

Neutral Citation No: [2016] NIQB 94

Ref: STE10174(T)

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

Delivered: 23/11/2016

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

AB

Plaintiff:

v

SUNDAY NEWSPAPERS LIMITED

Defendant:

STEPHENS J

[1] This is an application pursuant to Order 66, rule 5 of the Rules of the Court of Judicature (Northern Ireland) 1980 by the defendant, Sunday Newspapers Limited, for leave to inspect documents on a court file in relation to an application for Judicial Review. The application is made in the context of proceedings brought by the plaintiff (who I shall anonymise as AB) against Sunday Newspapers Limited.

[2] AB alleges that Sunday Newspapers Limited have defamed him, harassed him, misused his private information and are in breach of the Data Protection Act 1998 in that they have alleged that he was linked to or involved in dissident terrorist activity.

[3] There are certain more detailed allegations made by Sunday Newspapers Limited in their articles but that short summary is sufficient for the purposes of this ex tempore judgment.

[4] The defendants have relied, inter alia, in mitigation that the plaintiff AB is in fact linked to or associated with dissident republican activity including paramilitary activity and that he has criminal convictions, for instance, in relation to a crime associated with a tiger kidnapping.

[5] The context also involves a consideration of the judicial review application. The applicant in those proceedings ("the applicant") was a serving sentenced

prisoner in Roe House, HMP Maghaberry. He was temporarily released from prison on a number of conditions over a weekend. The conditions included that he must have no contact, direct or indirect, to persons linked to paramilitary organisations and he must have no contact, direct or indirect, with persons linked to criminal activity. In fact, immediately upon release he associated with a number of individuals, including AB, whom the police stated were senior and prominent republican figures. The applicant was disciplined for breach of the conditions of his temporary release and he then brought judicial review proceedings in relation to that disciplinary process.

[6] That judicial review application was heard and determined.

[7] The defendant in this case wishes to gain access to the court file in relation to that judicial review application. In order to do so it needs the leave of this Court which may be granted on an application made *ex-parte*. Paragraph 63/4/2 of the Supreme Court Practice 1999 at page 1266 states:

“... the principle on which these documents are excluded from the public right of inspection would appear to be that they are all interlocutory in character and may or may not be used or affect the justice of the case when the cause or matter comes to be heard in open court. Nevertheless, even in the respect of such documents, the leave of the court may be obtained for search and inspection by a person not a party on an application made *ex-parte*, ... but it is conceived that very cogent reasons would be required before such leave is granted.”

[8] The decision in *On the application of the Guardian Newspaper v City of Westminster* [2012] EWCA Civ 420, in my view, affects the test to be applied. That case emphasised the requirement of open justice so that persons who are not party to proceedings, namely the media, in order to fully understand the proceedings that are taking place in open court have a right to inspect documents which are on the court file. I consider that there is a more liberal attitude to allowing inspection of documents.

[9] The defendant has to establish that the documents are relevant. I consider that they have done so. The defendant has also to establish that it is necessary to inspect the documents. Mr Girvan, who appears on behalf of the plaintiff, expressed willingness to make admissions in relation to the matters which were contained in the judicial review judgment. As yet those admissions have not been made. In any event, before making an order under Order 66, rule 5(c), I consider that it is appropriate for the defendant to put the parties to the earlier litigation on notice of the application. That is both the respondent and also the applicant. That should be done in writing. That notice should state the material which is sought to be obtained relates solely to the role of the plaintiff, as perceived by the parties to the judicial

review application, as being linked to or associated with dissident republicanism. I will allow an adjournment to this application to facilitate that occurring. I will give directions as to the time within which both the respondent and the applicant to that previous judicial review application should respond.