

THE HIGH COURT

2010 2253 P

BETWEEN/

PAUL KIERNAN

Plaintiff

- and -

J. BRUNKARD ELECTRICAL LIMITED

And

QUEBEC CONSTRUCTION LIMITED

Defendants

**Judgement delivered 23rd of November 2011 White Michael J.**

This matter comes before the Court by way of Notice of Motion issued on behalf of the Second Named Defendant Quebec Construction Limited on the 6th April, 2011 seeking a Dismissal of the Plaintiff's claim on the grounds that it is statute barred, or in the alternative setting the matter down for trial as a preliminary issue. As no facts are in dispute, it is appropriate to deal with the matter on this motion.

The Plaintiff Paul Kiernan caused a Personal Injury Summons to be issued on the 5th March, 2010 alleging negligence which caused him personal injury.

The Plaintiff is an Electrician and was working on a building site at Pimm Street, in the City of Dublin, when he alleges he was injured on the 11th June, 2007. The First Named Defendants were Electrical Contractors on the site and the employer of the Plaintiff and the Second Named Defendants were the main Contractors.

Section 3 (1) of the Statute of Limitations Amendment Act 1991 as amended by Section 7 (A) of the Civil Liability and Courts Act 2004 provides that an action for personal injuries caused by negligence shall not be brought after the expiration of two years from the date on which the cause of action accrued or the date of knowledge if later.

Section 50 of the Personal Injuries Assessment Board Act 2003 provides that

**" In reckoning any period of time for the purposes of any limitation period in relation to a relevant claim specified by the Statute of Limitations 1957 or the Statute of Limitations (Amendment) Act 1991, the period beginning on the making of an Application under Section 11 in relation to the claim and ending 6 months from the date of issue of an Authorisation under, as appropriate, Section 14, 17, 32 or 36, Rules under Section 46(3) or Section 49 shall be disregarded".**

The Plaintiff instructed his Solicitors on the 28th June, 2007 and confirmed the accident occurred in the course of his employment with the First Named Defendant on a Quebec Construction site. A Company's Office Search carried out on the 2nd July, 2007 revealed that Quebec Construction was a limited liability company with a registered office at 54/55 Marrowbone Lane, Dublin 8.

On the 27th May, 2009 the Plaintiff's Solicitors faxed an Application Form, a copy Medical Report and copy cheque to the Personal Injuries Assessment Board at 1.58p.m. The Fax was successfully sent. On the same date the originals of these papers were sent by Registered Post to the Personal Injuries Assessment Board at P.O. Box 8, Clonakilty, Co. Cork.

The Board by letter of the 27th May acknowledged receipt of the documentation, but stated that additional information was required before the Application could be accepted as complete. This letter was received by the Plaintiff's Solicitors on the 2nd June, 2009. The Board wrote again on the 10th June, 2009 to the Plaintiff's Solicitors confirming the Application was completed on the 29th May, 2009 for the purposes of Section 50 of the Personal Injuries Assessment Board Act 2003.

On the 19th August, 2009 the Board issued an Authorisation pursuant to Section 14 of the Act, allowing the Plaintiff to bring legal proceedings. These proceedings were not issued until the 5th March, 2010. The Authorisation was received by the Plaintiff's Solicitors the following day on the 20th August, 2009.

The Second Named Defendants allege that the relevant dates for the operation of Section 50 of the Personal Injuries Assessment Board Act 2003 were the 29th May, 2009 and 19th August, 2009. The Plaintiff contends the relevant dates for the operation of Section 50 were the 27th May, 2009 and the 20th August, 2009.

The Plaintiff also contends that the date of knowledge of the accident was the 2nd July, 2007 the date of the Company Search, and relies on Section 2 of the Statute of Limitations (Amendment) Act 1991 as follows

**2.—(1) For the purposes of any provision of this Act whereby the time within which an action in respect of an injury may be brought depends on a person's date of knowledge (whether he is the person injured or a personal representative or dependant of the person injured) references to that person's date of knowledge are references to the date on which he first had knowledge of the following facts:**

**( a ) that the person alleged to have been injured had been injured,**

( b ) that the injury in question was significant,

( c ) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty,

( d ) the identity of the defendant, and

( e ) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;

and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(2) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

( a ) from facts observable or ascertainable by him, or

( b ) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek.

(3) Notwithstanding subsection (2) of this section—

( a ) a person shall not be fixed under this section with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice; and

( b ) a person injured shall not be fixed under this section with knowledge of a fact relevant to the injury which he has failed to acquire as a result of that injury.

The Second Named Defendant also relies on Rule 3 (3) (b) of Statutory Instrument Number 219/2004 Personal Injuries Assessment Board Rules 2004...

**3) In relation to a relevant claim, the date of--**

(a) the receipt by the Board of an application under section 11 of the Act for the purposes of section 13 of that Act, and

(b) the making of an application under section 11 of the Act, for the purposes of section 50 of that Act,

**shall be the date on which the application in a form specified in sub rule (1)(a), containing the information specified in sub rule (1)(b) is acknowledged in writing as having been received by the Board.**

#### **THE AUTHORISATION.**

Section 50 of the Act states the period to be disregarded ends six months from the date of issue of an Authorisation under the various Sections recited namely Sections 14, 17, 32, 36, 39, rules pursuant to 46 (3), and section 49. The Authorisation issued on the 19th August, 2009, pursuant to Section 14, and the Plaintiff's Solicitors received the Authorisation in the course of post, the next day the 20th August, 2009. For the purpose of this hearing, the relevant date was the date of the Authorisation the 19th August 2009. I am not dealing with any undue delay from the issue to the receipt of the Authorisation.

#### **DATE OF KNOWLEDGE**

Section 2 of the Statute of Limitations (Amendment) Act 1991 must be construed strictly as certainty is important.

Section 2 (2) of the Act includes knowledge which the Plaintiff might reasonably have been expected to acquire (A) from facts observable or ascertainable by him and (B) from facts with the assistance of expert advice.

The Plaintiff knew it was a Quebec Construction site. The only extra information he acquired from the Company's Office Search was that it was a limited liability company and the address of the registered office. I have no doubt that the date of knowledge of the claim was the date of the accident the 11th June, 2007.

#### **MAKING OF CLAIM**

Section 50 states "the period begins in the making of an Application under Section 11 in relation to the claim".

The rules state "the making of an application under Section 11 of the Act, for the purposes of section 50 of that Act, shall be the date on which the application in a form specified in sub rule(1)(a) containing the information specified in sub rule(1)(b) is acknowledged in writing as having been received by the Board.

In my opinion there is a conflict between the two. In construing when the claim was made the Court must have regard to the Act in preference to the Rules made pursuant to the Act. This is clear from the Case Law precedent.

In *Frascati Estates Limited V Marie Walker* [1975] IR P177 at Page 187 Henchy J in the Supreme Court Judgement stated

**"Much of the necessary procedure is laid down by regulations made pursuant to the Act, but these I ignore in**

**determining the scope of the Act. As Lord Diplock said in the context of another Act "It is legitimate to use the Act as an aid in construction of the regulations. To do the converse is to put the cart before the horse" Lawson – v- Fox [1974] A.C. 803, 809.**

Examining the ordinary meaning of "**making of an Application**" the essential components were in place after the fax had been successfully delivered on the 27th May, 2007. The Board had a copy Application Form and a copy of the Medical Report. The payment was not made but a copy of the cheque was in the Board's possession and the original cheque was sent by registered post on the 27th May, 2009 for the appropriate fee.

The Court comes to the conclusion the appropriate date in respect of the making of a claim for the purposes of the Statute was the 27th May, 2009.

In accordance with Section 50 of the Personal Injuries Assessment Board Act 2003 the period from the 27th May, 2009 to the 19th February, 2010 should be disregarded for the purposes of the Statute.

The commencement date for the statute to run was the 11th day of June 2007.