Neutral Citation No: [2018] NIQB 6 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **McC10548** *Delivered: ex tempore 27/01/18*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

_____

MARGARET McGUCKIN

Plaintiff;

v

SUNDAY NEWSPAPERS LIMITED

Defendant.

_____

McCLOSKEY J

Introduction

[1] Margaret McGuckin, the Plaintiff, brings this urgent application for a restraining injunction against the Defendant, a newspaper publishing company whose publications include the weekly "Sunday World", in the following circumstances.

[2] The Defendant is proposing to publish, tomorrow, an article relating to the Plaintiff's activities in her capacity of founder and chairperson of the entity known as the "Survivors and Victims of Institutional Abuse" ("SAVIA"), a registered charity which was founded in 2012. The gist of the proposed article has been disclosed to the Plaintiff and her legal representatives. It will allege, in essence, that the Plaintiff, in her aforementioned capacity, has indulged in much dictatorial and intemperate behaviour vis-à-vis other persons connected with the organisation. It is based upon information allegedly provided to the Defendant by eight victims of historical abuse who have sundry connections with SAVIA. The Plaintiff denies these allegations and the Defendant has made clear that her denial will feature in the publication.

[3] The Plaintiff could not realistically have brought this application any sooner, given that she learned of the proposed publication for the first time only some 24 hours ago, on 26 January 2018. The Defendant plans to publish the offending article tomorrow (Sunday) 28 January. The evidence before the court, hurriedly collated (naturally), consists of an extensive series of electronic communications generated

during the past 24 hours, an affidavit sworn by the Plaintiff and certain documentary evidence bearing on the Plaintiff's psychological condition. I have considered all of this.

[4] It falls to the court to apply the familiar "American Cyanamid" tests, namely whether there is a serious issue to be tried and to determine where the balance of convenience lies. I apply the first of these principles by reference to the evidence assembled and the draft Writ of Summons which will assert three causes of action, namely libel, misuse of private information and breach of privacy. I consider the first principle to be satisfied having regard in particular to the evidence relating to the severe psychological damage inflicted on the Plaintiff in consequence of the prolonged and unremitting abuse to which she was subjected in her childhood years, the high probability of further or exacerbated damage of this kind, the obvious detrimental impact on the Plaintiff's reputation which the proposed article would inflict and the broader canvass, which includes the threat to the continued activities and existence of the SAVIA organisation and the impact on an incalculable number of other victims.

[5] In the balance of convenience scales the main factors favouring the Defendant are the public interest in disseminating the proposed article, the balance which will be struck by including a clear statement of the Plaintiff's unambiguous denials of the allegations, the responsible journalism which this latter factor reflects, the Defendant's right to freedom of expression and the Plaintiff's ability to be compensated in damages if she can establish libel. I acknowledge that these facts and considerations combine to provide the Defendant with a weighty case.

[6] Ms O'Kane on behalf of the Defendant properly reminded the court of the principle in Bonnard v Perryman [1891] 2 Ch 269. This is a well known first instance decision which has admirably survived the passage of more than a century. The High Court held that an interlocutory injunction to restrain the publication of an alleged libel which the Defendant may seek to justify should issue only exceptionally. This "rule" has been plied with some frequency. For example in Greene v Associated Newspapers [2004] EWCA Civ 1462, where the Court of Appeal formulated the principle in these terms:

> "*In an action for defamation a court will not impose a prior restraint on publication unless it is clear that no defence will succeed at the trial. This is partly due to the importance the court attaches to freedom of speech. It is partly because a Judge must not usurp the constitutional function of the jury unless he is satisfied that there is no case to go to a jury. The rule is also partly founded on the pragmatic grounds that unless there has been disclosure of documents and cross examination at the trial, a court cannot safely proceed on the basis that what the Defendants wish to say is not true. And if it is or might be true the court has no business to stop them saying it.*"

[7] I acknowledge the potency of this principle, but decline to give effect to it at this stage for the following reasons. First, because the evidential matrix before the court in this urgent context is clearly limited. Second, because the parties' representatives, understandably, were insufficiently prepared to provide the court with considered argument on this discrete issue. Third, because this is properly described as a general, and not inflexible, principle. Fourth, because the principle does not necessarily exclude the grant of an interlocutory restraining injunction on the basis of the facts and factors digested in [4] above. Fifth, because while I recognise that nothing in section 12(3) of the Human Rights Act 1998 dilutes the Bonnard principle, the Plaintiff's causes of action in the present context extend to privacy and confidentiality and I note that in Greene the Court of Appeal expressly recognised the distinction which this generates.

[8] One of the clear advantages of proceeding in a proportionate and orderly way in this case will be to ensure that the court has the benefit of full argument and a considerably fuller evidential matrix, while simultaneously adopting a course entailing the least intrusive limitation on the Defendant's right to freedom of expression reasonably achievable in these rushed and emotionally charged circumstances.

[9] My evaluative judgment is that the notional balance of convenience scales are, by an admittedly narrow margin, tipped in favour of the Plaintiff by virtue of what I have summarised in [4] above. I further take into account that an appropriate balance can be struck by the formulation of a strict, narrowly circumscribed and time limited order. To this end I order as follows:

(a) The Defendant is restrained from publishing the offending article for a period of seven days viz until 04 February 2018.

(b) The Plaintiff will issue her Writ of Summons within 48 hours, ie not later than 29 January 2018.

(c) All further evidence, to include affidavits and medical evidence, upon which the Plaintiff wishes to rely will be filed and served not later than 16.00 hours on 31 January 2018.

(d) Any evidential response by the Defendant will be made within a further 24 hours, ie by 16.00 hours on 01 February 2018.

(e) There shall be a further listing before the court at 10.15 hours on 02 February 2018.

(f) There shall be liberty to apply.

(g) Costs are reserved.