

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

**ROBERT JAMES SHAW
and
DEIRDRE ELIZABETH SHAW**

Plaintiffs:

-and-

LAWRENCE PATTERSON

Defendant:

McCLOSKEY J

I INTRODUCTION

[1] This judgment determines the Defendant's application to strike out the Plaintiffs' claim under Order 18, Rule 19 of the Rules of the Court of Judicature or, alternatively, in the exercise of the inherent jurisdiction of the court. The Plaintiffs are personal litigants who addressed the court in a mixture of oral and written submissions.

[2] This is the first of two judgments delivered today. In the related case, *Shaw -v- James J Macaulay Solicitors*, the Defendant seeks the same relief. Both actions have their origins in proceedings brought and consequential orders made against the Plaintiffs in the County Court. The Plaintiffs complain bitterly that they are the victims of a profound miscarriage of justice.

[3] The conduct precipitating the original proceedings in the County Court consisted of the laying of foundations in the vicinity of the Plaintiffs' boundary, designed to facilitate construction of a boundary wall. I commence with a chronology of material dates and events:

- (a) On 14th May 2007, District Judge Brownlie made an *ex parte* injunction, at the instigation of the present Defendant, restraining the Plaintiffs from taking any step which might interfere with the Defendant's enjoyment of a right of way at Creevytenant Road, Boardmills, Ballynahinch. This order described the Defendant's right of way as "*coloured red on the map annexed to this order*". I pause to observe that maps lie at the heart of the Plaintiffs' multiple grievances.
- (b) In May 2008, the subsequent proceedings were conducted before Judge McReynolds at Newtownards County Court.
- (c) In a reserved judgment delivered on 22nd January 2009, Judge McReynolds concluded that the Plaintiffs had interfered with the Defendant's right of way. The Plaintiffs' counterclaim was successful to the extent that the judge awarded damages of £150 against the present Defendant.
- (d) Pursuant to this conclusion, by order of Newtownards County Court, dated 22nd January 2009:

"It is ordered as follows:

1. *A declaration that as against the Defendants the Plaintiff has a right of way for all purposes and at all times both for himself and any visitors over the laneway leading from the Creevytenant Road to his dwelling at 56 Creevytenant Road, Boardmills ... subject to the extent that vehicular size and dimensions are limited as follows: vehicle width - 7ft and 9 ins; vehicle weight - 6 tonnes; total vehicle length - 25 ft.*

2. *That the Plaintiff shall be entitled to a permanent injunction prohibiting the Defendants from building a wall or otherwise obstructing or interfering with the right of way as declared in paragraph 1 of this decree."*

- (e) The Plaintiffs appealed to the High Court. In a ruling given on 15th March 2010, Deeny J acceded to the Defendant's application to strike out the appeal on the ground that it was vexatious and an abuse of the court's process. In his ruling, Deeny J quoted from an affidavit sworn by the Plaintiffs in the following terms:

"...This matter could be resolved within five minutes by Diamond Heron, Solicitors, their client and others

admitting that they used a false 1997 map on which they gained their interim injunction and all that followed”.

Having noted this averment, the learned judge continued:

“I don’t need to rule on whether Judge Brownlie had or had not the better map of 1997 because it is irrelevant to Judge McReynolds judgment. Really what he wants is an admission that that was the case but that in effect means that this appeal is an abuse of process of the court because it is seeking to achieve something that is irrelevant to the decision of Judge McReynolds ...

What she had to deal with, as she says [in her judgment] is what was reasonable vehicular usage of the laneway ...

She had the advantage of visiting the site, ultimately she got all the necessary papers and it does not seem to me that in truth there is a bona fide appeal here, it is rather a grievance about the usage of maps at an earlier interlocutory stage ...

The Appellants do not dispute Mr. Sharpe’s submission, well grounded on documentary evidence, that the map was also before the relevant County Court judge”.

Deeny J concluded:

“It would be an abuse of process of the court to continue [these proceedings] because they are seeking to punish somebody for what Mr. Shaw believes was a subversion or omission of a map at an interlocutory hearing whereas that has nothing to do with the judgment of the lower court”.

- (f) The Plaintiffs then purported to appeal to the Court of Appeal. On 23rd June 2010, this was dismissed by the Lord Chief Justice on the ground that the Court of Appeal had no jurisdiction.
- (g) On 29th June 2010, the Plaintiffs issued a Writ against James J Macaulay, Solicitors, who represented them at a certain stage of the County Court proceedings [Cf. the separate judgment delivered today in that action].

- (h) A purported appeal to the Supreme Court was similarly dismissed, on 28th September 2010.
- (i) On 13th August 2010, the present Writ was issued.
- (j) On 8th November 2010, the Bankruptcy Master dismissed the Plaintiffs' application to set aside a statutory demand (being a debt arising from the unsatisfied order for costs made against the Plaintiffs in the County Court).
- (k) On 31st January 2011, Deeny J dismissed the Plaintiffs' appeal against the order of the Bankruptcy Master. The learned judge expressed himself in terms comparable to those contained in his earlier ruling.
- (l) On 1st March 2011, the Plaintiffs issued a summons in Newtownards County Court pursuant to Order 25, Rule 20 of the County Court Rules, seeking to reopen the order of Judge McReynolds dated 22nd January 2009.
- (m) On 4th May 2011, Judge Smyth dismissed the last-mentioned application.
- (n) The hearing of the present application ensued.

II THE PLAINTIFFS' CASE

[4] In the course of the present application, the Plaintiffs produced a document entitled "Events which have led to a Miscarriage of Justice". This seems to me to encapsulate the principal elements of the Plaintiffs' various claims, proceedings, allegations and complaints and, accordingly, I reproduce it in its entirety:

1. Claim

Diamond Heron Solicitors between the dates of 5th April 2007 and 8th May 2007 entered into correspondence with Robert & Deirdre Shaw in connection with a right of way.

Diamond Heron Solicitors claimed that their client Lawrence Patterson had a map which was agreed, with a Mr S McConnell and which delineated the Boundaries in 1997.

Proof.

Over the past 4 years the claim made by Diamond Heron Solicitors has been proven to be a false claim (Mistake?)

2 Claim

Diamond Heron Solicitors had a report compiled to obtain the Interim Injunction/Order based on a map coloured red drawn by a Wayne Storey Associates and dated May 07 (Mistake?)

Proof

Map Coloured red prepared by Wayne Storey Associates was a false representation of a Map agreed by Lawrence Patterson and the late Mr S McConnell in 1997 and does not display the true representation/topography, of what is in situ or the agreed 1997 map referred to by consent in the 1997 proceedings.

3. Peter Hill Solicitor of Diamond Heron Solicitors swore an Affidavit dated 14th May 2007 based on Wayne Storey Associates false map coloured red and false statements (Mistake)

Proof.

Brian Cole Solicitor of Diamond Heron Solicitors claimed in an Affidavit for the proceedings before the Chancery Court.

That Mr Lawrence Patterson used his own 1997 map .

Mr Patterson should have used the 1997 map referred to by Consent as per the 1997 proceedings.

4 Claim.

County Court Judge granted the Interim Injunction/ Order dated 14th May 2007 based on the map coloured red attached to the Decree K54/88.

Proof

Diamond Heron Solicitors used the map coloured red prepared by Wayne Storey Associates dated May 2007. to gain the Interim Injunction dated 14th May 2007 (Mistake).

5

Claim

Reports were compiled for the attention of Her Honour Judge Brownlie.

Wayne Storey Associates and Samuel Wilson Design Associates both used the Map Coloured red to compile their reports for the attention of the Honourable Judge in June 2007.

Proof

Reports of both Wayne Storey Associates and Samuel Wilson Design Associates Refers to Wayne Storey Associates Map.

Both Wayne Storey Associates and Samuel Wilson Design Associates did sign the report dated June 2007, this was in or around 22nd June 2007. (Mistake).

Conclusion at this point.

*By using the Wayne Storey Associates map coloured red and disregarding the County Court Order of 14th May 2007 this was an act of contempt of Court.
(Mistake).*

6. Throughout the County Court proceedings before Her Honour Judge Brownlie three reports were compiled (Mistakes)

A Wayne Storey Associates dated May 2007 upon which the map prepared by Wayne Storey Associates, was relied on.(Mistake)

B Report of both Wayne Storey Associates and Samuel Wilson Design Associates Dated June 2007 the Map of Wayne Storey Associates, was relied upon. (Mistake).

C Wayne Storey Associates and Samuel Wilson Design Associates report dated September 2007.

Non of the above mentioned reports were compiled to the map coloured red as ordered by the Court dated 14th May 2007, Decree K54/88 (Mistake).

Throughout the proceedings at the County Court, before Her Honour Judge Brownlie. At no time was the 1988 map coloured red relied on, or produced in an open Court before the Shaw's.

Mr Brian Cole Solicitor of Diamond Heron Solicitors did claim there was no map attached to the Interim Injunction/Order dated 14th May 2007. (Mistake).

Mr Brian Cole Solicitor may have made a false claim as James J Macaulay Solicitors claimed in their Defence document dated 7th January 2011 that Wayne Storeys map coloured red, was indeed attached to the order for an Injunction dated 14th May 2007(Mistake).

The statement made by James J Macaulay Solicitors would explain why Samuel Wilson Design Associates relied on the Wayne Storey Associates map coloured red.

A Diamond Heron Solicitor in correspondence to the Shaw's between the dates of 5.4.07 and 8.5.07 never provided to the Shaw's a copy of the map which they referred to in their letters. (Mistake)

B The Interim Injunction/Order dated 14.5.2007 had a map coloured red ie Map prepared by Wayne Storey Associates. (Mistake)

C The Order that was served on the Shaw's dated 14.5.2007 was forwarded to James J Macaulay Solicitors. (Mistake)

D James J Macaulay Solicitors did provide Samuel Wilson Design Associates with all the documents including the Wayne Storey map coloured red. (Mistake)

*E Wayne Storey Associates and Samuel Wilson Design Associates compiled their said reports dated June 2007 based on the Wayne Storey Map coloured red.
(Mistake).*

*F The proceedings before Her Honour Judge Brownlie only referred to or relied upon
The map prepared by Wayne Storey Associates coloured red. (Mistakes)*

*G When both Wayne Storey Associates and Samuel Wilson Design Associates were
on site conducting their respective reports, we fail to understand why they did not
discover that the Wayne Storey map coloured red did not reflect what was on site,
Samuel Wilson Design Associates. (Mistake).*

*Upon reading the Interim Injunction/ Order , sworn Affidavit of Peter Hill Solicitor
Dated 14th May 2007 we fail to understand why James J Macaulay Solicitors, their
servants and agents did not discover that the map coloured red and attached to
Decree K54/88 and referred to in the said injunction was not attached to the Order of
14.5.2007. (Mistake)*

*However the Map prepared By Wayne Store Associates coloured red and dated May
2007 was attached (Mistake).*

*Under the rules of the County Court both Diamond Heron Solicitors and James J
Macaulay Solicitors have not fully disclosed nor have they been truthful. (Mistake)*

*The County Court Proceedings before Her Honour Judge Brownlie were not legal and
the Shaw's should not have, been forced by the threat of Bankruptcy to pay Costs.
by the above this has lead to a miscarriage of Justice.*

The professional people involved

*Wayne Storey-Engineer
Samuel Wilson-Engineer
Leslie Wilson-Engineer*

*Peter Hill-Solicitor
Brian Cole- Solicitor
James J Macaulay-Solicitor
D Sharpe-Barrister
R Best-Barrister
R Shields-Barrister
D Dunlop-Barrister
P Boyle -Barrister*

Mr Patterson-Plaintiff.

*None of the above mentioned parties disclosed to the Shaw's or the Honourable Court
that the map coloured red which is referred to in the Interim Injunction was replaced
by with the Wayne Storey Map coloured Red and dated May 07 (Mistake)*

As a result of the Shaw's campaign for Justice and access to a fair trial in an attempt to have their Human rights adhered to since 2007 the Shaw's have uncovered the following.

1 Diamond Heron Solicitors did not lodge in the County Court Newtownards, Exhibit PH2.(Mistake)

2 Court Services claim that the map coloured red does not exist, (Mistake).

3 Diamond Heron Solicitors did attach a map coloured red which was prepared by Wayne Storey Associates to obtain the Interim Injunction. (Mistake)

4 Reports compiled for the County Court were based on Wayne Storeys map coloured red dated May 2007 (Mistake)

5 The expert report based on Wayne Storey Associates map coloured red were filed in or around 25th June 2007.

*6 On the 25th June 2007, legal representatives for Mr Lawrence Patterson did have a copy of exhibited PH2.
ie Decree K54/88 map coloured red.(Mistake)*

*7 On the 25th June 2007, legal representatives for Lawrence Patterson did claim that exhibit PH2 Decree K54/88 map coloured red was exhibited at PH2 in error.
(Mistake).*

*8 On the 25th June 2007, legal representatives for Lawrence Patterson and Counsel on behalf of the Shaw's had in their possession a copy of exhibit PH2.
Thus meaning, James J Macaulay Solicitors and Diamond Heron Solicitors along with Court Services on the 25/6/07 had in their possession a copy of the exhibit PH2 Decree No K54/88 and map coloured red. (Mistake)*

A. Why did Wayne Storey Associates rely on their own map coloured red dated May 2007 (Mistake)

B Why did James J Macaulay instruct Samuel Wilson Design Associates to rely on Wayne Storey Associates map when compiling their report in June2007 (Mistake)

*C Why did James J Macaulay not adhere to the Order dated the 14th May 2007 and instruct Samuel Wilson Design Associates to rely on the map referred to by Decree K54/88 map coloured red to compile their report in June 2007
(Mistake)*

*D On the 25th June 2007 the reports of both experts were to be filed .
This being the reports based on the Wayne Storey Map coloured Red were filed in Court.*

- E *On the same date 25th June 2007 the legal representatives for Mr Patterson, informed Shaw's Counsel, that exhibit PH2 Decree K54/88 had been exhibited at PH2 in error. This would explain why the Shaw's have never seen PH2. (Mistake)*
- F *James J Macaulay Solicitors claim legal representatives for Mr Patterson claimed that the 1988 map had been exhibited at PH2 in error. Exhibit PH2 was a copy of the map relating to the proceedings brought in 1988. Ie Decree K54/88 map coloured red. (Mistake)*
- G *On the 25th June 2007, it is also claimed by James J Macaulay Solicitors that legal representatives for Mr Lawrence Patterson handed a copy map to counsel for the Shaw's. It was asserted, that this map was the September 1997 terms of settlement map, which should have been exhibited to PH2. It was explained, that the 1988 map had been exhibited at PH2 in error.*
- H *On the 2.7.09 one of the legal representatives for Mr Lawrence Patterson Informed the Royal Courts of Justice Chancery office that the said Interim Injunction / Order dated the 14th May 2007 did not have a map attached to it. (Mistake).*

The above mentioned solicitors, on 9/3/2010 in a sworn replying Affidavit, claimed.

When the proceedings began in May 2007, the correspondence between the solicitors acting for the respective parties in 1997, had not been obtained at that stage Mr Patterson only had a copy of his own map prepared by Mr Browne, which he understood to be the agreed map. (Mistake)

Conclusion of what happened on the 25.6.2007 and Mistakes that occurred.

The expert reports were compiled and based on the Wayne Storey map coloured red dated June 2007.

Exhibit P.H.2 Decree K54/88 map coloured red, was replaced with Mr L Patterson's own 1997 map.

Exhibit PH2 disappeared and is unable to be found, as claimed by the Court Services. (Mistake)

Exhibit PH2, had not been attached to the order 14.5.07 as claimed by Mr Cole, solicitor of Diamond Heron Solicitors.

The map prepared by Wayne Storey Associates was based on Mr Patterson's Own 1997 map meaning that both maps matched.

James J Macaulay solicitors walked away from his clients.

The Shaw's had lost the case before it had started as set out above and the rest is history.

This has been a cover up which has now been exposed through the Proceedings brought about by the Shaw's against James J Macaulay Solicitors and the contents of their Defence Document dated 7.1.11.

We make reference to our site inspection as set out in pictures taken when the lawful 1997 map referred to which derived from the 1988 map / Decree K54/88 is plotted onto the said laneway/right of way.

Please see photographs referred to in Skeleton Argument.

III THE PRESENT APPLICATION

[5] The present application is made by a summons dated 6th January 2011, grounded on an affidavit sworn by Brian Cole, a solicitor in the firm representing the Defendant. The focus of this application is the Plaintiffs' Statement of Claim, which consists of some 63 paragraphs. On behalf of the Defendants, it was submitted by Mr. Sharpe (of counsel) that paragraphs 1 - 62 all raise issues determined in the County Court proceedings and ensuing appeal. Within paragraph 62 one finds the causes of action invoked by the Plaintiffs. These are threefold - defamation, fraud and collusion.

Defamation

The two particulars of defamation are "*statutory demand issued against the [Plaintiffs]*" and "*made dishonest claims in and out of court*".

Fraud

There are eight pleaded particulars of fraud in the Statement of Claim. These relate to reliance upon "*a false 1997 map*" at the time of securing the original ex parte injunction from District Judge Brownlie (the first seven particulars, duly analysed and dismantled) and perverting the course of justice (the eighth particular), by "*[securing] an order at the County Court unlawfully by dishonest means and [issuing] proceedings against the [Plaintiffs] in the Bankruptcy Court to gain money*".

Collusion

The two pleaded particulars of collusion assert that the Defendants "*assisted others to claim the [Plaintiffs'] property and money and [enforced] proceedings in an attempt to have the [Plaintiffs] bankrupt by unlawful means (frauds and collusion to make a gain for himself and others)*".

[6] In his submissions on behalf of the Defendant, Mr. Sharpe developed his carefully constructed skeleton argument. As noted above, the Plaintiffs' response was both oral and written. In his oral presentation to the court, Mr. Shaw (the first-named Plaintiff) focussed almost exclusively on the issue concerning the maps. In doing so, Mr. Shaw stated that the Plaintiffs did not know what map was considered originally by District Judge Brownlie and acknowledged that the "true" or "correct" map formed part of the evidence considered by Judge McReynolds at the substantive hearing.

IV CONCLUSIONS

[7] The principles which govern an application of this kind are both familiar and well established. They are contained in, *inter alia*, the speech of Lord Diplock in *Hunter -v- Chief Constable of West Midlands* [1982] AC 529, at p. 536; the judgment of Stuart-Smith LJ in *Ashmore -v- British Cole Corporation* [1990] 2 All ER 981, at p. 984; and the decision of the Northern Ireland Court of Appeal in *Lough Neagh Exploration -v- Morrice Associates* [1999] NI 258, per Carswell LCJ at pp. 284 - 287.

[8] Applying the governing principles to the present matrix, I conclude without hesitation that the Defendant's application is well founded. My specific conclusions in respect of the amended Statement of Claim are as follows:

- (a) It consists almost exclusively of a repackaging and re-ventilation of issues belonging to the forum of and determined in the original County Court proceedings and ensuing appeal to the High Court.
- (b) The two particulars of defamation do not disclose a semblance of any case against the Defendant and could not, as a matter of law, establish the commission of this tort.
- (c) Seven of the Plaintiffs' allegations of fraud have already been fully litigated and, properly analysed, disclose no reasonable cause of action in any event, bearing in mind the ingredients of the tort of deceit. The eighth particular is incapable of establishing the tort of deceit, lacks necessary particularity and is frivolous and vexatious.
- (d) "Collusion" is not a recognised cause of action, giving rise to an inevitable strike out.

My omnibus conclusion is that these proceedings are vexatious, entail an abuse of the court's process and disclose no reasonable cause of action against the Defendant.

[9] I accede to the Defendant's application accordingly.