause of action. A draft order should be provided to the court for its consideration and the final Order of the court should "specify on its face under what gateways and for what causes of action leave to serve out of the jurisdiction has been granted" with the judge expressing the basis upon which leave is granted.

[13] One of the issues in this case is that the material was posted by third parties, namely the administrators of a Facebook page. They were not acting under the authority or control of the defendant meaning the defendant argues it was not the data controller and not the publisher of any personal data. The defendant relies on *CG –v- Facebook Ireland* [2017] EMLR 12. In that case the Court of Appeal confirmed that the defendant, now called Meta, was an information society service ("ISS") or hosting service. This is within the ambit of Article 14 of Directive 2000/31/EEC ("E-commerce Directive) and Regulation 19 of the Electronic Commerce (EC Directive) Regulations 2002 ("the E-commerce Regulations"). This can provide a conditional exemption from liability in hosting allegedly defamatory material, but this depends on a range of factors such as whether the service provider had actual knowledge of the unlawful nature of the information posted by third parties, or upon gaining such knowledge, acted expediently to remove it.

Defence submissions

[14] The defendant asserts there is simply no evidence before the court in the plaintiff's application to show that private information was even published and if it was, there is no context and circumstances of publication which could assist the court in applying the relevant legal principles.

[15] In *Tamiz –v- Google Inc*. [2013] 1 WLR 2151, the English Court of Appeal held intermediaries such as Meta could not be liable for unlawful material posted online by third parties until after effective notification had been given to them and it had a reasonable time to remove it. After that an inference could be drawn that it has associated itself with the content and its continued presence could make it a publisher.

[16] Further in *CG –v- Facebook Ireland*, the Court of Appeal confirmed it is the plaintiff's burden to show adequate notification in the form of a substantive complaint that gave Meta actual knowledge of unlawful content. This is necessary both to establish that Meta could be liable as a secondary publisher and then to show

that it could not avail of the Regulation 19 defence. The defendant asserts the 24 January 2022 letter from the plaintiff's solicitor did not form effective notification which could render Meta potentially liable for any harm resulting to the plaintiff from the video in question.

[17] The defendant contends that any damage to the plaintiff's reputation was trivial as the video was taken down one day after what they say was effective notification on the 6 December 2022 (not the 24 January 2022 as claimed by the plaintiff). The defendant argues the plaintiff has not adduced any evidence of a causal link between any such injury and the availability of the video for such a brief period of time. Further, it asserts there is no medico-legal report or evidence of loss and damage that will form part of a data protection claim meaning the plaintiff does not have a good arguable case nor has he demonstrated a serious question to be tried in relation to this aspect of the claim.

[18] The defendant also argues the plaintiff's claim has been brought to avoid the rules of the tort of defamation which can amount to an abuse of the court's process. The plaintiff has never advanced or addressed a claim for defamation which could not benefit from legal aid.

Plaintiff submissions

[19] The plaintiff contends the application has now been presented in a manner consistent with the recommendations of Horner J in *Galloway* set out above and the separate claims for damages, based on the torts of misuse of private information and breach of the UK GDPR and DPA, are made in good faith and based on good causes of action. The grant of leave is through the gateway in Order 11 Rule 1(1)(f) in respect of both matters. The plaintiff submits the defendant is culpable for its acts and omissions after being alerted to the content of the videos and it should answer for the loss and damage occasioned by its decision to continue to host the material. Further, the plaintiff argues that the existence of a possible common law action in defamation cannot limit a plaintiff's ability to claim for damages for breach of data protection.

[20] Once alerted by a complaint, and therefore put on actual notice, the plaintiff argues the defendant was expected to assess the material and determine whether any of it may be unlawful. The question of whether eventual removal was expeditious will be fact specific but a positive decision not to remove will be relevant.

[21] The plaintiff asserts he is the "data subject" within the meaning of article 4(1) UK GDPR and the DPA as he is an identifiable natural person. The plaintiff contends that the video of him constitutes "personal data" as he is identified and identifiable from the footage. He argues the protections of the DPA are therefore engaged and

the acts and omissions complained of, come within the broad scope of "processing" in article 4(2) UK GDPR and the DPA.

[22] The plaintiff contends that the defendant has processed his personal data in a manner contrary to the first and third data protection principle in article 5(1)(a) and (c) UK GDPR. It is submitted this was not lawful, fair or transparent and the processing is not adequate, relevant and limited to what is necessary. The plaintiff asserts the purpose of the publication was to vilify him and expose him to harassment, ridicule and insult. Consequently, he argues the processing will not be considered lawful having regard to article 6(1) UK GDPR. While the plaintiff will obtain a psychiatric report to identify any recognised psychiatric injury, in any event the plaintiff claims he suffered material and non-material damage. Therefore, he is arguably able to receive compensation pursuant to article 82 UK GDPR and section 168 DPA.

[23] In his amended writ of summons, the plaintiff claims damages for misuse of private information. Counsel argues this relates to the publication of his name, address, movements and allegations of criminal conduct by third parties on the defendant's forum. The plaintiff argues this is private information and this attracts a reasonable expectation of privacy. The publication will not, it is submitted, be justified by the right to freedom of expression as it was intended only to vilify and mark out the plaintiff for insults and harassment.

Consideration

[24] As was observed by Horner J in *Galloway* at paragraph 7, "a contested interlocutory application is not the forum in which to reach determinations on controversial factual disputes." The role of this court is therefore not to make findings of fact as that is for the trial judge, but rather to apply the legal principles based on the limited material available to the court and determine whether this is an appropriate case to make an Order allowing this plaintiff leave to serve proceedings outside Northern Ireland.

[25] The authorities are clear that the courts should be extremely careful before allowing a writ to be served outside the jurisdiction. The learned judge in *Galloway* highlighted a passage from *Dicey, Morris and Collins on the Conflict of Laws* (15th Edition) at 11-142 which states:

> "First, the court ought to be cautious in allowing the process to be served on a foreigner out of England. This has frequently been said to be because service out of the jurisdiction is an interference with sovereignty of other countries … Secondly, if there is any doubt in the construction of any of the heads of jurisdiction, that doubt ought to be resolved in favour of the defendant. Thirdly, since the application for permission is made without notice to the defendant a full and fair disclosure of all relevant facts ought to be made."

[26] The plaintiff in this application has sought to rectify the clear deficiencies from the first ex parte application. The plaintiff has now confirmed that the only gateway under which he seeks leave to serve outside the jurisdiction is the tort gateway under Order 11 Rule 1(1)(f) which is in the following terms:

> "the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction."

[27] In accordance with Order 11, Rule 4 this new application has been supported by an affidavit from the plaintiff's solicitor stating the grounds on which the application is made and that, in the deponent's belief, the plaintiff has a good cause of action, the country the defendant is located and the grounds for the deponent's belief that there is a real issue between the plaintiff and the person on whom proceedings have been served which the court may reasonably be asked to try.

[28] The requirements for service out of the jurisdiction, helpfully summed up at paragraph 41 of *Galloway*, are not an exhaustive checklist which must be mechanistically followed but rather, as the learned judge stated, they represent "good practice" for such applications. In this new application, the plaintiff has exhibited a further affidavit, draft statement of claim and skeleton argument, and I consider the plaintiff has sought to follow this guidance as much as possible.

Does the plaintiff have a good arguable case that one of the grounds in Order 11, Rule 1(1) is made out?

[29] I agree with defence counsel's assertion that the plaintiff cannot simply broadly assert that he has a cause of action and that any consideration beyond that is a matter for trial. It is for the plaintiff to satisfy the court for each cause of action pleaded that he has a good arguable case and that there is a serious question to be tried. It is only if he does so that he can pass through any of the Order 11, Rule 1 gateways.

[30] In this application, the plaintiff alleges misuse of private information. He contends the information relates to his movements, details of his address or at least his neighbourhood, his work and his name, which he argues were all private information as was the fact there was a police investigation of the allegations against him. The plaintiff claims there was no public interest or other justification for publishing the video of the confrontation that occurred, which included accusations, insults and threats. They were intended to mark him out in the community for ridicule and hostility. While the defendant asserts the plaintiff has not sought to put any evidence before the court in the application to show that any such information was published, a court could well conclude that the notification letter to the defendant of 24 January 2024 contains relevant evidence as it provides a purported screenshot of the video in question showing the plaintiff, his name and the area in which he lives.

[31] The plaintiff argues his images constitute personal data and he is entitled to damages for material and non-material loss for breach of a data controller's obligations under UK GDPR and there is a legal basis for compensation in Article 82 of this legislation together with Section 168 of the Data Protection Act 2018. Further, he asserts a medico-legal report to address the existence, scope, prognosis and causation of any psychiatric injury is to be obtained. In his rejoinder affidavit of 20 November 2024, filed with the court just a few days before the hearing, the plaintiff avers as to the distress that the continued publication of the video has purportedly caused. A court could find that this undermines the defendant's contention there is no evidence of loss and damage. I am also conscious the plaintiff has indicated an intention to obtain a psychiatric report to support his claim.

[32] This new leave application is not without its deficiencies, but I consider the plaintiff has established there is a good arguable case in line with Order 11 Rule 1(1)(f) as the claim is founded on a tort and a court could conclude there was damage and this was sustained, or resulted from an act committed, within the jurisdiction.

Is Northern Ireland a proper place in which to bring the claim?

[33] The plaintiff resides in Belfast, and it is credibly argued the individuals who posted the material similarly reside in Northern Ireland. Their Facebook page is entitled "Parents against Predators NI" (my emphasis added) and they confronted the plaintiff in Belfast. I consider that the torts alleged were arguably committed in Northern Ireland and the alleged damage sustained occurred in Northern Ireland as a result of the defendant's alleged breach of statutory duty. I am thus persuaded Northern Ireland is the proper place in which to bring the claim.

Is there a serious issue to be tried?

[34] The plaintiff contends the defendant was on actual notice of the offending material from January 2022 and took no steps to remove it. I note that the plaintiff claims to have initially notified the defendant directly via its online reporting tool. There was then a letter from his solicitor of 24 January 2022 and further correspondence on 9 February 2022. Finally on the 6 December 2022, the plaintiff sought an injunction from the court. I have carefully reviewed the correspondence and consider there is force in the argument the plaintiff made not one, but four attempts at notification. The letter of 24 January 2022 is from the plaintiff's solicitor to the defendant via email and post and is significant in the context of this case. It is four pages long and states:

> "Please treat this correspondence as formal notice of unlawful content currently accessible on the Facebook platform."

[35] While it refers to harassment and false accusations against the plaintiff and fails to identify all the allegedly private information forming the basis of the misuse of private information claim now being advanced, it does clearly refer to misuse of

private information, citing the relevant caselaw and states the posting in question includes "a video of our client and his name". It encloses a screenshot of what appears to be the defendant's decision not to remove the material via its online reporting system and within this is a purported screenshot of the actual original post from the "predators" page.

[36] I therefore consider this could amount to evidence which credibly seeks to establish a substantive complaint was made in respect of which the relevant unlawful activity is apparent. Thus, there is a good argument there was actual knowledge on the part of the defendant. This is sufficient for the plaintiff to establish that Meta could be liable as a secondary publisher and that it may not be able to avail of a Regulation 19 defence. At this stage, I am not persuaded by the defendant's assertion that this was not effective notification, and I consider there is a serious issue to be tried in relation to this issue and whether they acted expediently in response to any complaint.

[37] This is distinguishable from the Court of Appeal decision in *CG*. In the judgment at paragraph 64, it was held that the pre-proceedings correspondence in that case did not identify a misuse of private information or harassment claim. They were ultimately the claims advanced at trial, therefore, it was determined it did not provide actual notice of the basis of the claim which is now advanced and, accordingly, Facebook was not on notice of that claim or liable on foot of that correspondence.

[38] In this case, the notification letter may not be perfect, but it is sufficiently detailed, and the wording appears unambiguous. In any event, and this will be a matter for evidence at trial, such a system of notification in this context is surely designed to be informal and speedy given the volume of such enquiries the defendant no doubt receives. Not every complainant will have the benefit of legal advice as was the case here and be able to formulate their complaint with the precision as is seemingly required by the defendant in the submissions advanced as part of this application.

[39] I am not clear as to whether review and consideration of the notification letter by the defendant was carried out by a human or by artificial intelligence. It is conceivable given the scale of the defendant's operation that it was the latter, however, if it were the former, a court could well conclude that on any reasonable reading of that letter it could not be seen as anything other than "notification" and a "substantive complaint" of "unlawful content." These are the actual words used in the letter, thus arguably giving the defendant effective notice of the offending material from the 24 January 2022.

[40] Accordingly, there is a good arguable case that Meta could be liable for any harm caused to the plaintiff during the 11 month period it is alleged the video was available to view. I do not consider it irrelevant that another large internet platform,

Google Ireland Limited/YouTube, when faced with a similar request from this plaintiff to remove similar offending material from its site around the same time, duly obliged and did so relatively promptly within 13 days, as compared with the alleged 11 months in the case of this defendant.

[41] In order to succeed in a claim for misuse of private information, a plaintiff must satisfy the court of both elements of a well-established two-stage test. It was described by the UKSC in *Bloomberg LP v. ZXC* (2022) UKSC 5 at paragraph 47. At stage one, the question is whether the claimant has a reasonable expectation of privacy in the relevant information. If so, at stage two, the question is whether that expectation is outweighed by the countervailing interest of the publisher's right to freedom of expression.

[42] The question of whether a reasonable expectation of privacy arises requires a court to consider all relevant matters including, but not limited to, the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher. Those who had come under suspicion of having committed a criminal offence had, in general, a reasonable and objectively founded expectation of privacy in relation to that fact. There is a fact sensitive enquiry to be conducted at trial when all the evidence will be tested. In the circumstances of this case, on balance, the plaintiff has a good arguable case that he had a reasonable expectation of privacy, and that expectation is not outweighed by the countervailing interest of freedom of expression.

The burden of proof

[43] The burden of proof in such applications is on the plaintiff to demonstrate a good cause of action or establishing a real or serious issue to be tried. This case is at an interlocutory stage. While the materials at this point may be voluminous, the evidence has not been tested, discovery has not been provided and witnesses have not been cross examined. The defendant asserts the "good arguable case" test is a much higher standard of proof than on the balance of probabilities and seeks to highlight the distinction between a good arguable case as opposed to a purely arguable case. I pause to observe that it has been stated across numerous authorities of the dangers of forming views at a preliminary stage and that it can be wholly inappropriate for there to be prolonged debate and consideration of the merits of a plaintiffs' claim in an interlocutory application. (Lord Goff in *Seaconsar Far East Ltd v Bank Markazi Jomhouri Islami Iran* [1993] 4 All ER 456).

[44] I consider the burden of proof does not significantly alter in terms of the core principles across many interlocutory applications. The plaintiff here must show a good arguable case and demonstrate serious issues to be tried, which I consider

similar to what is cited in the authorities relied on by defence counsel as one side having a "much better argument" at this stage on the material available, relying on *Canada Trust Co. v Stolzenberg* (No.2) (C.A.) 1 W.L.R. at p555 (F). In the same passage relied on by the defendant it further states the court must be "satisfied or as satisfied as it can be having regard to the limitations which an interlocutory process imposes that factors exist which allow the court to take jurisdiction." In this case, the limited material available satisfies me the plaintiff has discharged the burden of proof in respect of the relief sought, regardless of whether it is framed as the much better argument or a good arguable case.

[45] I therefore determine that the threshold is met in this case and there are serious issues to be tried. They include inter alia, whether there was publication, who was responsible for publication, the nature of the information published, whether there was a justification for this, whether the defendant was a data controller, whether and when there was actual notice to the defendant of the unlawful activity, if so, did it seek to take action expediently as a result, did the plaintiff suffer damage as a consequence and is this supported by medical or other evidence. At this interlocutory stage, it is not the role of the court to reach a determination on any of these issues.

[46] Order 11, Rule 4(2) states leave may not be granted unless it is made sufficiently apparent to the court that the case is a proper one for service out of the jurisdiction. I consider there is sufficient material before me at this interlocutory stage to determine this is such a case.

Abuse of process

[47] The defendant argued that the nub of this complaint is the falsity of what was allegedly published. It argues the plaintiff's claim is brought to avoid the rules of the tort of defamation, which can amount to an abuse of the court's process. The plaintiff may well be aggrieved at the nature of the allegations and the content of the video and while I note he has not brought a defamation claim, nevertheless, at this preliminary stage the provisional view of the court is that he has established the basis of a good arguable case in these proceedings. This is not in my view an appropriate case in which to use the court's inherent jurisdiction to refuse to grant the plaintiff leave on the grounds of an abuse of process. I am persuaded the existence of a possible common law action in defamation cannot limit a plaintiff's ability to claim for damages such as here.

Conclusion

[48] I consider in this new application the merits are made out on the material now available to the court and establish sufficient grounds to make the appropriate Order.

[49] I grant the plaintiff's application to amend the writ pursuant to Order 20 Rule 5. I further grant the plaintiff leave to serve the writ on the defendant outside the jurisdiction and determine that the grant of leave is through the gateway contained in Order 11 Rule 1(1) (f) in respect of the torts of misuse of private information and breach of the UK GDPR and the Data Protection Act 2018. I direct the defendant shall file an appearance within 21 days of the date of service of the amended writ of summons, pursuant to Order 11, Rule 4(1). I will hear from the parties in relation to costs on a date to be fixed in consultation with the Master's office.