

NA HARD-CHÚIRTE
THE HIGH COURT

RECORD No. 2012 / 8487P

Between

Arnaud D. GAULTIER

Plaintiff

and

**THE REVENUE COMMISSIONERS,
THE MINISTER FOR FINANCE,
THE COURT SERVICES,
THE MINISTER FOR JUSTICE,
IRELAND AND THE ATTORNEY GENERAL**

Defendants

and

**THE COMPTROLLER AND AUDITOR GENERAL &
LOIRE VALLEY LIMITED**

Notice Parties

<p>OUTLINE LEGAL SUBMISSIONS on behalf of Arnaud D. GAULTIER SWORDS</p>
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<i>I. Prologue</i> _____	3
<i>II. Introduction</i> _____	4
<i>III. Preliminary issues</i> _____	5
A. Determination of Court Impartiality _____	5
1. Assessment of Court Impartiality at previous hearings _____	5
2. Conditions of Impartiality in any matter brought by a litigant in person where the other party is represented by Counsel. _____	6
B. Disallowance of the Grounding Affidavits of the Defendants _____	7
<i>IV. background and history of the proceedings</i> _____	8
<i>V. The Relevant Statutory Provisions -</i> _____	10
A. Right to an effective remedy _____	10
1. The Constitution of Ireland _____	10
2. (European) Convention for the Protection of Human Rights and Fundamental Freedoms, 1950-2010 _____	10
B. Companies Act 1963-2009 _____	10
<i>VI. The Pleadings</i> _____	11
A. Relief sought _____	11

B. Legal Principles - General Considerations	11
C. Grounds for refusing Defendants' motion	11
<i>VII. General Conclusion</i>	<i>13</i>

I. PROLOGUE

1. I, Arnaud D. Gaultier, Plaintiff in these proceedings, representing myself, solemnly declares that all submissions brought before this Honourable Court are made in good faith and believed to be true. The same applies to any evidence brought before this Honourable Court.

As a litigant in person, all the below expressions in those submissions are referring to myself: “the applicant”, “I”, “my”, “our”, “ours”. Loire Valley Limited, 2nd named notice party in these proceedings, would be referred as the Company.

2. As a litigant in person, I have to outline that since the beginning of these proceedings, my knowledge and understanding of the rules of the Superior Courts is increasing on an on-going basis.

II. INTRODUCTION

3. Three motions are before the Court in the within matter. In the order in which they issued, the first is the Plaintiff's motion for interlocutory relief against the 1st named Defendant. The second is the 1st named Defendant's motion to strike out the proceedings. The third is the 2nd to 6th named Defendants' motion to strike out the proceedings.

4. These submissions will first deal with Preliminary issues, including the fact that the two motions to strike out the proceedings can not be considered as interlocutory motions and as such, their grounding affidavit should not include any belief as per rule 4 of Order 40 of the Rules of the Superior Courts.

5. Then, the background and history of the proceedings, as well as the history of some related proceedings will be presented. The submissions will then address the applications to strike out the proceedings, and finally the Plaintiff's motion for interlocutory relief though the Plaintiff has requested a short adjournment on this matter in order to allow time to file a replying affidavit. In the alternative, the Plaintiff would request to strike-out his motion with liberty to re-enter.

III. PRELIMINARY ISSUES

A. Determination of Court Impartiality

6. It is important to start with reference to the following article of the Convention for the Protection of Human Rights and Fundamental Freedom 1950-2010.

Article 6 of the Main Act

*“Right to a fair trial. 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an **independent and impartial tribunal established by law.***

1. Assessment of Court Impartiality at previous hearings

7. First, we are going to illustrate how litigant in person ([colloquially] known as lay-litigant) can be dealt with in the Superior Courts of the Republic of Ireland, in some worst case scenarios, at either *Ex-Parte* applications, [Motion on Notice] and Hearings.

a) Order of Mr Justice Murphy dated 19th July 2012

8. In the matter of Gaultier -v- The Registrar of Companies [2013] IEHC 111, the applicant made an *Ex Parte* application before Mr. Justice Murphy for an amendment of his “Statement of ground” adding the words “injunctive interim” in its paragraph 6 before the word “relief”. However, Mr. Justice Murphy issued an order not relevant to the applicant’s application.

9. This order was based on hearsay from Ms Justice Laffoy, that the Applicant was in Contempt of Court when he first applied before him on the 5th July 2012, for leave to apply by way of an application for judicial review. This was making reference to a former application, the Applicant made *Ex Parte* before Ms Justice Laffoy on the 18th June 2012, reference 2012/911A where he was refused “a relief to issue the Plenary Summons as exhibited and/or documented in Court this day”.

10. The notable fact, which was blatantly ignored, is that the Application of the 5th July 2012 was made in the Chancery list, in the same Court and before the same registrar that his application of the 18th June 2012. The fact that Mr. Justice Murphy was sitting in stead of Ms Justice [Laffoy] was a matter of chance or, as it appears, maybe of God’s will. By itself, this fact alone should have vindicated the Applicant’s good name. But it did not.

11. In addition, having been unable to force the Court Registrar to amend Mr Murphy’s order as to match his application, this order was going to become a most damaging factor in the proceedings to come.

b) Order of Mr Justice Hedigan dated 21st November 2012

12. In the matter of Gaultier -v- The Registrar of Companies [2013] IEHC 111, the Applicant attended his motion, on the 21st November 2012, before Mr Justice Hedigan despite the huge discrepancy between his Notice of Motion and his grounding affidavit. He was very unprepared as he did not have not any written legal submissions.

13. And, in the absence of any written legal submissions, the Applicant was surprisingly refused to present any verbal submissions. Following the above-

mentioned damaging order, Mr Justice Hedigan made an order after a 15 minutes recess on the ground of the order of Mr Justice Murphy of the 19th July regarding an *Ex Parte* application the Applicant did not make.

c) Order & Judgment of Ms Justice Dunne dated 8th March 2013

14. In the matter of Gaultier -v- The Registrar of Companies [2013] IEHC 111, on the 5th March 2013, at the final hearing of this Judicial Review, the Honourable Ms Justice Dunne turned toward Counsel for the Respondent to ask if “there was any liberty in the Companies Acts to issue any of the relief sought by the Applicant [ndrl: litigant in person]. The Counsel surprisingly stated they were none.

15. In her following judgement of the 8th March 2013, the Honourable Ms Justice Dunne demonstrated partiality as my submissions on Human Rights (including paragraphs 3, 4, 5, 9, 10, 12, 13, 16 and 60) were neither accepted nor refuted, they were just [not mentioned]. Also, in its entirety, the judgement, by itself, is short of the rules of Essay writing, by not clearly presenting the view of both parties and their respective submissions, before reaching a conclusion. This is surely short of the expected standards of Judges in any Democratic Country with an Independent Judiciary. The fact that the learnt judge has since been promoted to the Supreme Court put the entire judiciary of the Republic of Ireland into disrepute. This illustrates that Article 34.5.1 of the Constitution is not sufficient in ensuring the constant impartiality of Judges. This is under appeal which has been transferred from the Supreme Court to the Court of Appeal

d) Order of Mr Justice Tony O’Connor dated 3rd April 2017

16. In the current proceedings, at the hearing of my Motion to rename the Grounding affidavit of the Plenary Summons into a Statement of Claim to reflect its true nature and content. This motion was refused on hearsay from Counsel[s] for the 1st to 6th named Defendants, while my affidavit, a written evidence, was not read. This order is under appeal before the Court of Appeal.

2. Conditions of Impartiality in any matter brought by a litigant in person where the other party is represented by Counsel.

17. In the Republic of Ireland, Judges of the Superior Courts are former solicitors or former barristers, who had practised as such for over 20 years. As such, they have created and kept ties with their former peers and peerage.

18. As a litigant in person, it is difficult to establish such ties. In order to do so, a preliminary statement as the one below, may be considered as appropriate for any sitting Judge in such matters:

“I, as former member of the Bar or the Law Society, swears having no former connections with neither the barrister nor the solicitor representing the “other party”. This includes:

- *having never met casually;*
- *having never met professionally;*
- *having not attended the same school at the same time.”*

19. In the alternative, the litigant in person should be made aware of the extent of any existing connection and be in a position to decide if he considers appropriate to

ask for the judge to recuse oneself on this matter or to request an alternate declaration: “I take oath not to favour any of the submission[s] and / or evidence[s] brought by the said barrister / [solicitor] and to take in equal considerations any submission and evidence brought in by the [party] litigant in person.”

20. In the alternative, a litigant in person might be automatically entitled to benefit of the Attorney general’s scheme which I only got aware of two weeks ago.

B. Disallowance of the Grounding Affidavits of the Defendants

21. As the motion for striking-out those proceeding[s] are being final, they can not be qualified of being interlocutory. As such, pursuant to the rule 4 of Order 40 of the Rules of the Superior Courts, their grounding affidavits of those motion[s] should not refer to any belief.

RSC. O40.r4 “4. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of any affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall not be allowed.”

22. In addition, the fact that those grounding affidavits are referring to the same wrong Plenary Summons when the amended versions were served to all parties. Counsels for the parties have been advised of such at the end of [last] January. Having not made any effort or attempt to amend such, it is a deliberate waste of the most precious time of this Honourable Court.

23. In those circumstances, those grounding affidavits should be disallowed and the motions of the Defendants’ motions should be strike out in the absence of any ground supporting them.

IV. BACKGROUND AND HISTORY OF THE PROCEEDINGS

24. This is a matter where a single member company, Loire Valley Limited, the 2nd named Notice Party has been refused a fair redress for the illegal detention and seizure of wine for a value in excess of €50,000, fifty thousands Euro in August September 2006. Acting diligently, his sole-member attempted negotiations in 2008. During such, the 1st named Defendant acknowledge [its] wrong-doing, but **refused to fully redress the 2nd named Notice Party** by offering an unsubstantiated take-it or leave[-it] offer of €105,000, two years after it was put out of business.

25. It is to be noted that during the 2008 negotiations, the Plaintiff facilitated the 1st named defendant's request of transferring the legal ownership of half the above-mentioned seized wine as it was the object of a retention title clause from the company's suppliers. It is alleged that at all time during those negotiations, it was in my dual capacity of sole member & representative of the Company. In the alternative, it is alleged that after the above-mentioned transfer, I was only representing myself while its director-secretary was representing the Company.

26. The Company has refused this final offer and sought to initiate proceedings, but his sole member was prevented to do so by lack of resources to access a legal team. In December 2011, eight months before this matter become statute barred, the sole-member, Plaintiff in these proceedings had to put his business activities on stand-by and to learn its way to bring the litigation by himself.

27. In this context, in August 2012, the 3rd named defendant refused The Plaintiff to file proceedings in his name and in the name of the Company. [So, the Plaintiff] brought the litigation in his name only, seeking for a full redress for himself and his Company.

28. In the mid-time (Spring 2012), the Company got dissolved by the Companies Registration Office. This dissolution was sought to be quashed by way of Judicial Review which was refused. In her Judgment, the learnt judge found: "*There is simply no evidence to support this allegation made by the applicant. It is disgraceful and scurrilous allegation and one that should not have been made*".

29. In January 2015, the Chief State Solicitor initiated a Summons to Tax regarding the above-mentioned matter while the same matter is subject to an appeal. It is considered as an attempt to intimidate the Plaintiff in bringing or pursuing any further proceedings.

30. However, it has been [very much] appreciated that item 16 of the Bill of Costs read "*3/8/12 - Received detailed report from the Office of the Revenue Commissioners regarding its involvement with the Applicant and the Notice Party*". A detail report issued within 20 days of the initial application. This shows obvious ties between the Revenue Commissioners and the Chief State Solicitor's office and support the allegation such report is likely to have been obtained by the Chief State Solicitor's office on behalf of the Registrar of Companies before the administrative dissolution of the Company.

31. Since initiating these proceedings, as his knowledge of the Rules of the Superior Court[s] has increased, the plaintiff has successfully:

- ✓ initiated plenary summons before the matter being statute barred;
- ✓ answered the undue request of statement of claim from the 1st named defendant while refusing the same for the solicitor to the 2nd to 6th named defendants¹.
- ✓ amended his Plenary Summons as stated in his original summons for completeness.

32. In addition, since the 23rd Day of January 2017, the Plaintiff is aware that a Statement of Claim is equivalent to a Grounding Affidavit. As such, he has attempted but failed to date to validate his affidavit setting ground for Plenary Summons to be (or to be part of) his Statement of Claim. It is alleged that the requests of the defendant[s] for a **Statement of Claim were unnecessary**.

33. To date, no defence has been delivered from the 1st named defendant since he was served with the unnecessary Statement of Claim on the 22nd October 2012. The 2nd to 6th named defendants have used my refusal in delivering an unnecessary Statement of Claim for not delivering a defence, with no movement since their motion before The Master, who ordered an extension of time to deliver a statement of claim of the 20/11/13.

34. On the 30th of May 2016, the Plaintiff served all defendants with a notice of intention to proceed.

35. In August of 2016, the 1st named defendant organised a warrant from the Revenue Sheriff [against the Plaintiff] while knowing that [he] did not owe the Revenue anything. The solicitor for the 1st named Defendant was asked to set it aside by reasons of the current proceedings. Such was refused giving no consideration to the facts that:

- ❖ my home was privileged by reasons of the herein proceedings;
- ❖ Plaintiff's assets in excess of any alleged liability were already and unlawfully in custody of the 1st named Defendant;
- ❖ [The Plaintiff's] wife was 8 months pregnant.

36. I say that the above was [an] attempt to slow down the proceedings herein and that as such the 1st named Defendant is in contempt of the Court

¹ as the Chief State Solicitor's Office for failure to demonstrate any reason why he should not represent the 1st named defendant and take over from the Revenue Solicitor's Office

V. THE RELEVANT STATUTORY PROVISIONS -

A. Right to an effective remedy

1. The Constitution of Ireland

Article 40

3. 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

2. (European) Convention for the Protection of Human Rights and Fundamental Freedoms, 1950-2010

Irish Law by European Convention on Human Rights Act 2003 (including Protocol 1, 4, 6 & 7).

Main Act - Rome, 4.XI.1950

“Article 13 - Right to an effective remedy. Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

B. Companies Act 1963-2009

Article 12B(3) of the Companies (Amendment) Act 1982
as amended by the Companies (Amendment) (No2) Act 1999:

“12B(3) If any member, officer or creditor of a company is aggrieved by the fact of the company's having been struck off the register under section 12(3) or 12A(3) of this Act, the court, on an application made (on notice to the registrar of companies, the Revenue Commissioners and the Minister for Finance) by the member, officer or creditor, before the expiration of 20 years from the publication in Iris Oifigiúil of the notice referred to in section 12(3) or, as the case may be, 12A(3) of this Act, may, if satisfied that it is just that the company be restored to the register, order that the name of the company be restored to the register, and, subject to subsection (4) of this section, upon an office copy of the order being delivered to the registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off or make such other order as seems just (and such other order is referred to in subsection (4) of this section as an ‘alternative order’).

VI. THE PLEADINGS

A. Relief sought

37. The plaintiff seeks any relief to carry on and come to term with these proceedings in the most expeditious manner and so oppose any motion to strike-out these proceedings and his motion.

B. Legal Principles - General Considerations

38. In *Gladys Ryan v The Attorney General* [1965] I.R. 294, the Honourable Mr Justice Kenny states at page 311 that the article 40 of the Constitution of Ireland

“I have to anticipate a later part of this judgment by saying that, in my opinion, this general guarantee relates not only to the personal rights specified in Article 40 but to those specified personal rights and other personal rights of the citizen which have to be formulated and defined by the High Court.”

39. With due regard to *Ferrazzini v. Italy* (2002) 34 E.H.R.R. 45, paragraph 27, the Article 6.1 of the European Convention on Human Right should apply

“[...] This has led the Court to find that procedures classified under national law as being part of «public law» could come within the purview of Article 6 under its «civil» head if the outcome was decisive for private rights and obligations, in regard to such matters as, to give some examples, the sale of land, the running of a private clinic, property interests, the granting of administrative authorisations relating to the conditions of professional practice or of a licence to serve alcoholic beverages [...].”

40. In *The State (Quinn) v. Ryan* [1965] I.R. 70, the Chief Justice, O Dálaigh stated:

“It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of these rights. As a necessary corollary it follows that no one can with impunity set these rights at nought or circumvent them, and that the Courts' powers in this regard are as ample as the defence of the Constitution requires. Anyone who sets himself [on] such a course is guilty of contempt of the Courts and is punishable accordingly.”

C. Grounds for refusing Defendants' motion

41. As legal owner of half the wine seized, I have full entitlement to issue proceedings in my own name.

42. Loire Valley Limited was a single member company as defined by the Single-Member Private Limited Liability Companies Council Directive No. 89/667/EEC of 21 December 1989. Its shares were owned by one sole member, myself. As such, I am not a shareholder of Loire Valley Limited but its rightful owner, i.e. I am not sharing its ownership with anyone. In addition, the fact that it is dissolved should allow any member, officer or creditor to bring litigation in the name of the Company pursuant to Article 12B(3) of the Companies (Amendment) Act 1982. For those reasons, I am also fully entitled to represent the Company in these proceedings.

43. In the alternative, when the Company became dissolved pursuant to the Companies Act 1962, all of the assets of the company were vested in the 2nd named Defendant pursuant to the State Property Act 1954 and all its liabilities were vested into me. In that regard, the Companies Act is wrong, as such will be an infringement of article 1 of the 1952 Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms, as taking away without any due regard to the general interest. The Chief State Solicitor Office acting for the Registrar of Companies has failed to demonstrate at any stage that the dissolution of the Company was made in the general interest.

VII. GENERAL CONCLUSION

44. In the alternative, the motions of the Defendants having been initiated in excess of 2 to 3 years after any correspondence in relation to these proceedings, but just few months after a Notice of Intention to proceed, it might be the case that the delay in issuing such is fatal. It might also be the case that those motions are frivolous and vexatious.

45. In addition, in his separate Affidavit of John Dunlea replying to the grounding affidavit of my motion, there is a very high presumption of perjury. This affidavit should therefore be disallowed. And in the absence of any defence to my grounding affidavit the orders sought in my motion should be granted. In the alternative, I would ask for my motion to be adjourned. In the alternative, I would ask for my motion to be stroke out with liberty to re-enter.

46. The Plaintiff reserves the right to lodge supplemental submissions or present such orally.

Arnaud D. Gaultier Swords
23rd June, 2017