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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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IN THE MATTER OF MICHAEL SHERRIE

IN THE MATTER OF SECTION 32 OF THE JUDICATURE (NORTHERN IRELAND) ACT 1978

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Between:

HER MAJESTY'S ATTORNEY GENERAL FOR NORTHERN IRELAND

Applicant;

-and-

MICHAEL SHERRIE

Respondent.

_____

COLTON J

Introduction

[1] In this application the applicant seeks the following relief:

(i) An order pursuant to Section 32 of the Judicature (Northern Ireland) Act 1978 that no legal proceedings shall, without the leave of the High Court, be instituted by the respondent in any court or tribunal.

(ii) An order that any legal proceedings instituted by the respondent in any court or tribunal before the making of the order shall not be continued by him without such leave.

(iii) Such other relief as this honourable court deems fit.

(iv) An order that costs be justly provided for.

Background

[2] This application has been prompted as a result of a series of 9 judicial reviews initiated by the respondent against diverse individuals and public bodies which were all dismissed by Mr Justice McCloskey on 23 October 2017. The respondent appealed each of the refusals of leave to the Court of Appeal. On 20 February 2018 the Court of Appeal dismissed all of the appeals.

[3] I shall return to the detail of each of the applications later in this judgment. At this stage I confine myself to noting that the applications for judicial review were variously described by McCloskey J as "*manifestly ill-founded*", "*uniformly hopeless*", "*fundamentally misconceived*" and "*utterly speculative*". McCloskey J went on to comment in his judgment at paragraph 45 in relation to the applications that "*they were so singularly devoid of merit and substance that each merits the condemnation of a misuse of the process of the High Court*".

[4] The Court of Appeal in dismissing each of the appeals against the decision of McCloskey J concluded that:

> "*The root of these applications is an attempt to re-litigate matters that have already largely been determined by the court or alternatively to litigate through the judicial review process in respects which are non-justiciable.*"

[5] It is against this background that the Attorney General's application is brought.

The Legal Framework

[6] The statutory framework for such an application is set out in Section 32 of the Judicature (Northern Ireland) Act 1978 as follows:

> *"32* ***Restriction on institution of vexatious actions***
>
> *(1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court or tribunal, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order –*
>
> *(a) that no legal proceedings shall without the leave of the High Court be instituted by him in any court or tribunal;*

(b) that any legal proceedings instituted by him in any court or tribunal before the making of the order shall not be continued by him without such leave;

and such leave shall not be given unless the court is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings."

[7] The legal principles to be applied have been considered by the Court of Appeal in William John Morrow and Attorney General for Northern Ireland [2015] NICA 69. The court endorsed the approach of Lord Bingham in the case of Attorney General v Paul Barker [2000] 2 F.C.R. 1; which dealt with a civil proceedings order which is the English equivalent of our Section 32. Lord Bingham says as follows:

"1. ... before the court can make an order under the section it must be satisfied that the statutory precondition of an order is fulfilled, namely that the person against whom the order is sought has habitually and persistently and without any reasonable ground instituted vexatious civil proceedings or made vexatious applications whether in the High Court or any inferior court and whether against the same person or against different persons.

2. If that condition is not satisfied, the court has no discretion to make a civil proceedings order. If the condition is satisfied the court has the discretion to make such an order, but it is no obliged to do so. Whether, where the condition is satisfied, the court will exercise its discretion to make an order, will depend on the court's assessment of where the balance of justice lies, taking account on the one hand of the citizen's prima facie right to invoke the jurisdiction of the civil courts and on the other the need to provide members of the public with a measure of protection against abusive and ill-founded claims. It is clear from Section 42(3) that the making of an order operates not as an absolute bar to the bringing of further proceedings but as a filter …

19. I am satisfied on the facts adduced in evidence before us that Mr Barker has instituted vexatious civil proceedings. "Vexatious" is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all

proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.' …

22. From extensive experience of dealing with applications under section 42 the court has become familiar with the hallmark of persistent and habitual litigious activity. The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of resisting claim after claim; that the claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who if they were to be sued at all should have been joined in the same action; that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give any effect to orders of the court. The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop."

[8] It is important to observe that the statutory jurisdiction restricting access to the courts by so-called "vexatious litigants" has been held to be ECHR compliant and consistent with the Strasbourg jurisprudence. Thus in, H v United Kingdom [1995] 45 BR 281 the European Commission of Human Rights held that a requirement for judicial permission to proceed with a claim by a person who had previously abused the right of access to the court was held to be proportionate.

[9] In Bhamjee v Forsdick & Others [2004] 1 WLR 88 the Court of Appeal in England and Wales set down guidelines on the range of measures available to the courts to protect against abuse of process by vexatious litigants. In the course of the judgment Lord Phillips MR observed:

"[16] It is now well settled both at common law and under Strasbourg jurisprudence that a court has a power to regulate its affairs in such a way that its processes are not abused … the right of access to the courts may be subject to limitations in the form of regulation by the state, so long as two conditions are satisfied:

(i) the limitations applied do not restrict or reduce the access left to the individual in such a way or to such

an extent that the very essence of the right is impaired; and

(ii) a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

[10] Before I apply these principles I propose to summarise the cases brought by the respondent upon which the applicant relies. In doing so I have read all of the relevant court papers exhibited to the affidavit of Mr Wimpress on behalf of the Attorney General, the judgments of McCloskey J delivered on 23 October 2017 and that of the Court of Appeal delivered on 20 February 2018. In addition I considered material submitted to me in the course of the hearing from Mr Sherrie, in particular a note of a text message from his then solicitor dated 19 August 2010 and affidavits sworn on 24 March 2009 from Francis Moore and Nathaniel Shane relating to the dispute about the applicant's proposal to purchase premises under the Right to Buy Scheme in 2004/2005.

The first challenge

[11] The first application dealt with by McCloskey J related to complaints in relation to a right to buy application which was made by Mr Sherrie and others in 2004.

[12] In refusing leave to apply for judicial review, McCloskey J pointed out that neither the ex parte docket nor the Order 53 statement filed by the respondent disclosed "*any identified, or identifiable decision, measure or omission under challenge*" and that "*no grounds of challenge have been formulated and none are discernible from the papers*". More importantly, it is apparent that the respondent had previously brought two successive High Court actions concerning this matter and the matter was ultimately dealt with by the Court of Appeal in 2013 in a judgment delivered by Lord Justice Coghlin. McCloskey J found that the application was "*manifestly ill-founded*".

[13] Despite this the respondent appealed the matter to the Court of Appeal. In dismissing the appeal on 20 February 2018 the Court of Appeal took the view that this was in effect an attempt to re-litigate a matter which had already been decided by the Court of Appeal.

The second challenge

[14] The second application for leave to apply for judicial review identifies the proposed respondent as Higgins Holywood Deazley, a private firm of solicitors and purports to challenge a decision of that firm. The decision in question is not identified in the Order 53 statement by date or otherwise. This also relates to the

respondent's application to buy premises from Belfast Improved Housing in and around 2004/2005. On considering the papers including the material drawn to my attention by the respondent in the course of the hearing I do not see how the documents disclose any justiciable decision or omission. Indeed it is clear that no question of public law arises at all from the respondent's grievance with his then solicitors.

[15] Unsurprisingly the respondent's application for leave to apply for judicial review in this matter was dismissed by McCloskey J on the basis that the application was "*manifestly ill-founded*".

[16] Again the respondent appealed this decision and on 20 February 2018 the respondent's application for leave to appeal was dismissed by the Court of Appeal.

The third challenge

[17] The third application brought by the respondent sought to challenge an order made by a High Court Judge, Madam Justice McBride on 23 May 2017 in proceedings brought by the respondent's mother by her next friend the Official Solicitor.

[18] Although the ex parte docket or the Order 53 statement filed in connection with this application do not disclose either the relief sought or the grounds upon which relief could be sought, the respondent has submitted a manuscript document in the course of which he makes serious allegations against another High Court Judge, his previous solicitor and the Belfast Trust.

[19] In respect of this application the legal position is abundantly clear, something which has been explained to the respondent by two High Court Judges and by the Court of Appeal, namely that a decision of the High Court is not amenable to judicial review. McCloskey J found that the application was manifestly ill-founded.

[20] The respondent appealed this decision. On 20 February 2018 the Court of Appeal dismissed the appeal on the obvious basis that the decision was not amenable to judicial review and commented that despite the fact this had been pointed out by two High Court Judges and the Court of Appeal in the course of a review the respondent still pursued the matter before the appellate court.

The fourth challenge

[21] The fourth application related to a decision of Master Wells and the Northern Ireland Courts and Tribunal Service. From the judgment of McCloskey J it appears that this order was actually made on 1 June 2017 but that a further order was made by the Family Judge Mr Justice O'Hara on 12 June 2017 staying the order. As McCloskey J said at paragraph [25] of his judgment:

> "*…. the authority of the Official Solicitor as Controller ad Interim to terminate the patient's tenancy of her flat is stayed and shall remain stayed pending the determination of the Supreme Court or until further Order*."

[22] None of this was referred to in the applicant's application. McCloskey J described the application as "*manifestly ill-founded*".

[23] The respondent appealed the decision, stating that the grounds were "*collusion, cover up with the court to protect Master Wells*" and "*I would like to be heard properly and witness called to a new hearing*".

[24] The Court of Appeal dismissed the appeal pointing out firstly that the order of the Master did not take effect, leaving aside the issue as to whether or not the original Master's order was susceptible to judicial review.

The fifth challenge

[25] The fifth application relates to the actions of Radius Housing which concerns the valuation that was placed upon the premises that the respondent was proposing to purchase under the right to buy scheme in 2004/2005. The ex parte docket and Order 53 statement do not actually identify the decision that is challenged. The material relied upon by the respondent is similar to that relied upon in respect of the first complaint and in respect of which I received additional material in the course of the hearing.

[26] In dismissing the application for leave McCloskey J observed that the documents filed by the respondent did not specify the decision under challenge, the date of the decision, the identity of the respondent or the relief claimed and that the application was "*manifestly ill-founded*".

[27] The respondent appealed this decision and the appeal was dismissed by the Court of Appeal on 20 February 2018. In doing so the Court of Appeal observed that this application was an attempt to bring judicial proceedings in relation to a matter which was at least 13 years old and which concerns precisely the same matter which was dealt with by the Court of Appeal in 2013.

The sixth challenge

[28] In the sixth application the ex parte docket identifies the respondent as "*Judge McBride*", whereas the Order 53 statement identifies "*BHSCT*" and a named individual as proposed respondents to the application.

[29] The documentation lodged does not identify the decision under challenge, the date of the said decision or the relief claimed. In dismissing the application McCloskey J observed that it was manifestly ill-founded.

[30] The matter was appealed to the Court of Appeal who succinctly observed that the application relates to a decision of a High Court Judge which is plainly not amenable to judicial review.

The seventh challenge

[31] This application was for leave to apply for judicial review against a decision of the Public Prosecution Service. Neither the ex parte docket, nor the associated Order 53 statement and affidavit identify any justiciable decision by the PPS. The documentation filed indicates that the respondent had requested that police investigate an allegation of perjury by his previous solicitor. On 18 September 2017 the respondent sent a letter to the PPS asking "*is lying under oath twice at least perjury or not as (a named solicitor) did*". McCloskey J found the application to be "*manifestly ill-founded*". The matter was appealed and the Court of Appeal dismissed the appeal commenting that "*the seventh is an application in relation to the Public Prosecution Service which appears to be based on the proposition that the failure to answer the question whether lying on oath was perjury constituted some breach of public law. One can well understand that such an abstract question is not the responsibility of the Public Prosecution Service to answer although it may be something upon which a litigant would wish to take advice.*"

The eighth challenge

[32] This application relates to the Belfast Trust in which the respondent sought to challenge a decision of the "*BSO*". The subject matter relates to the welfare of the appellant's mother. The documentation suggests that this in fact is an action for damages. Within the papers filed is a manuscript document addressed to the Directorate of Legal Services purporting to claim the sum of £8,904,000. McCloskey J noted that in substance, the respondent had failed to identify any decision under challenge or the relief claimed and that the application was "*manifestly ill-founded*". The matter was appealed on grounds alleging "*collusion*" on the part of the court in order to "*protect BSO*". In dismissing the appeal the Court of Appeal said as follows:

> "*The eighth issue is in relation to Belfast Trust and concerns the conduct of the Trust in relation to the welfare of the appellant's mother. The conduct or the care of the appellant's mother has been the subject of careful consideration by these courts in the judgment given by Mrs Justice Keegan. The applicant has been entitled to exercise all of his appeal rights in relation to that and indeed is entitled to continue to ensure that if there are issues arising in relation to the care of his mother, new issues arising, that he is entitled to raise those so far as he has a basis for doing so. But there is nothing in relation to what has been produced to us which indicates that leave to issue judicial review proceedings could or should be issued.*"

The ninth challenge

[33] The ninth application seeks leave to apply for judicial review against "Health Care Ireland Group/Bradley Manor". Neither the ex parte docket, Order 53 statement and the documentation in support disclose any discernible decision challenged, grounds of challenge or relief sought. McCloskey J, in considering this application, observed that the purpose of the proceedings appeared to be that the respondent was seeking monetary redress and disclosure of documents by the proposed respondent. The proposed respondent is a private company providing nursing services to the respondent's mother pursuant to orders of the court.

[34] In dismissing the application McCloskey J noted that the documents filed by the respondent had failed to identify any justiciable decision, any grounds of challenge or relief claimed. He determined that the application was "*manifestly ill-founded*". This decision was appealed to the Court of Appeal who dealt with the matter in the following way:

> "*The ninth concerns a private company who are providing care services for the applicant's mother pursuant to the orders of the court, that is where she should be housed. If there is any complaint about that, that can be made to the relevant regulatory authorities or by way of action if the applicant succeeds in persuading the Official Solicitor, who is the controller ad interim, that this is an appropriate course.*"

This appeal was also dismissed along with the eight others.

Submissions on behalf of the Attorney General/Applicant

[35] I am obliged to Mr David Sharpe for his clear and helpful oral submissions supplementing the comprehensive affidavit of Mr Wimpress of the Office of the Attorney General. In short form he argues that the conduct of the applicant in bringing the nine judicial reviews to which I have referred, all of which were appealed, meets the statutory test and making the order sought is entirely consistent with the principles identified in the case of Attorney General v Paul Barker, as approved by the Court of Appeal in The Attorney General v Morrow.

[36] In the course of his submissions Mr Sharpe took me through the basis of each of the nine applications and the manner in which they were dealt with by the High Court and the Court of Appeal. He concluded by referring to the comments of the Court of Appeal in dealing with the respondent's appeals when it said:

> "*It appears to us that therefore at the root of these applications is an attempt to re-litigate matters that have already largely been determined by the courts or*

alternatively to re-litigate through the judicial review process in respects which are non-justiciable."

He argues that this, in essence, is the hallmark of persistent and habitual litigious activity as identified by Lord Bingham.

The respondent's submissions

[37] The respondent submitted a four page manuscript in support of his submission that the Attorney General's application should be dismissed. In the first page of that document he gives notice to the effect that from 1 June 2018 he will charge the Attorney General for Northern Ireland £10,000,000 plus £10,000 per day payable to him and in the event of his death to his charity.

[38] He says this is for accountability as "*monetary is the only way the legal system know*".

[39] He goes on to complain that affidavits he submitted to the Central Court Office were not made available to McCloskey J and that he was "*led to believe I was going to court to make an appointment for a hearing not that the judge had not got all the paper in front of him*". He goes on to make allegations against a member of staff in the court office in relation to an alleged failure to submit affidavits to the court.

[40] In support of this allegation he purported to call a witness to confirm that these affidavits were given to the court office. As indicated earlier in the judgment I considered the relevant material and concluded that it was not necessary to hear from the witness. The affidavits to which the respondent referred would in my view have made absolutely no difference to the decisions of the court. They relate to the 2004/2005 dispute which has been extensively litigated and determined by the Court of Appeal in 2013.

[41] The document goes on to complain about the conduct of the Attorney General and repeats that he was aware of the fact that another solicitor had lied in the course of these proceedings.

[42] The document alleges that McCloskey J was engaged in a "*cover up*" in respect of lies told by the Official Solicitor and that "*the judges*" are in effect telling Central Office to cover this matter up.

[43] The respondent amplified these written submissions in the course of the hearing.

[44] At the heart of his complaint is the fact that his mother has been placed in a home by order of the court against his wishes. He alleges a cover up dating back to the issue of the proposed purchase of premises back in 2004/2005 right up to the decisions of the court in relation to the welfare of his mother. Those involved in the

cover up include solicitors, High Court judges, the Ombudsman, BSO, the Health Trust and the Official Solicitor. In a telling comment he said that all of this could be solved if his mother could be returned home. He said that that would "*end it all*".

[45] The respondent made it clear that he will continue to pursue this matter via the courts.

Consideration

[46] I start from the premise that the respondent has the right to invoke the jurisdiction of the civil courts. As McCloskey J pointed out in his judgment of 23 October 2017 this right has been acknowledged "*as a right of constitutional stature* ". It is also clear, that both under domestic and Strasbourg jurisprudence, the court has power to regulate its own affairs to ensure that its processes are not abused provided that:

(a) The limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired.

(b) A restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aims sought to be achieved.

[47] These principles are clearly reflected in Section 32 of the Judicature (Northern Ireland) Act 1978 upon which this application is founded.

[48] I turn to the statutory test.

[49] Has the respondent habitually and persistently, and without any reasonable ground instituted vexatious legal proceedings?

[50] There can be little doubt that the proceedings to which I have referred meet the test of "*habitually and persistently*".

[51] The respondent has brought nine separate judicial reviews between 21 April 2017 and 10 October 2017. Notwithstanding the very clear judgment of McCloskey J all nine of these applications were appealed to the Court of Appeal. Furthermore, it is clear from the applications themselves that they relate to other proceedings brought by the respondent in relation to similar subject matters.

[52] Have these proceedings been issued "*without any reasonable ground"* and could they fairly be described as *"vexatious legal proceedings*"?

[53] In my view the answer to this is unquestionably "*yes*". It is clear from what I have outlined above and from the judgments of McCloskey J and the Court of

Appeal that there was little or no basis in law for the proceedings brought by the respondent. They were undoubtedly "*manifestly ill-founded*". The effect of this pointless litigation has been to subject various public bodies and individuals to inconvenience and expense. Counsel for the Ombudsman for Northern Ireland, the Northern Ireland Courts and Tribunal Service, Radius Housing Association, Belfast Health and Social Care Trust and the Business Service Organisation all appeared before McCloskey J. It is also clear from the transcript of the Court of Appeal that five counsel also appeared on behalf of the proposed respondents in that forum. Thus these manifestly ill-founded applications have resulted in very considerable costs to the public purse. They have also engaged significant judicial and administrative resources in the High Court and Court of Appeal. It is also clear that the respondent automatically challenges every adverse decision on appeal and refuses to take any notice of the reasons given for the orders of the court.

[54] Clearly the proceedings have been brought in the High Court against the same person and different persons so that the remainder of the test in Section 32(1) is met.

[55] In the course of the hearing I had the opportunity to hear from the respondent and consider his written submissions. I indicated to him that I would be willing to make an order permitting him to instruct solicitor or counsel which would be taxed and paid out of the legal aid fund. However, it was clear that the respondent was determined to represent himself and I could see no benefit in assigning legal representation independently of the respondent.

[56] Thus I am satisfied that the statutory test has been met. That being so I have a discretion whether or not to make the order sought. In exercising that discretion I must assess where the balance of justice lies, taking into account on the one hand the citizen's prima facie right to invoke the jurisdiction of the civil courts and on the other the need to provide members of the public with a measure of protection against abusive and ill-founded claims and also the need to prevent scarce and valuable judicial resources being extravagantly wasted on barren and misconceived litigation to the detriment of other litigants with real cases to try.

[57] I am satisfied that the balance lies in favour of making the order sought. In coming to this conclusion I am particularly influenced by the attitude of the respondent to this application.

[58] In terms of his past conduct it is clear that he has involved in persistent and habitual litigious activity which has no valid legal basis.

[59] Rather than accept decisions of the court he challenges each and every decision. This is so even when it is explained to him that there simply is no basis for the challenge irrespective of his own personal views, see for example his continued insistence upon seeking judicial review of decisions of a High Court judge. It is also clear that the respondent is seeking to re-litigate matters that have been decided by

the higher courts in this jurisdiction. Rather than accept the decisions or orders of the court he seeks to initiate new "*challenges*" with the most recent decision-maker added as another respondent, as exemplified by the most recent notice to the Attorney seeking £10m from 1 June 2018.

[60] On any rational and objective assessment this continued litigation should come to an end.

[61] Whilst this conclusion is clear from the respondent's conduct to date it has been reinforced by his submissions to me. He has made it abundantly clear that he will continue to litigate until such times as he gets what he wants in relation to his mother's arrangements, irrespective of any orders of the court.

[62] In making an order under Section 32 I bear in mind that it will not have the effect of barring the respondent from bringing legal proceedings but rather will act as a filter.

[63] In the circumstances of this case I consider that such an Order meets the requirements that it will not deny the essence of the respondent's ability to invoke the civil courts and that the order is clearly proportionate in pursuit of a legitimate aim. The order, as the Lord Chief Justice pointed out in his judgment of 20 February 2018, should be seen not only as an effort to protect the court from litigation that should not be before it but also to protect the litigant from having to engage in what is potentially stressful litigation.

[64] In view of the respondent's attitude to this application and his stated objective to continue litigating in the matter I consider that the order should be made without limitation of time.

[65] Accordingly I propose to make the following order.

(i) An order pursuant to Section 32 of the Judicature (Northern Ireland) Act 1978 that no legal proceedings shall, without the leave of the High Court, be instituted by the respondent in any court or tribunal;

(ii) An order that any legal proceedings instituted by the respondent in any court or tribunal before the making of this order shall not be continued by him without such leave.

(iii) An order that such leave shall not be given unless the court is satisfied that the proceedings are not an abuse of the process of the court and that there is a prima facie ground for the proceedings.

(iv) The orders are made without limitation of time.

(v) A notice of the making of this order shall be published in the Belfast Gazette.

[66] I make no order in relation to costs.