

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH

BETWEEN:

EC

Plaintiff:

-v-

SUNDAY NEWSPAPERS LIMITED

Defendant:

STEPHENS J

Introduction

[1] The plaintiff, who is anonymised as EC, brings this action which includes, amongst others, a claim for defamation against the defendant Sunday Newspapers Limited. An issue has arisen as to whether the defendant's solicitors, who sent to the Central Office as a pdf attachment to an e-mail, a notice requesting trial with a jury have lodged that request in the appropriate office within the meaning of Order 33 Rule 4(2) of the Rules of the Court of Judicature (Northern Ireland) 1980. If sending the notice in that way did not amount to lodging a request in the appropriate office then whether it was a nullity which could not be cured or an irregularity which could be cured, under Order 2 Rule 1(2). Finally, if it was an irregularity, then whether despite that irregularity, the court, in the exercise of discretion, should make an order declaring that the notice was lodged in the appropriate office in accordance with Order 33 Rule 4(2) thereby overriding the irregularity.

[2] Mr Millar QC and Mr Girvan appeared on behalf of the plaintiff and Mr Coghlin appeared on behalf of the defendant. I am grateful to all counsel for the assistance that they provided.

The Legislation and the Rules of Court

[3] Insofar as relevant Section 62(1) of the Judicature (Northern Ireland) Act 1978 provides that:

“... an action or an issue of fact in an action in the High Court in which a claim is made in respect of ... libel ... shall, if any party to the action so requests, be tried with a jury.”

It can be seen that Section 62(1) provides that a request from any party to the action will have a consequence, which is that the action shall be tried with a jury. The means by which and the time within which, a party requests a trial with a jury is not specified in Section 62. For completeness I would add that subsection (1) is subject to subsection (2) which allows the court in certain circumstances to order the action or any issue of fact in the action shall be tried without a jury.

[4] As I described in *Stokes v Sunday Newspapers Limited* [2015] NIQB 53 at paragraphs [37] to [39] the method by which and the time within which a party may request trial with a jury is set out in Order 33 Rule 4. Order 33 Rule 4(1) provides that the party setting the action down for trial must specify the mode of trial which he requests. In this case the plaintiff in setting the action down for trial requested a trial without a jury. Order 33 Rule 4(2) deals with the situation where the party setting the action down does not request a jury trial but where another party wishes to request a jury, by providing that any other party may within seven days after receiving a notice pursuant to Order 34 Rule 7(1) “lodge a request in the appropriate office that the action be tried with a jury.” Insofar as this case is concerned the relevant part of that rule is the requirement to “lodge a request in the appropriate office.” The plaintiff contends that attaching a pdf to an e-mail which is copied to the office is not lodging a request in the appropriate office.

Factual Background

[5] The plaintiff’s notice of trial is dated 18 May 2016. The defendant’s solicitors received the notice of trial on 20 May 2016. They had seven days within which to lodge a request in the central office for trial with a jury. Reckoning periods of time is governed by Order 3 Rule 2 so that, for instance, Saturdays and Sundays are excluded. Mr Coghlin calculated that the last day for lodging a request was 31 May 2016. No issue was taken with that calculation in this court. By letter dated 26 May 2016 the plaintiff’s solicitors wrongly indicated that the defendant was out of time for lodging a request for trial with a jury. In fact the defendant could have lodged the request up to and including 31 May 2016.

[6] On 27 May 2016 the defendant’s solicitors sent an e-mail timed at 16.36 to Katie McAllister who is the solicitor in the plaintiff’s firm who has carriage of the

plaintiff's action. It was copied to Mr Byers of the Central Office and it was also copied to Carol Martin, another member of the firm of solicitors instructed on behalf of the defendant. It was headed *EC v SNL* and it stated that the author had updated the January notice to the day's date and attached the notice by way of service upon you. There was a pdf attachment which contained a notice of request for jury trial. It is accepted that the notice would have been effective if physically lodged in court. Also it is accepted that on 27 May 2016 Mr Byers printed out the notice of request for jury trial and date stamped it as having been received in the Central Office on that date.

[7] The only additional fact which I need to record is that there had been a number of reviews before me before the events of May 2016. All the parties knew that the plaintiff did not wish the action to be tried with a jury and all the parties knew that, insofar as it was possible to do so, the defendant wished the action to be tried with a jury.

Discussion

[8] The plaintiff contends that to lodge a request in the appropriate office requires the physical presence of a person in the office physically lodging the document. There is no authority that counsel have been able to find that assists but rather the plaintiff relies on the Oxford English Dictionary definition of the word lodge which is "to place, deposit" and/or "To deposit in court or with some appointed officer a formal statement of (an information, complaint, objection, etc.)". Deposit is defined also in the Oxford English Dictionary as "the action of placing something in a specified place." I see no reason why depositing or the action of placing something in a specified place has to be done by a person as opposed to being done electronically. I do not consider that any purpose is fulfilled by a requirement that the action is done by a person rather than electronically. If a party chooses to do the action electronically then that party at its election runs the risk of the electronic communication failing, but that is not a reason for requiring physical presence.

[9] I was also referred to Order 34 Rule 4(1) which under the heading "Lodging documents" provides that:

"The party setting down an action for trial must deliver to the appropriate office two indexed bundles
...."

It was contended by the plaintiff that to deliver and therefore to lodge required a person attending at the office. I see no reason why delivery has to be delivery by a person attending the office. The important point is whether the documents are in fact delivered. The method of delivery is not significant provided that delivery is achieved.

[10] I consider that by sending the e-mail with the pdf attached the request on behalf of the defendant for trial with a jury was lodged in the Central Office.

[11] That conclusion does not require me to consider the alternative submission on behalf of the defendant that if sending the request as an attachment to an e-mail was not lodging the request in the Central Office that this amounts to an irregularity under Order 2. However in case I am incorrect in my primary conclusion I will also rule in relation to this alternative case. In such circumstances I consider that the method of lodging the request would be an irregularity as opposed to a nullity. I note that all the parties knew their respective positions in relation to trial with or without a jury. The plaintiff states that he would be prejudiced if what was irregular was now declared to be regular in that he would lose the procedural advantage that the defendant no longer has a presumption in favour of a jury trial. The plaintiff asserts that a mere irregularity would have resulted in the loss of a presumption in favour of a jury trial. I consider that the balance comes down in favour of regularising any irregularity.

Conclusion

[12] I consider that the defendant did lodge in the appropriate office a request that the action be tried with a jury.

[13] In the alternative I declare that any irregularity in lodging such a request be declared regular.

[14] Counsel for the defendant is to prepare a draft order.

[15] I will hear counsel in relation to the costs of this application.