

THE HIGH COURT

[2021] IEHC 818

[2014 No. 9351 P]

BETWEEN

LYNDA MEEGAN

PLAINTIFF

AND

TIMES NEWSPAPERS LIMITED TRADING AS THE SUNDAY TIMES

DEFENDANT

**SUPPLEMENTAL JUDGMENT of Mr. Justice Meenan delivered on the 10th day of
December, 2021**

Background

1. I refer to my judgment in this matter delivered on 2 July 2021 ([2021] IEHC 495). A motion for third party discovery was brought against the Commissioner of An Garda Síochána seeking discovery of a report prepared for the Minister for Justice, dated 1 October 2014, in relation to the provision of confidential information by a serving member of An Garda Síochána on dissident republicans. An affidavit of discovery was sworn by John Finucane, a Garda Inspector who was duly authorised to make the affidavit on behalf of the Commissioner. The said report was set out in the second part of the first schedule of the affidavit of discovery. The Garda Commissioner objected to produce the said document on the grounds: -

“4. The grounds on which I object to produce these last mentioned documents are that such are covered by Public Interest privilege, in the interests of preserving An Garda Síochána’s ability to effectively investigate crime and Garda tradecraft, and in the interests of protecting informants.”

2. In giving judgment, I set out the principles that a court should apply on an application such as this, in particular, that a balancing exercise is to be carried out. I stated: -

“11. In carrying out the balancing test, I wish to identify what factors are in balance. On the one side, there is the right of the defendant to defend these defamation proceedings and to vindicate its reputation and good name. On the other side, as stated in the affidavit of Inspector John Finucane, there is the public interest of An Garda Síochána being able to effectively investigate and prevent crime, which may require the receipt of information and intelligence from informants whose identities are required to be protected. The required balance can be achieved by certain redactions, which I will make in the report.

12. In making the redactions, I will proceed on the basis that it must be generally accepted and known to the general public that An Garda Síochána receive information from informants, but that it is essential that any information that could potentially lead to the identities of any such informants be redacted.”

3. Subsequent to giving judgment, an application was made by the Commissioner of An Garda Síochána to re-enter the matter so that the Court could consider certain information that was not before the Court on the previous occasion. An affidavit was filed by Anthony Howard, a Chief Superintendent at Garda Headquarters, Phoenix Park, Dublin 8. In the course of this affidavit Chief Superintendent Howard sets out the circumstances under which this information was not brought to the attention of the Court.

The issue

4. When the matter was re-entered, the first issue which the Court had to address was whether, having given judgment in the matter and having carried out the consequent redactions, this Court was “*functus officio*” and did not have jurisdiction to deal with the application. It was submitted by counsel for the defendant, and counsel for the Garda Commissioner, that the

Court did have jurisdiction to deal with this application. It was made clear that the application was not directed towards altering the legal principles that had been set out in the judgment. Rather, the issue that was being re-entered concerned the application of these principles to the report. It was suggested that the matter came back before the Court under the heading of “*liberty to apply*”, notwithstanding the fact that the Order made by the Court did not provide for “*liberty to apply*”.

5. Having considered these submissions, I am satisfied that the Court has jurisdiction to entertain the application made by the Commissioner of An Garda Síochána. The application does not seek to revisit the terms of the judgment I gave but, rather, the application of the principles stated therein in light of further matters that have been brought to the attention of the Court. I should say that the plaintiff was on notice of this application but did not take part.

The application

6. In his grounding affidavit, Chief Superintendent Anthony Howard states as follows: -
“23. I have reviewed the relatively limited redactions which this Honourable Court has ordered to be made to the Report. I say and believe that by reason of the concerns that I have set out, which were not before the Mr Justice Meenan when the application was heard on 29th April 2021 these redactions are not sufficient to safeguard the safety of Garda sources and for preserving the secrecy of Garda intelligence gathering methods.
24. In particular, I say and believe that if the identity of Garda sources is to be safeguarded and the secrecy of Garda intelligence gathering methods preserved, certain additional redactions are warranted. In this regard, I have prepared a memorandum relating to the redactions ...”

7. In a memorandum to the Court, Chief Superintendent Howard gave detailed reasons as to why these further redactions were necessary, in order to protect sources, and, importantly, expressed the view that the lives of those concerned would be in danger.

8. I have considered the contents of this memorandum and am satisfied to make further redactions to the said report. I make these further redactions having applied the balancing test as set out above.

Conclusion

9. I will direct that An Garda Síochána make available for inspection a copy of the said report as redacted by the Court.

10. As the notice party has consented to the defendant receiving its costs in respect of this application, I will make such an order with those costs to be adjudicated in default of agreement. Further, I will give the parties liberty to apply.