

**APPROVED**

**[2024] IEHC 705**



**THE HIGH COURT**

**2023 3109 P**

**BETWEEN**

**PETER CASEY**

**APPLICANT**

**AND**

**KIM MCMENAMIN**

**RESPONDENT**

**JUDGEMENT of Mr Justice Nolan delivered on the 4<sup>th</sup> day of December, 2024**

**Introduction**

1. The Plaintiff in these proceedings is a well-known businessman, entrepreneur and former presidential candidate. He lives in County Donegal. He seeks damages in defamation arising out of a Facebook post made by the Defendant in April of 2023.

**Background**

2. In February of 2023, Vladimir Putin instructed the Russian army to invade Ukraine. The world was captivated and scared in equal measure. The Plaintiff, however, took a different view and immediately tried to engage with the authorities in Ukraine to see if he could offer

his services. That is very much to his credit. He visited Warsaw but was unable to get a visa into Ukraine, primarily due to his age and lack of military experience. Thereafter, he sought to assist in other ways. Through a company which he owns in Donegal called “*Claddagh Resources Ltd*”, he had access to a property known as Ludden House, Ludden, Buncrana, County Donegal.

3. The house was initially constructed as a bed and breakfast and then converted into an old peoples care home. He immediately sought to convert the property to make it suitable for women and children refugees from Ukraine and informed the people of Donegal through the media that it was his intention to distribute any profits made from the rental to the Government to the people of Donegal and the people of Ukraine.

4. To that end, significant monies were expended on the premises and the papers before the court clearly show that it was renovated to a very high standard. The building was ideal for its new purpose and with the help of Tusla, the premises was made child friendly.

5. Unbeknownst to the Plaintiff, there was another political figure in Buncrana who expressed serious opposition to the idea of non-nationals coming to the town and county. That was the Defendant, who the Plaintiff has never met.

6. The plans of the Plaintiff did not meet the approval of the Defendant, as is clear from the post which is the subject matter of these proceedings.

### **The Defamatory Post**

7. On his Facebook page, there is both public and private access to his Facebook group. To join the group, an applicant must answer a number of questions. One of these asks “*do you think moving people around and squeezing them into makeshift cubicles could be classed as inhumane and a form of human trafficking for profit? Yes or no?*”

8. It transpires that he is a member of a group known as National Alliance - Irish People and an administrator of a group called the Buncrana Community Watch which was created on the 5<sup>th</sup> of March 2023.

9. On the 25<sup>th</sup> of April 2023, a post was put up on the public side of his Facebook page.

10. It read as follows:

*“Buncrana Community Watch members were out at Ludden Proposed Provision centre at links view Ludden today. The building in question is owned by businessman Peter Casey and is smack bang in the middle of 3 private housing estates. We spoke to the workers and informed them that moving unvetted people around like cattle and then warehousing them in office cubicles for profit is akin to human trafficking and inhumane”.*

He suggested that the post be shared.

11. The Defendant sought election in the recent local elections and in his promotional literature, he states that he has been an activist for years, standing up against draconian lockdowns and more recently, against undocumented, uncontrolled mass immigration. His most recent posts state that after organising and helping what he described as *“many brave Buncrana people”*, he managed to avert 66 single men of military age being warehoused into a building beside the local schoolchildren last year. He went on to say *“although we protected our town, the rest of this beautiful country is being invaded on a daily basis, this has to be stopped because it seems like the government have gone off the rails”*.

### **The Fire**

12. In the meantime, however, something awful took place. Sad to say that this is not the first or only occasion upon which a house or property which was destined to be used for the

benefit of people seeking protection either from the brutality of Putin or other oppressive regimes around the world, has been attacked.

13. On the night of the 11<sup>th</sup> of May 2023, a fire occurred at Ludden House. The Plaintiff was away at the time, but remarkably the next day, the 12<sup>th</sup> of May, the Defendant was able to put up a photograph of damage to the upper story of the house on his Facebook page including a post which read:

*“The proposed Direct Provision in Links View Ludden Buncrana, caught fire last night around 11:00pm according to locals. Extensive damage was caused to most of it, especially second floor and severe damage to the ground floor with water, it could be an electrical fault, who knows? Gardaí and the forensic teams were there this morning and apparently there was a car found burned out in Fanan around 12 midnight. There is no reporting at all today for a mainstream or local news outlet...”*

14. He went on to complain in other posts later that day that the matter had not been reported in the main media outlets. He said for example *“please everyone share as much as possible about the building being burnt, it's deliberately being kept quiet, so as to keep promoting bringing people in, it's up to us now to reverse that... share, share, share, make this a mission now share it every day.”*

15. It certainly seems to be the case that the Defendant was very anxious that the fact of the building had been damaged should be made known and to use his own words *“to stop promoting bringing people in”*.

### **The Legal Proceedings**

16. On foot of seeing the post of the 25<sup>th</sup> of April, the Plaintiff went to his solicitor who, on the 15<sup>th</sup> of May 2023, wrote to the Defendant at his home requesting that the post be removed since it was defamatory and untrue and created a reasonable inference that the Plaintiff was

involved in illegal human trafficking and was not a person of good standing. There was no response and the post was not removed.

17. On the 26<sup>th</sup> of June 2023, the Plaintiff issued High Court proceedings. He seeks damages for defamation including aggravated and exemplary damages and a correction under Section 30 of the Defamation Act 2009, together with an injunction restraining the Defendant, his servants or agents from publishing or causing to be published the material defamatory to him, as well as an order removing the defamatory comments.

18. In the Statement of Claim, the Plaintiff repeats the post and sets out what their natural and ordinary meaning are, namely that the Plaintiff was intending to house migrants in an accommodation that was equivalent to office cubicles and therefore, unfit for human habitation, that he was intending to house migrants in inhumane circumstances, that he was involved in conduct akin to illegal human trafficking, that he was involved in conduct which was inhumane, that the plaintiff treated or has treated people like animals and he is a person who prioritises profit over human welfare, is not of good standing and is a person of reprehensible morals.

### **Subsequent Court Orders**

19. Having served the proceedings upon the Defendant, there was silence. No appearance was entered nor were any steps taken by the Defendant to defend his position. On the 27<sup>th</sup> of November 2023, Coffey J. entered judgment in default of appearance and set this case down for hearing so that the Plaintiff's damages could be assessed. That is the hearing that is before this court. However, that was not the end of the Plaintiff's difficulties in that the Defendant has evaded service. On the 11<sup>th</sup> of March 2024, O'Donnell J. made an order allowing service of the order of Coffey J. to be served by ordinary prepaid post and also by pinning a copy of the documents including pinning his order to the door or gate of the Defendant's property. A further

order was made by O'Donnell J. on the 24<sup>th</sup> of June 2024, for the purposes of serving the documents for execution of the judgment upon the Defendant in the same manner.

**Are the Words Defamatory?**

20. While judgment has already been obtained against the Defendant, I think it appropriate that I should decide whether the words are in fact true and if they are not true, whether they are defamatory. I am satisfied that the people who were intended to reside at the property were not unvetted, but were women and children fleeing from the appalling atrocities which Putin's government imposed upon the people of Ukraine. Secondly, I am satisfied that the premises in question was nothing like office cubicles and in fact, was very fine accommodation.

21. Thirdly, I am satisfied from the evidence of the Plaintiff himself that it was never his intention or that of his company to make a profit, and indeed any monies that were to be made over and above the expenses, were to be shared with the people of Donegal and the people of Ukraine.

22. Fourthly, I am satisfied that what was intended to take place was not human trafficking, but in fact, a very genuine attempt on the part of the Plaintiff to try and relieve the pain and suffering of the women and children of Ukraine.

23. Finally, I am satisfied that it was far from inhumane. Therefore, in all the circumstances, 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.

### **Damages - The effect upon the Plaintiff**

28. The Plaintiff has given evidence of how this matter has affected him. He was clearly distressed and although he is a public figure, he was somewhat resistant in expressing to the court just how much it did affect him. It is clear however that it was very stressful, hurtful and upsetting and affected himself and his family, including his daughter who had to be hospitalised.

29. However, the Plaintiff is the only person who I need consider in order to deal with the issue of damages. As Mr. McAllister, who also gave evidence, said the Plaintiff was trying to do some good and the Defendant wanted to undermine that good work. The Defendant was asked to take down the posts but refused for many months.

30. 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. In this case, there are none.

**31.** I am satisfied that the Plaintiff has a fine reputation in this society which has been harmed by these defamatory remarks. I am struck by the evidence of Mr. McAllister that the post in question remained in place up until June of 2024, being only removed sometime between June and August of 2024, notwithstanding the court order of Coffey J. Therefore, for at least nine months after the order of the court, the posts were still in place. This is also something that I can consider in relation to the issue of damages. This is not a case of a defamatory mark being publicised and then taken down relatively quickly. The defamatory remarks were in situ for over nine months after the court order. Thus, the harm to the Plaintiff continued for all that length of time after the court order, but in fact had been in place for some one year and three months at least.

**32.** It is not the case of the Plaintiff that the Defendant caused the fire. There was no evidence that the Defendant caused the fire. The evidence that is before the court is that the Defendant was very anxious that the general media would publicise the fact that there was a fire at their location where he said *“it's deliberately being kept quiet, so as to keep promoting bringing people in, it's up to us now to reverse that”*. He did of course repeat the defamatory remarks where he described the house as a direct provision center when it was no such thing, another aggravating factor.

**33.** Mr. Reilly BL on behalf of the Plaintiff, has brought me to the case of *Higgins v the Irish Aviation Authority* [2022] IESC 13, where McMenamin J. set out general categories or brackets of damages in defamation cases. It seems to me that this case falls within the parameters of the second category which, while described as medium range, still has had a significant impact upon the Plaintiff. In all those circumstances, it seems to me that the Plaintiff is entitled to an award of damages in the sum of €120,000.



### **Section 32 Aggravated and Punitive Damages**

**34.** It is patently clear that the Defendant has played ducks and drakes with the Plaintiff and the court. As noted above, the court order of Coffey J. directed that Defendant remove the offending posts. However, the evidence of Mr. George McAllister was to the effect that they remained in place at least up until June of 2024. The Defendant was asked to take down the posts but refused for many months. In my view, that is a breach of a court order and a contempt of the court process.

**35.** I am satisfied that service has been affected of all relevant documents at all relevant times and that the Defendant was fully aware of this case, of the steps taken to try and serve him, and of the hearing of the action. He has refused to defend the case, and therefore must face the consequences of his actions.

**36.** This then brings me to the issue which appears in the pleadings and is dealt with under Section 32 of the Defamation Act 2009, namely aggravated and punitive damages. The section states that where the court finds that the Defendant has conducted his defense in a manner that aggravated the injury caused to the Plaintiff, the court may in addition make an award of punitive damages.

**37.** It seems to me that I can take into consideration the failure of the Defendant to remove the defamatory remarks, notwithstanding a court ordered to do so. I think I can also take into consideration the complete failure of the Defendant to engage with these proceedings, in circumstances where he clearly was aware that they had been issued and that judgment had been marked against him. All of these matters are aggravating matters and in particular, the failure to remove the hurtful, damaging and defamatory remarks. In those circumstances, I will make an award of aggravation damages in the sum of €20,000.

**38.** The final issue that I need to address is making an order pursuant to Section 30 of the Act in circumstances where I find that the statement of which this action was brought was

defamatory to the Plaintiff and that the Defendant has no defense to the action, all things which I have found. In those circumstances, I shall make the orders sought in the pleadings.