

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

**[2025] IEHC 90
Record No. 2022/3083P**

BETWEEN/

STILLORGAN GAS HEATING AND PLUMBING LIMITED

PLAINTIFF

-AND-

JAMES MANNING AND JULIE MANNING

DEFENDANTS

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 11th day of February 2025

INTRODUCTION

Preliminary

1. By order dated 23rd October 2023, the High Court (Coffey J.) granted the plaintiff company (“the plaintiff”/“the company”) judgment in default of appearance in defamation proceedings brought by the plaintiff company against the defendants.
2. The company claims compensation in respect of what it alleges was defamatory material published online by the defendants. It states that the publication of this material had a serious reputational damage on its good standing and good name.
3. The application before me, consequent upon the order of Coffey J., is an assessment of damages.
4. The plaintiff is a private limited company with its registered office in Dun Laoghaire County Dublin and carries on the business of gas, heating, plumbing and electrical services in the greater Dublin and surrounding areas. The company has been operating since in or around 2011 and its main business is domestic callouts and small commercial jobs including embassy work, restaurants and local persons and businesses mainly in the Stillorgan, Goatstown and Dundrum areas of Dublin. The company has approximately 6,500 customers on its database with approximately 38 employees presently.

5. The first and second named defendants are a married couple residing in Rathfarnham County Dublin. At the hearing before me, the first named defendant gave evidence that he was in fact separated from the second named defendant.
6. Conor Power SC and James Charity BL appeared for the company. Mr. James Manning (the first named defendant) represented himself. There was no appearance by (or on behalf of) Mrs. Julie Manning (the second named defendant).

Witnesses

7. In this application, I heard evidence from the following persons: Mr. Dara Keogh, managing director and sole shareholder of the company (Mr. Keogh and his wife are directors of the company which he runs with his son); James Cowley, summons server and licensed private investigator; and Mr. James Manning, the first named defendant.

Summary of Background Facts

8. In the period between in or around 26th January 2022 to in or around 4th February 2022, the company was engaged to carry out work to the heating system of a property located at 33 Lower Mount Pleasant Avenue, Ranelagh, Dublin. The property was owned by the first named defendant's sisters and it was tenanted. The first named defendant did not own or have any share in the property but assisted in its management.
9. The work carried out by the company involved a little over four hours of labour and the evidence is that, while the gas boiler in the house appeared to be working, a problem arose in relation to the external circulating water pump which had stopped

working and required to be replaced with a new pump and two gate-style valves. The work also included addressing leaks in the property. The company's practice was to take an initial deposit with payment made on completion of the job. In this case, the total deposit paid appears to have been two instalments of €120, giving a total of €240, paid by the first named defendant's sister.

10. The first named defendant stated that he was of the view that the job, which had been initially priced, was for the service of a boiler and that the price had doubled when it came to be carried out.
11. When the first named defendant refused to pay for the work which was carried out – approximately €1,190 – the company removed the pump, pump valves, piping and compression fittings which they had installed.
12. After a heated exchange between the first named defendant and Mr. Keogh on behalf of the company, the first named defendant informed Mr. Keogh that he would be pursuing the company and making a report to Rathmines Gardaí, which he did at approximately 14:10 on 4th February 2022.
13. The first named defendant thereafter engaged another person to fix the boiler, which he said was done at a cost of €794.

DEFAMATION ACT 2009

14. Section 31 of the Defamation Act 2009 deals with the question of damages and provides as follows:

“(1) The parties in a defamation action may make submissions to the court in relation to the matter of damages.

(2) In a defamation action brought in the High Court, the judge shall give directions to the jury in relation to the matter of damages.

(3) In making an award of general damages in a defamation action, regard shall be had to all of the circumstances of the case.

(4) Without prejudice to the generality of subsection (3), the court in a defamation action shall, in making an award of general damages, have regard to—

(a) the nature and gravity of any allegation in the defamatory statement concerned,

(b) the means of publication of the defamatory statement including the enduring nature of those means,

(c) the extent to which the defamatory statement was circulated,

(d) the offering or making of any apology, correction or retraction by the defendant to the plaintiff in respect of the defamatory statement,

(e) the making of any offer to make amends under section 22 by the defendant, whether or not the making of that offer was pleaded as a defence,

(f) the importance to the plaintiff of his or her reputation in the eyes of particular or all recipients of the defamatory statement,

(g) the extent (if at all) to which the plaintiff caused or contributed to, or acquiesced in, the publication of the defamatory statement,

(h) evidence given concerning the reputation of the plaintiff,

(i) if the defence of truth is pleaded and the defendant proves the truth of part but not the whole of the defamatory statement, the extent to which that defence is successfully pleaded in relation to the statement,

(j) if the defence of qualified privilege is pleaded, the extent to which the defendant has acceded to the request of the plaintiff to publish a reasonable statement by way of explanation or contradiction, and

(k) any order made under section 33, or any order under that section or correction order that the court proposes to make or, where the action is tried by the High Court sitting with a jury, would propose to make in the event of there being a finding of defamation.

(5) For the purposes of subsection (4)(c), a defamatory statement consisting of words that are innocent on their face, but that are defamatory by reason of facts known to some recipients only of the publication containing the defamatory statement, shall be treated as having been published to those recipients only.

(6) The defendant in a defamation action may, for the purposes of mitigating damages, give evidence—

(a) with the leave of the court, of any matter that would have a bearing upon the reputation of the plaintiff, provided that it relates to matters connected with the defamatory statement,

(b) that the plaintiff has already in another defamation action been awarded damages in respect of a defamatory statement that contained substantially the same allegations as are contained in the defamatory statement to which the first-mentioned defamation action relates.

(7) The court in a defamation action may make an award of damages (in this section referred to as “ special damages ”) to the plaintiff in respect of financial loss suffered by him or her as a result of the injury to his or her reputation caused by the publication of the defamatory statement in respect of which the action was brought.

(8) In this section “ court ” means, in relation to a defamation action brought in the High Court, the jury, if the High Court is sitting with a jury.”

15. Section 32 of the Defamation Act 2009 deals with aggravated and punitive damages as follows:

“(1) Where, in a defamation action—

(a) the court finds the defendant liable to pay damages to the plaintiff in respect of a defamatory statement, and

(b) the defendant conducted his or her defence in a manner that aggravated the injury caused to the plaintiff’s reputation by the defamatory statement,

the court may, in addition to any general, special or punitive damages payable by the defendant to the plaintiff, order the defendant to pay to the plaintiff damages (in this section referred to as “aggravated

damages”) of such amount as it considers appropriate to compensate the plaintiff for the aggravation of the said injury.

(2) Where, in a defamation action, the court finds the defendant liable to pay damages to the plaintiff in respect of a defamatory statement and it is proved that the defendant—

(a) intended to publish the defamatory statement concerned to a person other than the plaintiff,

(b) knew that the defamatory statement would be understood by the said person to refer to the plaintiff, and

(c) knew that the statement was untrue or in publishing it was reckless as to whether it was true or untrue,

the court may, in addition to any general, special or aggravated damages payable by the defendant to the plaintiff, order the defendant to pay to the plaintiff damages (in this section referred to as “punitive damages”) of such amount as it considers appropriate.

(3) In this section “court” means, in relation to a defamation action brought in the High Court, the jury, if the High Court is sitting with a jury.”

16. At paragraphs 156 to 161 of his judgment in the Supreme Court in *Higgins v The Irish Aviation Authority* [2022] IESC 13, MacMenamin J. observed that, broadly speaking, the applicable case law established general damages awards in defamation cases which could be viewed within four general “categories” (or “brackets”) in the following range and one exceptional category:

Level	Category of seriousness of defamation	Compensation range (€)
1	Moderate defamation	0-50,000
2	Medium defamation	50,000-125,000
3	Seriously defamatory material with mitigating factors such as limited publication	125,000-199,000
4	Very serious defamation	200,000-300,000
Exceptional Cases	Very real damage to an individual's reputation where the balance is tilted decisively in favour of vindication of good name	Only in exceptional cases will be awards greater than 300,000

17. The applicable legal principles arising from sections 31 and 32 of the Defamation Act 2009, the judgment of the Supreme Court (MacMenamin J.) in *Higgins v The Irish Aviation Authority* [2022] IESC 13 and the consequences of publishing defamatory material on line were recently discussed by the High Court (Nolan J.) in *Casey v McMEnamin* [2024] IEHC 705 in which damages were awarded to the plaintiff arising from a defamatory post published by the defendant on Facebook in connection with the plaintiff's proposal to convert a property in Donegal to make it suitable for women and children refugees from Ukraine and to distribute any profits made from the rental income to the people of Donegal and Ukraine.

18. Whilst judgment had already been obtained, Nolan J. first addressed whether the words in that particular case were true or not and whether they were defamatory, observing as follows at paragraphs 23 to 27:

“(23) ... I am satisfied that the words were untrue.

(24) I am satisfied that the words in their natural and ordinary meaning are defamatory to the Plaintiff in the eyes of likeminded

members of society. They are untrue and carry with it the meaning ascribed to them in the pleadings as set out above.

(25) I am satisfied that there has been publication. The Plaintiff had over 2,000 friends on his Facebook page, which has now risen to 4,000. The posting in question had 181 reactions, 45 comments and was shared on 180 times.

(26) Many years ago, one of the leading members of the Irish bar, Ralph Sutton SC, once explained the effect of a defamatory comment. He said it was like taking a pillow of feathers and opening it at the top window of the GPO and thereafter, releasing the feathers and then trying to run around and collect the feathers that had blown to the four winds.

(27) The World Wide Web is exactly that and the spread of these defamatory and malicious remarks are widespread throughout the world. These are all matters which I have to take into consideration when I assess the issue of damages pursuant to the provisions of section 31 of the Defamation Act 2009.”

19. At paragraph 25 of his judgment in *Casey v McMenamin*, Nolan J. referred to the factors which are required to be considered, as follows:

“Pursuant to Section 31 of the Defamation Act 2009, I must take a number of matters into consideration which include the nature and gravity of any allegation and the defamatory statement concerned, the means of publication of it, the extent that the statement was

circulated, the importance of the Plaintiff of his reputation in the eyes of recipients of the statement and the evidence of the reputation of the Plaintiff. The other provisions of the section deal with steps taken by the Defendant to remediate the defamatory remarks”.

ASSESSMENT

20. In the application before me, approximately 10 reviews (including some duplicate copies) negatively critical of the company were referred to in evidence.

21. All of the reviews were pleaded in the company’s Statement of Claim.

Reviews not attributed to the first named defendant

22. Whilst I can readily appreciate the company’s frustration in relation to the following reviews (which were posted around the same time as those for which the first named defendant has accepted responsibility), I have not, based on the evidence adduced before me, attributed the allegations in the following posted reviews (and pleaded in the Statement of Claim) to either of the defendants in this action, when assessing the claim for damages in this case:

Posted Review	Paragraph in the Statement of Claim
John Filters (p.5)	3(a)
Filter Solutions & [Named] ¹ GAA Club (p.6)	3(b)
Filter Solutions (p.7)	3(c)

¹ Name redacted.

DIRE COMPANY (p.11/12)	4(b)
AVOID AT ALL COSTS (p.13)	3(h)
Filter Solutions & [Named] ² Medical Centre	3(f)

Reviews carried out by the first named defendant

23. The first named defendant accepts that he was responsible for four of the ten reviews published online, namely the posts which refer to James Manning, Julie Manning and JPM and he states that he had nothing to do with, and knew nothing about, the remaining posted reviews (including the ones with filters) which were referred to on behalf of the company in evidence and which are pleaded in the Statement of Claim. Two of the reviews were removed after 24 hours and two were removed after four days. Three of the reviews were posted in or around 5th February 2022 and one was dated 16th February 2022.

24. The first named defendant accepts that he was responsible for the following review by way of an online post/publication on the plaintiff's google maps review page and pleaded at paragraph 3(e) of the plaintiff's Statement of Claim:

“JD M

2 contributions

Stillorgan Gas, Plumbing & Electrical

Absolute con men Gardai investigating this case today on your men removing items from my home”.

² Name redacted.

[Two copies of this post were furnished at pages 8 and 15 of the book of Reviews. The second post on page 15 of the book of Reviews also contained a post which is unrelated to these proceedings].

25. The first named defendant accepts that he was responsible for the following review by way of an online posting/publication on *www.trustpilot.com* and pleaded at paragraph 3(g) of the plaintiff's Statement of Claim:

"James Manning

JM

...5 reviews

Updated 2 days ago

Avoid these gangsters.

Update, will produce proof of their communication, gangsters Avoid these gangsters

Paid for service, arrived and said it needed parts, paid deposit for parts, arrived a week later and said they priced it incorrectly, doubled the price. Said they finished work and wanted payment. But it didn't work and they said I'd have to pay someone else to fix it.

Agreed for 3rd worker to call back next day. 2 men called and removed items from my house illegally, this company is now being investigated by Rathmines Gardai and will be pursued legally.

PLEASE DON'T LET THEM NEAR YOUR HOME. I SHOULD HAVE READ THE OTHER REVIEWS".

26. The first named defendant accepts that he – and not the second named defendant, Ms. Julie Manning – was responsible for the following review on the plaintiff’s google maps review page and pleaded at paragraph 4(a) of the plaintiff’s Statement of Claim which references ‘Stillorgan Gas, Plumbing & Electrical Ltd’ from ‘*Julie Manning*’:

“NEW

Critical

Don’t use these cowboys, we will be dealing with them on Monday for their actions last week and damaging our property”.

27. Accordingly, the first named defendant accepts that he was responsible for the following lengthy review (apparently the last in time), by way of an online posting/publication on or about 16th February 2022 on *www.trustpilot.com* and pleaded at paragraph 5 of the plaintiff company’s Statement of Claim, which references ‘Stillorgan Gas, Plumbing Electrical Ltd’ from ‘JM James Manning’. This review alleged as follows:

“Please note my review is honest and ...

Please note my review is honest and its important to let the public know of Rogue traders such as Stillorgan Gas.

I have been contacted by a solicitor asking me to pay Stillorgan Gas compensation, to remove my review and place a false review that the owner will word for me to put them in a positive light.

Defamation is when something isn't true, below is a small example what myself the owner and occupants had to endure all true and can be backed up by everyone involved.

For complete transparency, I called Stillorgan Gas on the 26th Jan to repair a boiler that had stopped working. Light still on but gas blocked out. They gave two prices 80 for a service or 120 for service if its not in working order. I contacted the owner of the property, as I only manage this property and they paid Stillorgan Gas immediately €120. No receipt ever issued even after two requests by owner but had proof on their bank statement. They sent two men on the 27th called to say they could not fix the boiler because it needs a new pump and everything seemed fine otherwise. They were at the property five mins. They said they'd get a quote for parts in 24 hours, six days later and five calls from myself they finally gave a quote of €590 all in. While it was extremely expensive as the job was now 710 all in and I told the owner to proceed that it was imperative to have heating on the property for the occupants. The owner again called to pay and she was told to pay €100 only deposit which she duly did. The occupant let them in, two new men arrived on the 4th of Feb. After 1 min I received a call stating they couldn't proceed because the previous worker had priced it incorrectly and it needs all the pipework changed as its leaking, this is why the pump wouldn't work. He queried if it needed a new pump at all and said it was poor form and apologised. I asked how much would the pipework be and he said €70 approx. plus labour of one hour but this could be offset if the pump is

working and new one not required. I told him to proceed as he is there now and heating needs to be back on. A few hrs later I received a call from the tenant asking me to call them they were finished and need payment. I called them to be told my job had now jumped from €590 plus call out of 120 to 1,090 plus call out. I was shocked and asked could send through a breakdown of work as that was madness. After finally speaking with the office and got a horrible man with a condescending bully tone, I agreed to go back to the owner to talk to him directly and arrange payment once she was happy. I called the tenant to see if they were happy with the work before the excess amount was paid and told that the heating doesn't work and I have to pay for the other guys to come and fix it again. I was speechless. I called the company again and had a heated debate with the owner as he would not give me his name. He agreed to send two new lads that's six now the following day to get it working as per our €120 payment was paid for that reason. He said they'd be there between 11 and 1. I let the owner and occupant know. The following morning I emailed twice called and left a voicemail, sent a text to the company requesting a breakdown of the additional works and for invoices for the owner. I also called the office and spoke to accounts and they said it would be done prior to the arrival of their employees. They failed to do so. They arrived and told the two occupants that they were there to turn on the gas and get working. About 1 hr later the occupant called and said that the guys were gone and left the door open they hadn't repaired the boiler but had removed all evidence of their work. The

boiler was left in a worse condition than they originally found it. I have never come across this before and was shocked and embarrassed in front of the owner and poor occupants. I tried to call the engineering company but they had BLOCKED my number. I then called from my second number and got the owner who again laughed and belittled me. I told him I would be pursuing them and reporting to Rathmines gardaí which I did at 2.09 pm on the 4th of Feb. I immediately called around and asked contacts for a gas company. I got an engineer there later that day and he ordered in the parts Stillorgan Gas removed. He called back and finished same three days later and like magic the boiler they said didn't turn on did so immediately at a cost of €794 all in, substantially cheaper with VAT invoices too. The owner paid him the following day.

PLEASE NOTE PROOF OF ALL Calls AND TEXT LOGS TO THE OWNER, OCCUPANT, STILLORGAN GAS AND THE GARDAI ARE NOW SAVED AND AVAILABLE ALONG WITH PROOF OF PAYMENTS TO STILLORGAN GAS TWICE AND THE NEW GAS COMPANY PAID IN FULL.

THIS COMPANY NEEDS TO BE AVOIDED”.

28. This review was posted after the first named defendant had been contacted by the company's solicitor in relation to the earlier online posts which Mr. Keogh stated had been taken down and replaced with this post and therefore it at the end of the 'review posts'. Mr. Keogh states that being described as a 'rogue trader' was dreadful and destructive of his company's reputation. He stated that the company worked for some

of the leading colleges, including Gonzaga College, and churches, including Dalkey Church, and for embassies, and he felt it was disgusting to be described as a ‘rogue trader’. Mr. Keogh categorically denied the allegations in this review including the suggestion that he or any person on his behalf had asked for payment of compensation for the removal of the review and its replacement by a false positive review. He stated that the company was a cashless business and in 2024 had a turnover of approximately €3.7 million, with none of it in cash. Of all of the reviews referred to by company in this application, Mr. Keogh described this review as “*the softest*” as it was posted after the company’s solicitor’s contact with the first named defendant.

29. At paragraph 11 of the plaintiff’s Statement of Claim, it is further pleaded that “[t]he *posting/publication of the 16th February 2022 as pleaded at Paragraph 5 above was made by the Defendants, their servants and/or agents following the transmission of initiating correspondence to the First Named Defendant on or about the 11th February 2022 calling on same to desist from such activity and to delete the false and defamatory posts/publications previously made of and concerning the Plaintiff, as well as to furnish an apology for same, and the conduct of the Defendants, their servants and/or agents in refusing to do so and posting/publishing additional false and defamatory postings/publications thereafter entitles the Plaintiff to claim as against the Defendants, either or both of them, which it so does, aggravated, exemplary and/or punitive damages.*”

30. In around the same time – Wednesday 16th February 2022, at approximately 13:12, the first named defendant e-mailed the company and stated that he “*will only communicate with your solicitor on this matter going forward. I’ll be updating my*

review with the word complete before Rogue traders. I'll be contacting the gardaí today for further updates. Trustpilot have been excellent to deal with and have now read the occupants and owners side of the story. They have agreed to permanently submit my review and I'll be updating you with your hilarious email received. Please also remind your solicitor he's using incorrect postal address in his email. The owner is in the process of making communications at Rathmines Garda Station. We'll send you a request for her refund. If you look at other reviews, you've been called cowboys, rogue traders and threatened women as per their many previous reviews, so these words are common knowledge in the public domain about your standards. It's important, due to the dangerous nature of your work the contracts are fulfilled and not left vulnerable with possible gas leaks. Have a good day."

31. Mr. Keogh described the connection between this e-mail and the online post, both dated 16th February 2022. He rejected the allegations in the e-mail. He stated, for example, that he was gas-registered and operated under a licence and never had any issues with gas safety issues and that the work in this case did not involve gas but related to a water circulating pump. After receiving this e-mail, Mr. Keogh in fact telephoned Rathmines Garda Station and a member of the gardaí confirmed that his company was not under investigation.

32. In terms of chronological sequence, therefore, this review dated 16th February 2022 was the final review involving the first named defendant and was removed after a period of about four days.

33. Up until the hearing of this assessment, neither defendant had not taken a step in the proceedings. The plaintiff company had proven service of the plenary summons and Statement of Claim on both defendants and had obtained judgment in default of appearance by order of Coffey J. on 23rd October 2023.
34. The first named defendant appeared at the hearing of this assessment application and stated that he and the second named defendant had been going through a separation, commencing on or about 18th December 2023. The first named defendant stated in evidence that when his posted review was taken down, he should not have replaced it with the post in his wife's name (*i.e.*, that which is pleaded in paragraph 4(a) of the Statement of Claim). He stated that this had been done because his name had been blocked and that the second named defendant had nothing to do with the posting of these comments in her name.
35. The first named defendant accepts that he posted four reviews (one via Trustpilot, and three in the names of JDM, Julie Manning and James Manning respectively). I find that the first named defendant was responsible for the aforementioned four reviews posted online.
36. Together the reviews far exceed what might be described as the normal criticism associated with the cut and thrust of business and are, in my view, defamatory of the company. They allege criminal conduct on the part of the company. They allege, for example, that there is an investigation by An Garda Síochána arising from property allegedly taken by the company. I am satisfied that the four reviews posted by the first named defendant meet the definition of comprising a 'defamatory statement' within

the meaning of section 2 of the Defamation Act 2009 (“the 2009 Act”) and each is a statement that tends to injure the company’s reputation in the eyes of reasonable members of society (and “defamatory” is to be construed accordingly), *i.e.*, I am satisfied that the words used in each of these reviews, in their natural and ordinary meaning were (i) defamatory of the company in the eyes of those who read the reviews which were published online and (ii) carry with it the meaning ascribed to them as set out by, and on behalf of, the company.

37. The provisions of the 2009 Act apply to a body corporate as they apply to a natural person, and a body corporate may bring a defamation action under the 2009 Act in respect of a statement concerning it that it claims is defamatory, regardless of whether or not it has incurred or is likely to incur financial loss as a result of the publication of that statement (section 12 of the 2009 Act). The tort of defamation is actionable *per se* (or without proof of special damage (section 6(5) of the 2009 Act).

38. There was no evidence adduced which would suggest that, on the balance of probabilities, the second named defendant was responsible for any of the reviews referred to in these proceedings (and I address this matter in the order which I propose at the end of this judgment).

39. In terms of the nature and gravity of any allegation in the defamatory statement concerned, the reference in the first three reviews to describing the company as “cowboys” “gangsters”, “absolute con men” and that the “gardai” were “investigating the removing of items” would lead a reader of those reviews, *i.e.*, in the eyes of reasonable members of society, to conclude that the reviewer who had engaged the

company thought they conmen who had had stolen property and that the gardaí were investigating the matter. Whilst these reviews may have been posted for a relatively short period – approximately 24 hours (and/or up to four days) – and led to the intervention of the company’s solicitor, the words were nevertheless untrue and in their natural and ordinary meaning are defamatory to the plaintiff company in the eyes of those who read the reviews online. They were replaced by a review which described the company, *inter alia*, as a “*rogue trader*” and as set out above, Mr. Keogh described this defamation as being destructive of his company’s reputation, notwithstanding he said it was “*the softest*” of the posted reviews as it was posted after the company’s solicitor’s contact with the first named defendant. This final review remained posted online for approximately four days.

40. In this case, having regard to the means of publication of the defamatory statement, the extent to which the defamatory statement was circulated and the evidence given concerning the reputation of the plaintiff, I accept Mr. Keogh’s evidence that the ‘online’ posting of reviews has the potential for wide circulation and that ‘word of mouth’ – what his senior counsel, Mr. Power SC referred to as ‘soft advertising’ – constitute important factors in generating the business and reputational profile of the company. I also accept his evidence that the normal type of critical or negative review may relate to a review which referred, for example, to the price of a job or a workman being slightly late and that these were infrequent in the years in which he had been operating (receiving possibly 15 in total) and that they were always replied to by way of an online response. In contrast, the posts for which the first-named defendant was responsible were not usual and, due to their damaging content, were not replied to in the ordinary way. Rather, these posts warranted the involvement and advice of the

company's solicitor. Also, this was the first time that the company had instituted proceedings for defamation.

41. That said, when assessing the question of the enduring nature of the means of publication of the defamatory statement, the evidence before me is that two of the reviews were removed after 24 hours and two were removed after 4 days. Three of the reviews were posted in or around 5th February 2022 and one was dated 16th February 2022. Whilst I accept Mr. Keogh's evidence that a person reading the four reviews referred to may be dissuaded from engaging the services of the company, the relatively short period during which the reviews were posted online, combined with the fact that company ran a well-established and trusted business are also factors to be weighed in the balance when assessing the amount of compensation.

42. Mr. Keogh stated that whilst there can be a seasonal factor to the plumbing business (when, for example, weather temperatures fall) he was of the view that there was work which did not come in and that people made decisions to shop around elsewhere and go with other contractors arising from these reviews posted online in or around February 2022. As stated, Mr. Keogh accepted, however, that he was fortunate in that the company was an established business, well-trusted in the community and, for example, sponsored three charities.

43. Mr. Keogh, in his position as Managing Director of the Company, gave evidence that while sales continue to rise year on year, the sums received net of VAT had fallen periodically after February 2022 from a figure of €375,949.45 in January-February 2022 to €344,781.30 in March-April 2022, €253,241 in May-June 2022, €277,647 in

July-August 2022, before rising to €496,423 in September-October 2022 and €555,687 in November-December 2022. Mr. Keogh stated that work which was already on the books would proceed but again he was of the view that at least some of the decrease for those periods was attributable to the reviews which had been posted.

44. Whilst I find that the reviews, for which the first named defendant has accepted responsibility, had a general reputational damage on the company (albeit one limited in time), I do not accept, on the balance of probabilities, that these allegations made in or around February 2022, in fact caused the particular reduced sales referred to immediately above.

45. Whilst not amounting to an apology in the manner prescribed in the 2009 Act, *i.e.*, the offering or making of any apology, correction or retraction by the defendant to the plaintiff in respect of the defamatory statement (or what might be described as a full apology), at the assessment hearing before me, the first named defendant expressed his regret of the tone used in the reviews and indicated that he should have left matters alone after his initial post had been removed and should not have reposted using his wife's name (because his own name had been blocked), apologising for doing so and referred to the pressure of having a situation of not being able to charge rent to tenants while the heating was not fixed and having to address his own medical issues. As for his non-participation in the proceedings up to the point of his involvement in this assessment, the first named defendant apologised for not taking the case seriously stating that he was 'burying his head' in dealing with some problems. Further, during the course of the hearing before me, the first named defendant appeared to pull back from an initial allegation that the company itself, or someone working for the

company, may have been responsible for the other reviews complained of. I do not consider that the circumstances of this case merit an award of aggravated or punitive damages.

46. Having regard to the matters set out above in the context of the categories identified by MacMenamin J. in *Higgins v The Irish Aviation Authority* [2022] IESC 13 as applied by Nolan J. in *Casey v McMenamin* [2024] IEHC 705, I am of the view that the assessment of damages in this case comes within level 1, the moderate category of seriousness of defamation.

47. Accordingly, in all the circumstances, the plaintiff company is entitled to an award of damages in the sum of €40,000.

PROPOSED ORDER

48. I shall make an order awarding the plaintiff company damages in the sum of €40,000.

49. My provisional view is that as the plaintiff company has been entirely successful, the default position – (having regard to section 169(1) of the Legal Services Regulation Act 2015 and (a re-casted) Order 99, rules 2 & 3 of the Rules of the Superior Courts 1986 (as amended)) – is that costs follow the event unless the court orders otherwise, having regard to the particular nature and circumstances of the case and the conduct of the proceedings by the parties (including the matters set out at sections 169(1)(a) to (g) of the Legal Services Regulation Act 2015.

50. On this basis, my initial view is that there are no circumstances arising which militate against making an order of costs in favour of the plaintiff company against the first named defendant, to include the costs of the action, the costs of the motion seeking judgment in default of appearance, the costs of the assessment of damages, such other reserved costs (if any), and all such costs to be adjudicated upon by the Office of the Legal Costs adjudicator in default of agreement.

51. I shall put the matter in for mention on Wednesday 19th February at 10:30 to address any consequential or ancillary matters which arise including my provisional view on costs and the quantum of costs having regard to the award of damages.