

THE HIGH COURT

[2013 No. 9498 P]

BETWEEN

AMALGAMATED RACING LIMITED AND RACING UK LIMITED

PLAINTIFFS

AND

JOHN PATTON T/A BALLYBOOKIES

DEFENDANT

***EX TEMPORE JUDGMENT* of Mr. Justice Tony O'Connor delivered on the 8th day of June, 2018**

1. By notice of motion issued in March 2017 and first returnable to 8th May, 2017, the plaintiffs sought an order for attachment and committal of the defendant, who is a bookmaker, arising from the alleged breach of orders made by Keane J. on 12th May, 2014, and Gilligan J. on 15th July, 2014, and undertakings given on oath to Gilligan J. on 15th July, 2014.
2. The plaintiff relies on the two affidavits of a Mr. Gary Crowe sworn on 20th February, 2017, and 13th February, 2018, which averred as to his observation on 8th February, 2017, concerning the showing of a race with the Racing UK logo in the defendant's betting shop screen in Donegal town. He exhibited photographs and the defendant was only shown colour copies of those photographs today.
3. The defendant takes issue, albeit without notice or having averred to it on affidavit, that:-
 - (i) the Donegal screenshots could not be correct because the position of the racing coverage should be at the bottom. He refers to the way by which a Mr. Enda Mahon installed the screens and how they are operated;
 - (ii) the reference to the race meeting at Chelmsford as identified in the first affidavit was incorrect due to the rights which the plaintiff had at that time.
4. The plaintiffs also rely on an affidavit of a Mr. Walsh sworn on 23rd May, 2017, subsequent to the issue of the notice of motion, which referred to his observation of a Racing UK logo on the defendant's screen in his bookmaker shop in Manorhamilton on 21st April, 2017. Mr. Walsh was there to collect a Turf TV satellite receiver. The following facts emerged during the hearing today:-
 - (i) the defendant was not in the Donegal shop on 8th February, 2017;
 - (ii) the defendant could not have turned off the screen in Manorhamilton on 21st April, 2017, as alleged by Mr. Crowe because of his positioning in the office;
 - (iii) Mr. Walsh did not take any photographs or refer to other corroborating evidence for his affidavit like the photographs taken by Mr. Crowe; and
 - (iv) the defendant's remaining three shops have shown and continue to show racing coverage using a supplier called SIS.

5. Consequently, I have not been satisfied beyond a reasonable doubt that the defendant caused, arranged or allowed an infringement of the plaintiffs' copyright on 8th February, 2017, or 21st April, 2017, due to the legitimate questions posed by the defendant himself.

6. I have listened to the suggestion that it is unfair for the plaintiffs to be faced with the above mentioned facts on 8th June, 2018, when the defendant ought to have relayed them to the plaintiffs' solicitors given that the allegations relate to 2017. That brings me to summarise the law mentioned before further and I quote from the judgment of Finnegan P. in *Shell E. & P. Ireland Ltd. v. McGrath* [2007] 1 I.R. 671 at 687; [2006] IEHC 108:-

"37. On a review of the cases I am satisfied that committal for contempt is primarily coercive, its object being to ensure that court orders are complied with. However in cases of serious misconduct the court has jurisdiction to punish the contemnor

38. When exercising its powers for coercive purposes the jurisdiction to imprison for an indefinite period for civil contempt is one to be exercised sparingly If there is any other means whereby compliance with the order of the court can be achieved this should be adopted, committal being in effect the last resort

39. Committal by way of punishment likewise should be the last resort. It should only be engaged where there has been serious misconduct. In such circumstances it can be engaged in order to vindicate the authority of the court. In litigation concerning exclusively private rights this will usually occur only at the request of the plaintiff."

7. The plaintiffs and the defendant entered into settlement terms dated 10th November, 2014, and both accept that either €10,000 or €15,000 remains due under those settlement terms. The defendant candidly told the Court that he had hoped to pay that sum when entering into that settlement. He has closed one of his booking shops and suffered a stroke last year which partly explains the delay in having this motion heard and determined. Various enforcement measures are open to the plaintiffs in relation to any breach of those terms other than by way of an application for contempt of court. It was submitted by counsel that the plaintiffs and the Court can expect compliance with the orders of the court. As I have said I have not been satisfied beyond a reasonable doubt that the defendant breached or continues to breach the orders of Keane J. or Gilligan J. nor the undertakings given by the defendant.

8. The defendant, representing himself, submitted that there is an element on the part of the defendants of vindictiveness, a yearning for punishment and a potential to use this application to persuade other bookmakers or users of their services of the force of the plaintiffs' resort to legal processes. In fairness to the plaintiffs they have not been given an opportunity to address those allegations and this Court is not going to determine anything in relation to those suggestions other than to say that the Court is alert to the possibilities. This prompts the Court to remind the plaintiffs that this form of application for contempt is one of last resort, imposes significant burdens on applicants to adduce

evidence and should not be used for any purpose which could be considered collateral or tangential to the purpose for the scarcely used power of committing citizens to prison for civil contempt.

9. Counsel for the plaintiffs stressed on a number of occasions "*the form*" of the defendant with respect to intellectual property rights and asked the Court to look at the history of the applications and orders made in these proceedings already. As far as this Court is concerned, the defendant cooperated with this Court in every way today. He willingly gave evidence on oath and was subjected to cross-examination. He admitted his previous infringement of intellectual property rights which led to previous orders, his undertaking and the terms of settlement. He remained and remains adamant that the research and evidence of Messrs. Crowe and Walsh were flawed. I repeat that his affidavit and viva voce evidence raises at the very least a reasonable doubt about whether a full unvarnished account of those visits made by those gentlemen was properly scrutinised and detailed.
10. While I do not find, because I could not find, that those gentlemen sought to mislead the court I think that the absence of corroborating evidence such as could reasonably be expected for the correcting affidavit of Mr. Crowe in February 2018 and a short affidavit of Mr. Walsh together with the issues mentioned by the defendant today raise concerns about the attention to detail and the motivation of the plaintiffs in this application. I do not find that there was any bad faith necessarily in the plaintiffs in making this application. In short, I make an order striking out the application to seek the attachment and committal of the defendant.