

## THE HIGH COURT

2001 No. 6543P

BETWEEN

WALTER CROKE

PLAINTIFF

AND  
WATERFORD CRYSTAL LIMITED AND  
IRISH PENSIONS TRUST LIMITED

DEFENDANTS

**Judgment of Mr. Justice Roderick Murphy dated the 28th day of July, 2006.****1. Motions before the Court**

This is the first of five motions for directions regarding the trial of the action. Similar actions are referred to in the pleadings.

The motion is that of the second named defendant (IPT) who sought directions pursuant to its notice of motion dated 14th November, 2005 in relation, *inter alia*, to its application for:

(c) An order directing the trial of an issue as to whether the plaintiffs in the relevant proceedings, in their respective replies, are entitled to plead and rely on the provisions of sections 44 and 71 of the Statute of Limitations, 1957, together with all necessary ancillary orders and directions [for] the due determination of that issue.

(d) An order directing the trial of an issue as to whether the claims of the plaintiffs in the relevant proceedings are, as against IPT, statute barred, together with all necessary ancillary orders and directions for the due determination of that issue.

(e) Subject to the determination of the issues as to whether the plaintiffs are entitled to plead sections 44 and 71 of the Statute of Limitations, 1957, and as to whether the claims are statute barred, directions in respect of (pleadings, identification of issues, discovery and submissions).

**2. Background**

2.1 The plaintiff was from 9th March, 1965 to 23rd October, 1992 a member of the Waterford Pension Scheme the trustees of which were IPT. He had accepted a redundancy package in 1999.

2.2 The plaintiff's action was but one of almost 350 similar actions against the defendants by former employees of Waterford who had common legal representation arising from the same essential factual background. The grounding affidavit of Peter Law, sworn on 20th October, 2005 in connection with the plaintiff's motion for discovery gives details of the complex history of the matter and an overview of the nature and categories of the claims.

Proceedings commenced by way of plenary summons on 3rd May, 2001 with a statement of claim delivered on 14th January, 2002.

IPT delivered a notice of particulars on 22nd February, 2002 which was replied to on 22nd May of that year together with the defence. A notice for further and better particulars was raised by IPT on 17th July and replies furnished on 30th September, 2002. IPT applied for orders to try the preliminary issues in February 2003 after requesting discovery in December, 2002.

On 26th June, 2003 the High Court (Smyth J.) ordered a trial of a preliminary issue of whether the plaintiff's claim was statute barred and whether the claim should be struck out under the rules or the inherent jurisdiction of the court and 28th October the matter was set as the date for the trial of that issue.

In October, 2003 the plaintiff brought applications to amend his statement of claim which was refused by Smyth J. on 20th April, 2004. A notice of appeal issued. On 26th November, 2004 the Supreme Court refused the plaintiff leave to amend his statement of claim so as to allege fraud against IPT but permitted him to deliver a reply and the directions appeal were dismissed by consent on 7th July, 2005, having been largely rendered moot by reason of the changes.

The plaintiff's claim had included an allegation that the first named defendant (Waterford) was at all material times guilty of fraud and/or fraudulent breach of trust and/or fraudulent misrepresentation and/or deceit and/or dishonesty. Particulars thereof included a claim that Waterford had made representations to the plaintiff with the intent and knowledge that the plaintiff would rely on them and would be induced thereby to accept a voluntary redundancy package which was being offered by Waterford. He accepted a net refund of his contributions to the pension scheme, thereby losing any other rights which he had acquired under the said scheme. These rights were concealed wrongfully from the plaintiff by Waterford. The plaintiff only discovered the existence of this fraud and the dishonesty and wrongful concealment in the latter half of 1999.

No such claim had been made against IPT until the plaintiff replied on 27th October, 1995 to IPT's defence of 24th March, 2005 (see 2.3 and 2.4 below) and furnished further and better particulars on 26th May, 2006 (see 2.5 below). Both the reply and further particulars post dated the decision of the Supreme Court of 26th November, 2004.

2.3 The plaintiff, following the close of pleadings and the fixing of a date for the hearing of directions, had applied for an amendment to the pleadings which was refused by the High Court (Smyth J.). The plaintiff's appeal to the Supreme Court was allowed against Waterford but refused as against IPT. See judgment of the Supreme Court on 26th November, 2004 [2005] 1 I.L.R.M. 321 and the unreported judgment of 7th July, 2005.

Subsequent to the Supreme Court decisions an affidavit of Frank Hickey, director of Waterford, was filed on 4th April 2006 which exhibited certain correspondence between IPT and Waterford in relation to members' vested rights in the pension fund.

2.4 IPT, in its amended defence dated 24th March, 2005, had claimed as follows:

The plaintiff's claim is statute barred having regard to the provisions of the Statute of Limitations and, in particular (but without

prejudice to the generality of the foregoing), the provisions of s. 11 and s. 43 of the Statute of Limitations, 1957.

2.5 The plaintiff, in reply dated 27th October, 2005 stated as follows:

1. It is denied that the plaintiff's claim is statute barred having regard to the provisions of the Statute of Limitations, 1957 to 2000 either as alleged or at all.
2. It is denied that the plaintiff's claim is statute barred in particular having regard to the provisions of sub-ss. (1)(a) and/or (2)(a) of s. 11 and/or s. 43 of the Statute of Limitations, 1957, either as alleged or at all. The plaintiff will rely, *inter alia*, on s. 11, s. 43, s. 44 and s. 71 of the Statute of Limitations, 1957 to 2000, as amended.
3. Further or in the alternative the plaintiff claims that he only discovered the existence of the fraud and/or fraudulent breach of trust and/or fraudulent misrepresentation and/or breach of duty and/or breach of fiduciary duty and/or deceit of the first named defendant and the breach of duty and/or breach of fiduciary duty of the second named defendant in or about the (date of knowledge pertaining to the particular plaintiff are set out in a schedule).
4. The plaintiff pleads that at all material times from the time the plaintiff left the first named defendant's employment, until (date of knowledge pertaining to the particular plaintiff as set out in the schedule), the second named defendant had actual knowledge and was aware of what was going on and had failed, neglected and/or refused to inform the plaintiff or to advise the plaintiff of his rights or entitlements. In failing to so inform the plaintiff the second named defendant was guilty of concealment within the meaning of s. 71(1)(b) of the Statute of Limitations. The plaintiff will also rely on the relevant paragraphs of the Statement of Claim and the relevant replies to particulars.

2.6 On 26th May, 2006 the plaintiff furnished further and better particulars of the deliberate and fraudulent concealment of IPT, *inter alia*:

"18. Moreover, on 22nd September, 1993, the second named defendant wrote to a Mr. A. Hartery who, like Walter Croke, had been a member of the pension scheme but who had retired from the company about six weeks after Walter Croke – on 4th December, 1992. This letter (dated 22nd September, 1993 from John O'Donnell, Administration Department of IPT to Mr. Hartery) clearly set out the range of options about Mr. Hartery's entitlements under the pension scheme. It is clear that IPT were aware that they had given these options to Mr. Hartery on 4th December, 1992 yet they never gave them to Walter Croke on 23rd October, 1992 – only six weeks later. It is also clear that IPT wrote to Mr. Hartery in September, 1993 yet never wrote to Walter Croke in similar terms.

19. Thus IPT were aware as of October, 1992 and December, 1992 that the options, including the option of a deferred pension, had to be given to the employees such as Walter Croke.

20. IPT in writing to Mr. Hartery but in failing to communicate with Walter Croke deliberately and fraudulently concealed from Walter Croke even almost one year after he left Waterford Crystal, the fact that he had various options under the pension scheme and in particular that he had the right to be advised that he had the option of a deferred pension.

21. Despite the fact that IPT and Waterford Crystal were communicating with tens if not hundreds of former employees in respect of their deferred pension entitlements, they never contacted Walter Croke either in writing or by telephone to seek to discuss the matter or to rectify the issue. Instead they concealed the matter from him when even a cursory review of his documents would have shown that he had not been given the correct options.

22. Moreover, approximately 98 former employees of Waterford Crystal issued proceedings against both Waterford Crystal and IPT in or about 1994. These proceedings continued from 1994 until Michaelmas Term 2000 when most of the cases were settled.

23. These proceedings raised exactly the same issues as are now raised in these proceedings. As such the defendants were now on notice between 1994 and November 2000 but some former employees (including the plaintiff) might not have been properly and fully advised as to their pension options and entitlements before they left Waterford Crystal. This was the perfect opportunity for Waterford Crystal and IPT to review their records and to write to all persons, including the plaintiff, who were not properly advised of their options and entitlements. However, both Waterford Crystal and IPT failed to do this. Instead they continued to deliberately and fraudulently conceal from the plaintiffs (including Walter Croke) the fact that he had a right to such advice, information and entitlements."

2.7 By letter dated 16th June, 2006 the plaintiff's solicitor wrote to IPT in relation to the affidavit and exhibits of Frank Hickey dated 4th April, 2006 and raising particulars drawn from the new evidence put before the court in that affidavit. The letter summarises many items of correspondence, meetings and discussions between Waterford and IPT from August 1990 to May 1992.

That evidence was not available to the plaintiff at the time when he replied to earlier particulars raised by the second named defendant and was not available to the plaintiff when he sought, both in the High Court and the Supreme Court, to amend his statement of claim.

Reference was made to paragraph 34 and exhibit FH13 of Mr. Hickey's affidavit in relation to the termination documents of Walter Croke where neither of two relevant forms attached to the second named defendant's letter of 14th May, 1992 were contained therein. In the premises the plaintiff pleaded that the IPT was privy to all of the acts, omissions, representations, statements and inducements of the first named defendant. Insofar as the plaintiff pleaded fraud and fraudulent breach of trust against the first named defendant, the plaintiff says that IPT was privy to the said fraud and/or fraudulent breach of trust of the Waterford. The plaintiff further pleaded that at all material times the second named defendant, IPT, was aware of and had actual knowledge of the fact that the redundancy package offered to the plaintiff did not provide for or include the option of a deferred payment and/or that the plaintiff was not advised of the rights he had acquired under the pension scheme and in particular was not advised of his rights to a deferred pension. The plaintiff further pleaded that at all material times IPT was actually aware of or had knowledge of the fact that where an employee accepted a refund of contributions that this was financially beneficial to Waterford, whereas if an employee opted for a deferred pension this was not so beneficial to Waterford and that the terms of the redundancy scheme were adopted with this in mind.

### **3. Submissions on behalf of the Defendants**

### 3.1 IPT

It was agreed that the logical and sensible way to go forward was for the motion of IPT to be heard first as it was concerned with the pleadings and therefore any sensible approach to case management on the remaining motions necessarily required the parameters of the pleadings to be first determined. The motion presented a very simple issue for the court. That was whether the contents of the reply, or certain contents of the reply delivered by the plaintiffs, were permissible having regard to decisions of the Supreme Court. It is assumed that the pleadings had already closed. Smyth J. had already dealt with directions in relation to case management on the same assumption in June, 2003. The application to amend went ultimately to the Supreme Court where amendments were allowed as against Waterford but disallowed as against IPT. Since 30th May, 2006 the plaintiff's solicitors have expressly stated that they reserve the right to apply to the High Court to amend the statement of claim yet again. They do not accept that the pleadings before the court and the subject of the application of IPT are final and closed. What had been said unificably by the Supreme Court is that the plaintiff could not plead fraud or fraud related claims against IPT.

He referred to the letter of 16th June, 2006 from the plaintiff's solicitor which stated, *inter alia*, that:

"Arising from the affidavit of Frank Hickey, 4th April, 2006, and the exhibits therein referred to, we now set forward therein further particulars of the matters referred to in the plaintiff's reply to the defences of the first and second named defendant.

Please note that all these particulars were drawn from entirely new evidence put before the court in said affidavit of Frank Hickey dated 4th April, 2006, and to which no substantive replying affidavit was filed by IPT after 30th May when the interlocutory applications commenced before Mr. Justice Murphy."

It was submitted that no reference to the delivery of any such particulars was made by counsel on behalf of the plaintiff in the course of his submissions to the court on 30th May, 2006.

The plaintiff was of the view that the particulars which they had filed did not contravene the Supreme Court order as they did not provide particulars of any alleged fraud against IPT or, indeed, that IPT was party to the fraud. The particulars were filed as further particulars of the plaintiff's reply and further particulars of the extent to which the plaintiff intended to rely on s. 44. The particulars set out facts in evidence that IPT was privy to the alleged fraud of Waterford Crystal. The plaintiff submitted:

"We do not believe that these particulars infringe the Supreme Court decision, because we don't believe that the Supreme Court intended to prevent the plaintiff from giving further particulars of its reply, particularly in the light of further evidence which might emerge, in the course of these proceedings."

### 3.2 Submissions on behalf of Waterford

Mr. Gordon S.C. was concerned that the plaintiff would move again to deliver amended pleadings. While his client had not direct involvement in the motion he supported the submissions of IPT. The plaintiff had to make his election, whether he was going to move to amend his pleadings or not.

## 4. Decision of the Court

4.1 This is an application for an order directing the trial of a simple issue: whether the plaintiffs are entitled to plead and rely on the provisions of certain sections of the Statute of Limitations.

Inevitably in litigation which commenced over five years ago, matters have been referred to which go to the merits of the plaintiff's claim and, indeed, to the detail of the defendants' defences in the matter.

While the plaintiff had pleaded fraud including fraudulent concealment of his right of action in relation to his vested rights in the pension funds at the time he opted for redundancy in 1999, that plea was limited to his action against Waterford and not as against IPT.

4.2 The plaintiff had sought to amend his pleadings at the earlier motions for directions before the High Court. This was refused by Mr. Justice Smyth. The plaintiff's appeal to the Supreme Court was successful against Waterford but not as against IPT.

The judgment of Geoghegan J., for the Supreme Court, on 26th November, 2004 ((2005) 1 I.L.R.M. 321) considered the proposed amendments as against the second named respondent at 329. The court stated:

"These proposed amendments, if allowed, would radically alter the case made against the second named respondent. There is no doubt that under the proposed amended statement of claim serious allegations of fraud and deliberate misconduct are alleged against the second named respondent ... The allegation of wrongful concealment contained in paragraph 11 is likewise now by way of amendment made against both respondents ... in addition to claims of fraud, fraudulent breach of trust, fraudulent misrepresentation, deceit and honesty there is claim of conspiracy which must necessarily involve both the respondents."

Geoghegan J. referred to the hopelessly unsatisfactory answer by the plaintiff to IPT's notice for further and better particulars in relation to the active and constructive notice that information was being concealed from the plaintiff and asked for full and detailed particulars of alleged failure to intervene. This elicited a reply that that was not an appropriate matter for particulars but for evidence at the hearing of the action.

Having referred to the pleadings as against Waterford and, in particular the letter of 8th August, 2002 the court held that a fraud claim of some sort against Waterford was at all material times in the mind of the plaintiff/appellant and that it was not clear that the amendments would give rise to any relevant legal prejudice.

In relation to IPT Geoghegan J. held at 338 as follows:

"Insofar as the appellant wants to amend the statement of claim as against the second named respondent I take a different view. In the earlier part of this judgment, I have demonstrated by reference to the pleadings in the existing statement of claim and by reference to the replies to the two notices for particulars sent by that respondent that the appellant had not put forward any factual basis whatsoever to support a fraud of any kind of deliberate misconduct claim against the second named respondent. In replies to particulars there is a vague allegation that deliberate misrepresentations made by the first named respondent were made by that respondent as agent for the second named

respondent. But there are no particulars even remotely supporting that proposition. There are no allegations against any single named employee of the second named respondent and, of course, having regard to the nature of the second named respondent company, fraud or conspiracy allegations against it would be particularly serious. ... as against the second named respondent no factual basis has been given to support any allegation against it other than the negative one of breach of duty. Accordingly, I would refuse leave to amend the statement of claim as against the second named respondent."

4.3 Subsequent to that decision of 26th November, 2004 IPT, in its amended defence of 24th March, 2005, pleaded that the plaintiff's claim was statute barred having regard to the provisions of the Statute of Limitations.

34. By reply dated 27th October, 2005 the plaintiff denied that its claim was statute barred and indicated that it would rely, *inter alia*, on ss. 11, 43, 44 and 71 of the Statute. In addition, the plaintiff said that he had only discovered the evidence of fraud of IPT in or about variable dates relating to the plaintiffs in this and other related proceedings. In particular the plaintiff pleaded that IPT had actual knowledge and was aware of what was going on and had failed etc. to inform the plaintiff or to advise him of his rights or entitlements and, as such, was guilty of concealment within the meaning of s. 71(1)(b) of the Statute of Limitations.

4.4 Seven months, later on 26th May, 2006, the plaintiff furnished further and better particulars of the plea of deliberate and fraudulent concealment of IPT. By letter of 16th June, 2006 the plaintiff's solicitor wrote to IPT in relation to the affidavit and exhibits of Frank Hickey, a director of Waterford, dated 4th April, 2006. That letter summarised many items of correspondence, meetings and discussions between Waterford and IPT from August, 1990 to May, 1992.

The plaintiff had submitted to this court that that evidence was not available at the time when he replied to earlier particulars raised by IPT and was not available to the plaintiff when he sought to amend his statement of claim in the High Court and in the Supreme Court.

4.5 It is necessary to consider the affidavit of Mr. Hickey, a director of Waterford, sworn 4th April, 2006 and exhibits therein in some detail. The affidavit was in reply to that of the plaintiff of the 21st December, 2005, referred to the pension scheme and the role of IPT. It was the latter's function to ensure that the scheme was properly funded and, therefore, at regular intervals, it carried out an actuarial valuation in relation to the scheme and advised the company as to what funding rate was appropriate in the light of that valuation. In addition, where a member left service with the company, through retirement or otherwise, it was IPT duty to ensure that the employee received the appropriate benefit and options available to him/her in accordance with the rules of the scheme. All pension information provided to workers by the company emanated from IPT

Mr. Hickey's affidavit deals with the evolution of the package from 1990 when Waterford was considering a further rationalisation of its manufacturing operation. This involved a consideration of what benefits were payable to employees under the company pension scheme and to what extent the scheme could be used to fund lump sum payments.

Mr. Hickey referred to a letter from Donal Walsh, deputy managing director of IPT. That letter considered retirement from the scheme by a member, through no fault of his own such as through redundancy, being entitled to a vested right in his interest in the pension fund. The difficulty of making payments to the members in lieu of his pension fund interest was addressed by Mr. Walsh:

"In 1987 we were able to overcome this difficulty by getting the arrangement accepted as a voluntary parting, rather than the redundancy exercise, but to copper fasten matters we also got a waiver form from each member. Because of the scale of the exercise in 1987, and the other benefits which were being paid, we were able to get this approach approved by the revenue. I doubt very much if we could get approval for the same approach at the present time because the circumstances are quite different and this is a straight forward redundancy exercise. We must therefore avoid breaking the rules of the scheme which would create difficulties with the revenue, and expose us to a comeback from the members at some future date."

Mr. Hickey believed this letter to be significant for a number of reasons which had potentially significant implications in terms of the value of the deferred pension which the employee was to take, if he elected for that option.

Mr. Hickey further said that under the rules of the scheme, once a member received a refund of his own contribution, he lost his right to any other interest in the fund.

On the 12th December, 1991, Mr. Donal Walsh, deputy managing director, wrote to Mr. Brian Patterson, director of Waterford stating *inter alia*:

"As trustees we are prepared to facilitate a situation where the company can take into account credits arising from unpaid benefits. This approach is not usual in pension funding terms as it is more normal to allow the credits to accrue to improve the funding position. However, we recognise the commercial realities of the present requirements of Waterford Crystal and we are prepared to defend this course of action in any discussion with representatives of the members. I have expressed reservations about the acceptability of this approach to your auditors, under S.S.A.P., but that is a matter which you need to take up separately with them."

Mr. Hickey's affidavit referred to a letter dated 14th May, 1992 from Mr. O'Donnell stating that he wished to "re-emphasise the importance of streamlining the process of fully notifying members of their leaving service options under the pension scheme". Mr. Hickey says that this letter gave the impression that Waterford had some form of obligation in relation to notifying members of their leaving service options. He said that this was clearly not the case and continued:

"Mr. Hickey says that this letter was not intended to impose any additional or particular obligation on the Company. Not alone were Mr. Croke's union representatives furnished with a copy of the letter of May 14th, they were at the meeting of May 13th. If they had any ongoing concerns no doubt they would have been raised with IPT. No concerns were in fact raised to my knowledge."

4.5.2. The court has considered the averments in the exhibits to the affidavit of Mr. Hickey, sworn 4th April, 2006 which form the basis of the plaintiff's application for amendment of the claim against IPT which had been disallowed by the High Court and, on appeal by the Supreme Court on November 26th, 2004.

It seems to me quite clear that the rules of the scheme were known, or could have been known to the plaintiff at all material times the plaintiff was represented by his union who had corresponded with Waterford in relation to the redundancy package. It is clear

that the option was to accept redeployment within Waterford at a lower income or to take the redundancy package.

What Mr. Walsh observed in the letter of the 12th December, 1991, that members are entitled to a refund of their contributions and in so doing forego any right to other entitlements under the scheme would appear to have been a provision in the then current scheme. The issue of taking into account credits arising from unpaid benefits would appear to be an internal matter between Water and I.T.P. subject, perhaps, to Revenue approval. There is no claim given in relation to the internal management of the fund.

The requirement to notify members of their leaving service options under the pensions scheme, referred to in Mr. O'Donnell's letter of the 14th May, 1992, to Mr. Hickey left Mr. Hickey with the impression that the company had some form of obligation in relation to notifying members of their options was an obligation of Waterford and not of IPT.

The plaintiff claims that IPT are implicated in fraudulent concealment by the letter of Mr. Walsh, deputy managing director of IPT to Mr. Hickey, who was then general manager of administration, on the 31st May, 1991. The first paragraph refers to the rules of "your scheme" which gave members a vested right to his interest in the fund creating. Difficulties if payments were made in lieu of the members of the members' pension fund interest were noted. The minutes of the meeting of Waterford Glass of the 30th October, 1991, with three members of I.T.P. refers to there being very little scope for the company to enhance benefits for the purpose of the redundancy exercise.

It does seem that these documents came to the knowledge of the plaintiff and/or his advisors at the date of the filing of Mr. Hickey's affidavit.

4.5.3 The court has then to consider, and to what extent, this constitutes new evidence as a factual basis for the proposed amendment in relation to the concealment of a right of action.

It seems clear to me that the plaintiff and/or his advisors had actual constructive knowledge of the provisions of the scheme and, generally, of the options available even if they were not notified.

It is clear from the members booklet relating to the 1985 pension scheme, exhibited in Mr. Croke's affidavit of the 21st December, 2005, that the scheme as originally established was totally funded by the company. A pension committee, comprising staff nominees, had been established to assist the management and smooth running of the scheme, was ready to assist members. The scheme outlines the benefits available in leaving employment and states that the member would be entitled to a deferred pension, commencing on the normal pension date, the amount of which would be related to years of service and to pensionable salary. A deferred pension might be exchanged for a reduced pension payable before normal pension dates for members who had attained the age of 50 on grounds of incapacity due to ill health or injury. In relation to voluntary contributions the deferred pension would be increased by the amount of pension secured by those contributions. Voluntary contributors had the option on leaving employment to take the realised value of their investment reduced by an amount equal to the tax for which the trustee was accountable. Where such a refund was taken, no further benefits could be provided under the scheme.

4.5.4 The exhibits in the affidavit of Mr. Hickey are submitted as new evidence relied on by the plaintiff and, indeed, may have been the basis for the further and better particulars of the deliberate and fraudulent concealment which was furnished on 26th May, 2006.

However, it cannot have been the basis for the pleadings by way of reply dated 27th October, 2005 where the plaintiff pleaded that IPT had actual knowledge and was aware of what was going on and had failed, neglected and/or refused to inform the plaintiff or to advise the plaintiff of his rights and entitlements and was so guilty of concealment within the meaning of s. 71(1)(b) of the Statute of Limitations.

That reply followed the amended defence of IPT and would seem to have constituted a radical amendment to the statement of claim.

Insofar as the matters relied on in the affidavit and exhibits of Mr. Hickey of 4th April, 2006 are concerned, these matters could not then have been the basis for such plea.

4.6 Indeed, the amendment which was refused by the High Court and the Supreme Court on 26th November, 2004 included allegations of wrongful concealment, fraud and deliberate misconduct made against IPT. The proposed amendments also contained a claim that Waterford and IPT had acted in concert and a claim for conspiracy between them was also made.

4.7 Counsel for the plaintiff submits that he seeks only to rely on such an allegation as a shield. However this does not appear to circumvent the clear ruling of the Supreme Court.

He has submitted that the application for a trial of a preliminary issue on the statute of frauds could not proceed at this stage without there being agreed facts. While there are, of course, disputes in relation to many issues, there are basic facts which are agreed as between the parties. The plaintiff was a member of the pension scheme which is exhibited in the plaintiff's affidavit. He accepted a redundancy package and the repayment of contributions from the pension fund. He commenced proceedings on 3rd May, 2001 against Waterford and IPT.

In any event, *McCabe v. Ireland* [1999] 4 I.R. 151 requires a moving party in the trial of a preliminary issue to accept the facts alleged by the opposing party. In that case Lynch J. followed *Kilty v. Hayden* [1969] I.R. 261 at 265 where Ó Dálaigh C.J. said:

"When Order 25 is contrasted with Order 36 it becomes clear that Order 25 is not providing for a separate trial of issues which are partly of fact and partly of law, but for the separate trial of a net point of law disassociated from issues of fact, that is to say, the point of law must arise on the basis of the facts being as the imposing party in his pleadings alleges them to be."

4.8 The court accepts that one of the objects of case management includes the narrowing of issues. It would seem to follow that the trial of the discrete separate issues pursuant to Order 25 is appropriate.

The court will accordingly make an order directing the trial of an issue as to whether the plaintiff in the relevant proceedings is entitled to plead and rely on the provisions of ss. 41 and 71 of the Statute of Limitations, 1957, together with all necessary ancillary orders and directions for the due determination of that issue, and an order directing the trial of an issue as to whether the claims of the plaintiff are as against IPT, statute barred together with all the necessary ancillary orders and directions for the due determination of that issue.

The court will hear counsel as to the necessary directions in relation to any further pleadings, identification of issues or further discovery and submissions.