

THE HIGH COURT

[2022] IEHC 333

[Record No. 2007/7939P]

BETWEEN

KEVIN TRACEY

PLAINTIFF

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,
IRELAND, THE ATTORNEY GENERAL, THE COMMISSIONER OF AN
GARDA SÍOCHÁNA AND THE DIRECTOR OF PUBLIC PROSECUTIONS
AND THE COURTS SERVICE AND KEITH LAMBE

DEFENDANTS

RULING of Ms. Justice Reynolds delivered on 30 May, 2022

1. In this application the plaintiff seeks an order for discovery and inspection of documents as set out in terms of paragraphs (1) and (2) of his notice of motion.
2. Further, Mr. Tracey, seeks an order in the following terms: -
“An Order that anything published by any Defendant (specifically the Courts Service in the present case) is deleted and expunged from any record (including paper and electronic) that may be seen or might otherwise be capable of being made available to the jury or any or all of its members before the commencement or during the trial in the matter.”

3. Finally, Mr. Tracey seeks an order that the defendants provide to him their intended list of witnesses for the impending jury trial. This issue has now been resolved between the parties on a consent basis.
4. The prolonged and protracted history of the within proceedings is comprehensively set out in the ruling (dated 19 June, 2019) and judgment (dated 25 October, 2019) of Eagar J. and for this reason I do not propose to regurgitate same.
5. The outstanding issues of discovery and inspection in the case were conclusively dealt on 19 June, 2019 pursuant to the written ruling delivered on that date.
6. At paragraph 25, the court stated:
.....“the court is satisfied that Mr. Tracey had an opportunity to inspect the documents but had not sought to do so and the court is not going to put the matter back for any further time but is going to list it for jury action call over list for the 20th June 2019. Mr. Tracey objected to this but the court is satisfied to do so.”
7. It is abundantly clear that the court had resolved all outstanding issues as between the parties at that stage and sent the matter forward to the list to fix dates with a view to setting a trial date.
8. Whilst Mr. Tracey had objected to this course of action, he did not pursue an appeal against the ruling.
9. However, he subsequently complained of deficiencies in the affidavits of discovery furnished by the State defendants and the Courts Service.
10. These matters were, *inter alia*, the subject of a further judgment of Eagar J. delivered on 25 October, 2019 in which the court was also concerned with a recusal application.

11. At paragraphs 91 and 92, Eagar J. refers to the affidavits of discovery furnished by the State defendants' and the Courts Service and noted as follows:

"Mr. Tracey was unsatisfied by the affidavits of discovery. However, he did not seek further and better discovery."

12. It is clear from the ruling and judgment that the issues of discovery and inspection have been comprehensively dealt with by the court. Whilst Mr. Tracey may have been unhappy with the outcome, he did not pursue an appeal.

13. The court subsequently sought to empanel a jury to hear the proceedings. However, the trial did not proceed in circumstances where there was an insufficient number of jurors available.

14. Notably, Mr. Tracey made no application at that stage to adjourn the proceedings, nor were the alleged issues of outstanding discovery and/or inspection raised. It is simply not open to him to seek to relitigate the issues at this late stage.

15. In respect of his application to have *"anything published"* by the Courts Service *"deleted and expunged from any record"*, Mr. Tracey sets out at paragraph 9 of his affidavit the basis for this as follows:

"The publication of discovery judgments for instance is a perversion of the course of justice as, being available to the public including all jury members, it prejudices a fair trial on the matter".

16. On the contrary, the publication of judgments serves a wholly legitimate and vital purpose in ensuring openness and transparency in the legal process and facilitating the proper administration of justice. Put simply, this assertion by Mr. Tracey is plainly misconceived.

17. In any event, a jury empaneled in due course to hear Mr. Tracey's case will principally be concerned with resolving the factual issues in dispute between the

parties and will not be troubled with pre-trial issues previously determined by the court.

18. In all the circumstances, I must dismiss Mr. Tracey's application and refuse the reliefs sought. The matter will therefore proceed in the next civil jury call over list.

19. Further, I am satisfied that this is classic case where costs should follow the event in circumstances where the application has been dismissed in its entirety.

However, should Mr. Tracey wish to be heard on the issue he can liaise with the court's registrar and the court will sit again to deal with that aspect of the matter.

Unapproved 30 May '22
Liane Reynolds