Neutral Citation No: [2025] NIMaster 7	Ref: [2025] NIMaster 7
Judgment: approved by the Court for handing down (subject to editorial corrections)	**ICOS Nos: 2023/005041** *Delivered: 04/03/25*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
KING'S BENCH DIVISION

Between:

IVOR PLATT

Plaintiff

-and-

THE TRUSTEES OF CASTLEROCK GOLF CLUB

First Defendant

-and-

DAVID STEEN

Second Defendant

-and-

GERARD MURPHY

Third Defendant

Keith Gibson BL instructed by McCartan Turkington Breen Solicitors on behalf of the plaintiff
Peter Hopkins KC instructed by Carson McDowell on behalf of the second and third named defendants

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MASTER HARVEY

Introduction

[1] The plaintiff was a trustee of Castlerock Golf Club but resigned in December 2022. He previously held other prominent roles in the club. The first defendants are the trustees of the club while the second and third defendants are club members. In January 2022, in advance of a planned Annual General Meeting ("AGM") of the club, the second and third named defendants typed and signed a resolution which they say

was in accordance with Rule 20(a) of the club's constitution. It stated the plaintiff was no longer fit to hold office as a trustee and that there should be a vote of no confidence in him. They purportedly hand delivered it in a sealed envelope to the first named defendant. The club apparently then sent it to all its members via email, by letter and posted it on the club notice board. The defendants accept it was a defamatory statement, but they are entitled to the qualified privilege defence. They say the only publication was to a single individual, it comprised a notice of motion submitted in accordance with the club rules and established practice of the club. The motion was included within the agenda of the AGM. They claim to have sought to withdraw it a few days later on the 26 January 2022 and anything that happened thereafter was a matter for the club, not them. The plaintiff resigned as a trustee on 5 December 2022. On the 18 January 2023 the plaintiff issued his writ of summons. The statement of claim includes claims in libel and malicious falsehood. The second and third defendants have yet to file a defence. The first defendant is not involved in this application.

The application

[2] The second and third defendants seek:

a. An Order pursuant to section 8 of the Defamation Act 1996 and Order 82, rule 9(2) of the Rules of the Court of Judicature (Northern Ireland) 1980 dismissing the plaintiff's claim in libel as against them;
b. An Order under the inherent jurisdiction of the court that the plaintiff's claims as against these defendants be struck out as an abuse of process; and/or
c. An Order pursuant to Order 18, rule 19(1) (b) and (d) that the plaintiff's claims as against these defendants be struck out.

Legal principles

[3] I do not intend to repeat the well-rehearsed relevant provisions of the Defamation Act or Order 18 rule 19 of the Rules. The parties agree on the applicable legal principles. There are several affidavits, helpful skeleton arguments and both counsel skilfully made focused submissions at hearing for which I am grateful. I have considered the electronic bundle of papers, and the authorities relied on by the parties. It is not possible to make reference to them all in this decision.

[4] I do wish to start, however, by pointing to a recent decision of the Northern Ireland Court of Appeal in the context of an interlocutory order striking out aspects of a defence, in *The Governor & Company of the Bank of Ireland and John Conway* [2024] NICA 80. In that case it was stated that caution should be taken when considering

affidavit evidence in such applications and the court also warned of the dangers of forming conclusions at a preliminary stage, stating:

> "[18] It is not for this court in the exercise of its circumscribed function to make any judgement about any of the foregoing assertions. Rather, it suffices to recognize that the defendant's evidence at trial could include the foregoing and, further, could be accepted by the trial judge, in whole or in part, giving rise to findings of fact in his favour which, in turn, could establish or contribute to establishing one or more of his causes of action as pleading.
>
> [19] We can also see force in the submission on behalf of the defendant that the Bank's appeal, impermissibly, involves arguments about "evidence." The fundamental flaw thus exposed is that at this stage of these proceedings there is no evidence and, by corollary, no findings of fact, to this we would add that there are no agreed material facts. Other aspects of the Bank's arguments entail attacks on the factual strength of certain elements of the defendant's pleading, again erroneously as a matter of principle."

Plaintiff's submissions

[5] The plaintiff relies heavily on a submission that this case should go to trial and it is not possible to deal with all the issues at an interlocutory stage. These defendants have not filed a defence, unlike the first defendant, and the plaintiff indicates they will seek to deal with matters such as malice in their reply once the defendant serves a defence. The plaintiff may also seek to amend the statement of claim to deal with issues such as an alleged breach of the club rules in terms of how the motion was proposed.

[6] The plaintiff refers to the constitution and rule book of Castlerock Golf Club issued in April 2009. The relevant section states that the trustees of the club, shall remain in office "until he ceases to be a member of the club, or until he is removed from office by a resolution passed at a general meeting of the club." The plaintiff argues the resolution by these defendants does not seek to remove the plaintiff from office but rather a declaration that:

> "He is no longer fit to hold office as a Trustee of Castlerock Golf Club and that the vote of no confidence in him is in benefit of the Club going forward harmoniously".

[7] The plaintiff argues the club rules do not provide for a "vote of no confidence". Issues regarding unsatisfactory conduct are at rule 24 where an allegation of a breach of rule or of conduct contrary to the best interests of the club can be addressed.

[8] The plaintiff asserts that the second and third defendants are essentially alleging the plaintiff is not neutral, that he turned up uninvited for meetings, he sent three intimidating letters to unspecified members of the club and that he is unfit to hold office as a trustee.

[9] The plaintiff contends these defendants clearly intended that the notice would be published, and this occurred on or about the 21/22 January 2022 as it was sent to club members as set out in paragraph 1 above. The latter publication on the club notice board meant it was purportedly available for the general public and non-club members to view.

[10] The plaintiff accepts the second and third named defendants may have made an attempt to withdraw the resolution, but it was not given effect until several weeks later. In that intervening period, he asserts it had been published. He alleges damage to his reputation, hurt, distress and embarrassment.

[11] The plaintiff argues these defendants are just as culpable for the publication as the first defendant and relies on *Gatley on Libel and Slander* 11th edition at paragraph 6.5:

> "in accordance with general principle all persons who procure or participate in the publication of a libel, and who are liable therefore, are jointly and severally liable for the whole damage suffered by the claimant."

[12] The plaintiff indicates that at the outset of this entire episode he told the defendants that an apology would resolve the matter. It appears the parties are now too far down the road of these proceedings, costs have been incurred and their positions are entrenched.

Defence submissions

[13] The defendant asserts that qualified privilege allows individuals to make statements on the basis that they have a legal, moral or social duty to make them and can make them without fear of being ultimately sued for defamation. They say this includes members of a club or society. The defendants contend the plaintiff's claim in libel does not have a realistic chance of success and there is no other reason why it should be tried, meaning it should be disposed of now. These defendants claim the motion they published for the removal of the plaintiff was in accordance with the club's constitution and this was a private communication to the honorary secretary. They claim this is the very definition of common law qualified privilege and the publication of the resolution was not designed to cause the plaintiff pecuniary damage. I pause to observe that paragraph 12 of the statement of claim makes the assertion the words used "were calculated to cause pecuniary damage to the plaintiff." It is worth pointing out that it is not the role of this court to make findings of fact.

[14] The defendants accept that proof of malice defeats the defence of common law qualified privilege (see *Gatley on Libel and Slander* 13th edition page 691, paragraph 18). The defendants state the plaintiff has not put forward any assertion or averment of malice against them to undermine a privilege defence or to ground the malicious falsehood claim. This is an onerous burden to prove, and they assert there is simply no evidence to support it. The defendants argue the height of the plaintiff's allegation appears to be that these defendants are liable for the subsequent publication of the resolution by the first defendant to its members but even if that is correct if does not undermine the qualified privilege defence for these defendants.

[15] Further and in the alternative, these defendants say the claim should be struck out on the grounds that they are frivolous or vexatious, in the sense of being incontestably bad. They also state that even if the qualified privilege defence did not succeed or the malicious falsehood claim was made out, and even if these defendants could be held liable for the limited subsequent publication of the resolution by the first defendant, within a matter of days these defendants sought to withdraw the resolution. Any delay thereafter was attributable to the first defendant. Considering the limited publication of the resolution and its swift withdrawal thereafter as a whole, the plaintiff has suffered little or no harm in this respect. Put simply "the game is not worth the candle", and it is not in the public interest that the court's finite resources are allocated to addressing disputes between members of a golf club.

Consideration

[16] While the second and third named defendants have not yet lodged a defence, they are of course able to bring a strike out application at any time under the Rules. The power to strike out is a draconian one and it should only be used in exceptional cases (*Stelios Haji-Ioannou -v- Dixon* [2009] EWHC 178 (QB) [30] per Sharp J.) While it is a sparingly used power, sometimes the court has to grasp the nettle as was stated by Scoffield J in *MacAirt v JPI Media NI Limited* [2021] NIQB 52.

[17] I consider the main difficulty with this application is a simple one. While the defendants assert the plaintiff has not properly pleaded malice, the defendants have not pleaded a defence of qualified privilege which would then give the plaintiff an opportunity to serve a reply to defence setting out his response. If as anticipated malice is to be asserted, the plaintiff will have to plead this. At hearing, counsel for the plaintiff pointed to the fact the first defendant has served a defence, and the plaintiff has served a reply to this further particularising his claim. The first defendant has not brought a strike out application.

[18] Through this application the defendants are seeking to set out their defence now and using this in addition to the purported defects in the plaintiff's pleading as

the basis for a strike out of the claim. On balance, I must consider whether the pleadings are capable of improvement and have regard to the overriding objective to do justice between the parties. A strike out would drive the plaintiff from the seat of justice, it would deny him a hearing on the merits and in many cases to do so offends the principles of fairness and Article 6 rights.

[19] Balancing the rights of the parties in this case, I consider there is greater prejudice to the plaintiff if the case is struck out now. If the defendants are vindicated and succeed at trial, there will be significant costs implications for this plaintiff, but he proceeds on that basis and his legal team will have made him aware of the risks. The defendant is not without further options. They may choose to revisit a strike out application after the close of pleadings and discovery has been provided. That is a matter for them. The case may look very different at that stage for all parties concerned. As is often said, the mere fact the case may appear weak is no grounds to strike it out. The defendants in this application make their case with some force but I consider there are insufficient grounds to strike it out now.

[20] The defendants credibly assert the defamatory statement at issue was made to a club representative in writing in the context of the golf club's constitution and they did not further publish it. Such a communication between members of an association can be held to be privileged, although the publication must be to a person who has a legitimate interest in the subject matter of the communication. In the case of *Umeyor v Ibe* [2016] EWHC 862 (QB), Warby J (at [83]) it was held that words spoken at a general meeting of an unincorporated association was a classic example of circumstances in which privilege would usually attach. In this case, the communication was between individuals in a club who would arguably all have a legitimate interest in the content. The plaintiff states at paragraph 5 of the statement of claim that full details of publication will be dealt with after discovery has been provided.

[21] The plaintiff pleads malice in the statement of claim at paragraph 11. The particulars of malice reference the refusal on the part of the defendants to provide details of the allegations, making them in a public forum without a chance to respond and failing to make an apology. At paragraph 13 the plaintiff asserts the defendants knew the allegations were unsupported and withdrew them and further they knew or ought to have known they defamed the plaintiff. The plaintiff has an onerous burden seeking to prove malice on the part of the defendants. Lord Diplock in *Horrocks v Lowe* [1975] AC 135 as referred to in *Gateley* at 18-003 stated that privilege remains unless some dominant improper motive is proved. While such a motive is asserted in the current pleadings, it lacks particularity. Counsel for the plaintiff argues they will seek to amend the statement of claim and will deal with malice in the pleadings assuming the defendant asserts privilege.

Section 8 of the Defamation Act 1996 - Realistic prospect of success

[22] The authorities make clear that in applications seeking summary disposal, the court must consider whether the claimant has a realistic prospect of success, and the allegations carry some degree of conviction. The court must analyse the material before it but avoid conducting a mini trial. It must take into account not only the material placed before it but also the evidence that can reasonably be expected to be available at trial. If the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it can grasp the nettle and decide it where, as stated by Scoffield J in *MacAirt* "the court has reached a view that the defamation claim rests on an unsustainable foundation." This is in keeping with the requirement on the court to give effect to the overriding objective, dealing with cases fairly and expeditiously and taking into account the finite amount of resources and the need to allocate time to other cases.

[23] At this preliminary stage, these defendants have not persuaded me that the claim is built on an unsustainable foundation and does not stand a realistic prospect of success against them. The opportunity to further plead the case, including filing a defence, reply to defence, notices for particulars, replies, interrogatories and the exchange of discovery and chance to hear from witnesses at trial means that I do not have all the evidence necessary to properly determine the case and further material may realistically come to light. This ensures fairness and protects the rights of all parties. I recognise the plaintiff has had the opportunity to address the case in argument during this lengthy interlocutory hearing and the defendant implores me to grasp the nettle and decide the case now but that usurps the role of the trial judge and should only be done in exceptional cases. An interlocutory hearing with admittedly lengthy legal argument and affidavits but with incomplete pleadings and scant evidential material before the court is no substitute for a trial.

Scandalous, frivolous, vexatious or an abuse of process

[24] This court recently set out the legal principles in a similar application: *McAuley v Chief Constable* [2025] NIMaster 4 at paragraphs 8 and 9. In short, frivolous and vexatious claims includes cases which are obviously unsustainable, uncontestably bad and an abuse of process of the court, taking into account matters outside the pleadings. This is in line with the comments of Gillen J in *Rush v Police Service of Northern Ireland and the Secretary of State* [2011] NIQB 28. Under the inherent jurisdiction and Order 18 Rule 19 (1) (b)-(d), evidence by affidavit or otherwise is admissible and the court can explore the facts fully but should do so with caution as per *Mulgrew v O'Brien* [1953] NI 10, at [14] (Black LJ).

[25] If this case proceeds, costs will no doubt escalate and the defendants assert they have an unassailable defence, but I do not consider this is a case which fits into the

category of incontestably bad or that to continue with the claim would represent an abuse of the process of the court.

Jameel

[26] The authorities have determined the damage to reputation in an apparently actionable case must pass a minimum threshold of seriousness. Counsel referred me to the comments of Lord Sumpton in *Lachaux v Independent Print Ltd and another* [2019] UKSC 27 in this regard. This test was introduced to exclude trivial claims. Applying such a threshold to the present claim, the defendants argue this is a classic case of "the game is not worth the candle" *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 [69]-[70] per Lord Phillips MR and *Schellenberg -v- BBC* [2000] EMLR 296, 319 per Eady J.

[27] In *Higinbotham (formerly BWK) v Teekhungam & Anor* [2018] EWHC 1880 (QB) Nicklin J summarised the principles to be applied in a *Jameel* application stating:

> "The Court should only conclude that continued litigation of the claim would be disproportionate to what could legitimately be achieved where it is impossible to fashion any procedure by which that claim can be adjudicated in a proportionate way" (*Ames –v- Spamhaus Project Ltd* [2015] 1 WLR 3409 [33]-[36] per Warby J citing *Sullivan –v- Bristol Film Studios Ltd* [2012] EMLR 27 [29]-[32] per Lewison LJ.)

[28] At the centre of this clam is a dispute between members of a golf club. The plaintiff claims the allegations were false, they were widely published, seen by non-members on a public notice board and this "seriously injured" his good reputation (paragraph 10 statement of claim). He argues the method by which the defendants dealt with the motion was not in line with club rules. There are brief allegations of malice in the statement of claim. If the defendants plead common law privilege in their defence, the plaintiff must respond to that. While I have concerns about the seriousness of the matters in dispute proportionate to the costs that will be incurred, it is at least arguable the plaintiff suffered more than trivial damage to his reputation, and this is sufficient to pass the threshold of seriousness. It is difficult to determine at this stage whether the plaintiffs' claim against the second and third defendants will succeed or make any firm conclusions on the full extent of the alleged damage suffered but there are sufficient grounds to allow it to proceed.

Conclusion

[29] I refuse to strike out the claim under Order 18 rule 19 as I do not consider the proceedings scandalous, frivolous, vexatious or an abuse of process. I also refuse to strike out the action under section 8 of the Defamation Act 1996 on the basis that I cannot determine its prospects of success. Further I refuse to strike out the action on the basis of the principles set out in *Jameel v Dow Jones* as I am not persuaded it fails to

pass the minimum threshold of seriousness. I reserve the issue of costs to the trial judge.