

THE HIGH COURT

[2019 No. 7009 P]

BETWEEN

JAMES GUERIN

PLAINTIFF

AND

GEMMA O'DOHERTY

DEFENDANT

JUDGMENT of Mr. Justice Richard Humphreys delivered on Monday the 12th day of October, 2020.

1. On 11th and 12th July, 2019 the defendant took to twitter to set out some comments in relation to a court case. Like many a twitter user before and since, she was then met with proceedings for defamation. Those proceedings were instituted on 9th September, 2019.
2. It is averred on behalf of the plaintiff that a summons server unsuccessfully attempted to serve the defendant on 15th January, 2020.
3. On 4th February, 2020 KRW Law Solicitors in Belfast confirmed that it had authority to accept service of the proceedings. It stated that it would undertake to "serve" the appearance; but the requirement of O. 9, r. 1 RSC, is that a solicitor accepts service and undertakes in writing to "enter" (*i.e.*, file) the appearance – merely serving it is not legally effective to obviate the need for personal service on the defendant. The plaintiff's side thought that the wording of the correspondence could be down to lack of knowledge on the part of KRW Law of the relevant procedures in this jurisdiction. On one view, that suggestion could be reinforced by the fact that KRW were to subsequently send correspondence to the plaintiff's solicitors incorrectly claiming that they had undertaken to *file* an appearance, when their original correspondence did no such thing. That further error caused some confusion in the hearing of the present application, but the plaintiff's side has enabled the matter to be clarified by producing all of the relevant correspondence.
4. On 6th February, 2020 KRW Law were served with the proceedings and endorsed the plenary summons on 11th March, 2020. The summons was then returned to the plaintiff's solicitors by letter dated 23rd May, 2020, received on 4th June, 2020. The plaintiff's solicitor says that she sent a letter by registered post to the defendant directly and that this was recorded as delivered by registered post on 21st May, 2020 but was subsequently returned as undelivered on 29th May, 2020. The plaintiff's side suggested that the inference was that the defendant had directed An Post in some manner to return the correspondence notwithstanding having received it. That seems to be a reasonable inference having regard to the evidence.
5. It is further averred that a summons server attempted to serve the defendant on 12th and 18th June, 2020 and that on the latter occasion the summons server knocked on the defendant's door. She opened the window, and when advised of who he was and that he

had a summons for her, she said "sorry, no". The defendant hasn't countered that in a detailed or meaningful way.

6. On 10th August, 2020 Murphy J. made an order deeming service of the plenary summons on KRW Law good and sufficient service and allowed substituted service of future documents at an address in Shankill. The learned judge expressed some concerns about what happened with the registered letter and indeed I would share her concerns.
7. On 13th August, 2020, on the *ex parte* application of the defendant, O'Connor J. made an order that the *ex parte* docket, affidavit and exhibits for the plaintiff's *ex parte* application of 10th August, 2020 be given to the defendant, and that the defendant have access to the DAR of 10th August, 2020. He also allowed the defendant to apply on 14th August, 2020 to issue a notice of motion in relation to setting aside the order of 10th August, 2020.
8. The defendant entered an appearance in person on 13th August, 2020 according to the High Court computer system, but another appearance seems to have been entered by the defendant in person the following day. It's not clear why this was accepted by the Central Office when an appearance had already been filed.
9. The defendant told me that she came back before O'Connor J. on 14th August, 2020 but seems to have misunderstood the procedure in that she anticipated that the plaintiff's side would be there even though she didn't serve them with anything. She says no particular order was made on that date.
10. She then applied to me *ex parte* on 18th August, 2020 in relation to her complaints regarding the order of 10th August, 2020. She had some difficulty accepting that the correct procedure to set aside an *ex parte* order is to apply on notice, asking if the plaintiff could get an order *ex parte*, why couldn't she? The essential answer is that an endless series of tit-for-tat *ex parte* applications would be a hall of mirrors. A hearing on notice brings finality to the issue, even if the original application was made *ex parte*. I did, however, allow the defendant to bring a notice of motion returnable at short notice for 19th August, 2020 in order to vary or set aside the order of 10th August, 2020.
11. She also asked for some sort of an order preventing publication of address details. I directed that in the interests of her right to privacy, having regard to all the circumstances including the particular privacy difficulties experienced in contemporary society by a public figure such as the plaintiff, there should not be publication, by any person having notice of the order, of the defendant's full address and in particular the street name or house number or house name or her email address, with liberty to the parties and to any person affected by that order to apply.
12. On the evening of 18th August, 2020, for some reason, she sent the plaintiff's solicitor an unfiled appearance on her behalf signed by KRW Law Advocates LLP. She has dispensed with their services and it is not clear why she sent that appearance, but either way it is unfiled so it can be ignored. If it helps clarify things, I can say that because the

defendant has herself entered an appearance in person, KRW Law are relieved of their obligations to comply with any undertakings as regards an appearance on her behalf.

13. On 19th August, 2020 matters resumed on notice and I heard from the defendant in person, as applicant on the motion, and from Mr. Ronan Lupton B.L. for the plaintiff. Subtracting various matters raised by the defendant that did not properly arise on her motion, there were essentially two net matters: setting aside the order deeming service good and varying the order for substituted service because the defendant wanted to specify alternative mechanisms for serving her. At the end of the hearing I informed the parties of the order and indicated that reasons would be provided later.

Application to set aside the order of 10th August, 2020 deeming service good

14. The first curial paragraph of the order of 10th August, 2020 says, "*[i]t is ordered that service of the Plenary Summons served herein on KRW Law Advocates be deemed good and effective service.*" Because KRW Law for some unexplained reason only undertook to "serve" the appearance rather than file it, O. 9, r. 1 RSC didn't apply, and it was necessary for the plaintiff to seek an order deeming service good, especially in circumstances where a summons sent directly to the defendant by registered post came back and where the defendant wouldn't answer the door to a summons-server. Thus, the application to set aside this order fails.

Application to vary the order regarding substituted service

15. The plaintiff has consented to vary the order of 10th August, 2020 insofar as it relates to substituted service of any future documents, so that such documents will be served on the defendant by ordinary post to her address in Foxrock and by email to the email address furnished by her.

Order

16. As noted above, on 18th August, 2020, I ordered that there should not be publication, by any person having notice of the order, of the defendant's full address and in particular the street name or house number or house name or her email address, with liberty to the parties and to any person affected by that order to apply. For the reasons I have attempted to set out above, the order made on 19th August, 2020 was as follows:
 - (i). the "appearance" signed by KRW Law is to be disregarded because it was not filed;
 - (ii). KRW Law are released from any undertakings in the case;
 - (iii). the defendant's application to set aside the first paragraph of the order of 10th August, 2020 deeming service good is refused;
 - (iv). the second paragraph of the order of 10th August, 2020 is varied by consent so that all future documents are to be served on the defendant by way of ordinary post to the address provided in Foxrock and by email to the address provided by the defendant.
17. I want to record clearly that the defendant has failed to substantiate any of her allegations of wrongdoing made against the plaintiff's legal team.

18. Having heard the parties on ancillary matters, I also ordered:

- (i). that the DAR of all relevant dates be made available to both parties on the usual terms – specifically that the plaintiff can take up the DAR and the defendant can have access on paying half the cost, with the plaintiff's solicitors to notify the court for the purposes of the order of the exact dates in question;
- (ii). that order to be stayed until 1st December, 2020 by consent of the plaintiff to ensure that the DAR is availed of for the substantive proceedings and not used for any collateral purpose; and
- (iii). I awarded costs of the defendant's motion to the plaintiff for two reasons: firstly, because costs follow the event on the only issue that was contested, and secondly, to factor in my disapproval of the unsubstantiated complaints made by the defendant against the plaintiff's legal team.