THE HIGH COURT

[2024] IEHC 659

Record No: 2020/5790 P

BETWEEN

LUIZA KEPA

Plaintiff

AND

NOONAN SERVICES GROUP LIMITED

Defendant

JUDGMENT of Ms. Justice Nuala Jackson delivered on the 16th day of October 2024.

1. The Plaintiff instituted proceedings by Personal Injuries Summons dated the 17th August 2020 in respect of personal injuries allegedly suffered by her in the context of her work. She was employed by the Defendant as a cleaner from in or about 2008 until she left this employment in the context of the circumstances the subject of the within proceedings in or about January 2019.
2. It is accepted by the Defendant's expert medical witness that the Plaintiff developed hand irritant contact dermatitis. While the issue of causation remains in contention (and I will consider this further below), there would not appear to be much contention as regards the expert evidence that this injury developed in the context of her employment. This has been confirmed by the medical professionals retained by both sides herein. The extent of the Plaintiff's injuries in this regard will be addressed below.
3. At the commencement of the hearing before me, the following matters between the parties were at issue:
    (a) Non-compliance with section 8 of the Civil Liability and Courts Act, 2004 as amended by section 13 of the Central Bank (National Claims Information Database) Act, 2018;
    (b) The Defendant contended that the proceedings had not been commenced by the Plaintiff with sufficient expedition and were statute-barred;

(c) It was denied that there had been any breach of duty on the part of the Defendant;
(d) The Defendant denied that the injuries suffered by the Plaintiff were caused by any such breach of duty on the part of the Defendant arising in the context of her former employment, if such breach of duty arose;
(e) Issues of the quantum of loss were also at issue.

4. I was informed by the Defendant on the second day of hearing that (c) was no longer being contested but that (b), (d) and (e) remained in contention. It is my understanding that (a) is also at issue although this was not robustly pursued. This was confirmed in the submissions of the Defendant which state:

"Breach of duty is admitted and causation, quantum and the statute of limitations all remain in issue."

5. The Plaintiff was employed at all material times by the Defendant working as a cleaner in a factory premises. It is common case that she was not engaged in industrial cleaning but that she was engaged in normal and usual cleaning duties albeit in a factory setting. The case advanced by the Plaintiff is that she was in regular, daily contact with strong cleaning chemicals in the course of her work and that she was supplied with inadequate gloves which did not protect from these chemicals, frequently split open due to their being of too light quality for the work concerned and further that these gloves themselves exacerbated skin irritation suffered.

6. There is no doubt that the Plaintiff suffered nasty skin irritation and this she alleges derived from her employment conditions. There is further little doubt that the response of the Defendants thereto was significantly suboptimal. During the course of the hearing, the Plaintiff produced text messages received from the Defendant suggesting that she cease wearing the gloves supplied altogether, presumably suggesting that she continue her work without wearing any hand protection, and there was also evidence of text messages suggesting that she cease using chemicals in the cleaning process. I questioned the Defendant's representative about the efficacy of carrying out cleaning works without using cleaning agents and he referenced modern

eco-friendly cleaning methodologies which are water-based only. While I have no doubt that such methodologies exist and are used, the evidence in this case does not support that such were being applied in this instance. In addition, the suggestion in cross-examination of the Plaintiff (Transcript page 66, line 22) concerning the cleaning of floor corners using the cleaner's foot to manipulate the cleaning cloth were also not convincing. These seems to me to have been altogether unsatisfactory suggestions and unfortunate responses to the personal injuries being suffered by the Plaintiff. As breach of duty is not contested, it is to be assumed that, albeit late in the day, the particulars of negligence alleged by the Plaintiff in the Personal Injuries Summons herein are admitted by the Defendant. There is no doubt in my mind that the Plaintiff has suffered nasty injuries herein which have impacted on her day to day life and her family life over a period of time.

SECTION 8 OF THE CIVIL LIABILITY AND COURTS ACT 2004 AS AMENDED BY SECTION 13 OF THE CENTRAL BANK (NATIONAL CLAIMS INFORMATION DATABASE) ACT, 2018

'8.—(1) Where a plaintiff in a personal injuries action fails, without reasonable cause, to serve a notice in writing, before the expiration of 2 months from the date of the cause of action, or as soon as practicable thereafter, on the wrongdoer or alleged wrongdoer stating the nature of the wrong alleged to have been committed by him or her, the court hearing the action may—

(a) draw such inferences from the failure as appear proper, and

(b) where the interests of justice so require—

(i) make no order as to the payment of costs to the plaintiff, or

(ii) deduct such amount from the costs that would, but for this section, be payable to the plaintiff as it considers appropriate.

(2) In this section "date of the cause of action" means—

(a) the date of accrual of the cause of action, or

(b) the date of knowledge, as respects the cause of action concerned, of the person against whom the wrong was committed or alleged to have been committed,

whichever occurs later.'

7. Non-compliance with these provisions has not been denied by the Plaintiff. In accordance with the statutes applicable, this is a matter which I will consider in the context of any costs application which may be made herein, as provided for below.

ARE THE PROCEEDINGS STATUTE BARRED?

8. The proceedings herein were authorised by PIAB on the 13th day of July 2020 and, as stated above, the Personal Injuries Summons issued on the 17th August 2020. Therefore, no issue concerning the statutory limitation period arises post-authorisation. However, the Plaintiff's claim was submitted to PIAB on the 4th April 2019 which submission stopped the statutory time limit from running. Replies to Notice for Particulars dated the 23rd August 2021 state *"The Plaintiff developed a rash on her hands and arms in or about May 2017."* The Defendant asserts that the Plaintiff's claim was statute barred at the date of submission of the claim to PIAB in April 2019. For this to occur (i.e. for the action to be statute barred), the cause of action must have accrued before the 4th April 2017 or, if later, the Plaintiff's date of knowledge must have been before that date (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). The Defendant asserts that this is the position and that the evidence supports accrual and date of knowledge in or about 2016. The Defendant further asserts that the date of knowledge extension of time provided for in legislation does not, on the evidence available, support the Plaintiff's claim. This assertion that the proceedings are out of time is contained in the Personal Injuries Defence:

"2. The Plaintiff's claim or part thereof is statute barred pursuant to the provisions of the Statute of Limitations Act 1987 as amended and the Defendant will seek that determination of this issue on a preliminary basis by way of motion or application at the commencement of the trial of the action."

9. A Reply (which is undated) was delivered by the Plaintiff in 2022 which denies that the Plaintiff's action was not commenced within the appropriate limitation period. In addition to the foregoing, the Plaintiff pleads:

> *"... that her date of knowledge for the purpose of Section 2 of the Statute of Limitation (Amendment) Act 1991 was May 2017 at the earliest. For the purposes of the date of knowledge, the Plaintiff pleads the following:*
>
> *(i) The Plaintiff's injury did not become significant and/or manifest until May 2017.*
>
> *(ii) The Plaintiff was diagnosed with contact irritant dermatitis by her consultant dermatologist in or about the 27th November 2018."*

10. Clearly, the burden of proof is on the Plaintiff to prove all aspects of her claim herein and therefore it is important to evaluate the evidence before me in relation to the date of accrual or date of knowledge, if later, of the cause of action. The evidence in this regard derives from:
    (a) The evidence of Patricia Coughlan, vocational assessor, called as a witness for the Plaintiff;
    (b) The evidence of the Plaintiff;
    (c) The evidence of Professor Brian Kirby, Consultant Dermatologist, retained by the Defendant;
    (d) The evidence of Dr. J. F. Bourke, Consultant Dermatologist, retained by the Plaintiff;
    (e) Medical notes and records of the Plaintiff's GP, Dr. Patrick Lynch.

Evidence of Ms. Patricia Coughlan

11. The Defendant seeks to attribute considerable weight to the report and oral testimony of Patricia Coughlan, vocational assessor. In her report of the 24th May 2022, Ms. Coughlan states:

> *"Circa late 2016 Ms. Kepa began to notice the back of her hands, and fingers became read [sic] and sore after work. While she wore gloves all the time, these were very thin and ripped regularly sometimes without her notice.*

Her hand problem became gradually worse some days more than others.

By 2017 she had developed a rash on her finger's [sic] hands and finger web spaces that were getting sore and uncomfortable more often."

12. In her report, Ms. Coughlan notes the injury date as *"Circa late 2016/2017".* Her oral testimony before me confirmed that she prepared her report following assessment of the Plaintiff on the 9th May 2022, that she was experienced in the preparation of such reports and in giving evidence before the Court and that she was aware of the importance of accuracy in note taking. This report was prepared in excess of two years after the commencement of proceedings.

Evidence of the Plaintiff

13. I was provided with a transcript of the Plaintiff's evidence before me. In so far as it is pertinent in relation to this issue, the relevant portions appear to me to be:

14. Examination in Chief (Transcript page 16, line 29):

"So when did you first – did you notice anything with your hands after a while with all the gloves cracking and all of that, did you notice anything?

A. What do you mean, sorry?

'Q. Okay I don't think this is leading. Judge, I think it is common case. You developed a problem with your hands, didn't you?

A. Yeah

Q. When was that?

A. It was 2018, actually 2017, it was hurting but I didn't realise what was going on.

Q. So will you tell the Judge what you saw on your hands in 2017. Do you know when that was in 2017?

A. I know that on 2016 it was hurt a little bit like, you know red, but it was just from time. I didn't even think about that because that's normally like for me.

Q. Where was it a little bit red?

A. It was red the same stage, yeah.

Q. Show the Judge?

A. It was the same in 2016, it was just really little bit.

Q. I think you were rubbing your knuckles.

A. In here and here (indicating).

Q. It was along your knuckles, was it?

A. Yes, here and here as well (indicating). But from 2017 it was start rash. So I spoke with my manager. It was—it was start rash around June, but I still didn't know what's going on, it was worse, a little bit worse, but then it was really bad. So I didn't still realise that it could be from the work and especially I didn't even think that I can finish the work or anything like that.

Q. Ms. Kepa, the Judge has not heard any of this before.

A. Sorry, no.

Q. We just need to tell her the story; is that okay?

A. Yeah

Q. So you said in late '16 you had on your knuckles, is that right?

A. Yes.

Q. My Friend I know you will stop me if he says I'm doing anything. What was the problem that you could see there?

A. In 2016 it was like, you know, maybe a little bit dry and that's it.

Q. I didn't hear what you said?

MS. JUSTICE JACKSON: A little bit dry.

A. A little dry, yeah, that's it, yeah.

Q. MR KENNEDY: Sorry, thank you, Judge. Did you keep working?

A. Yes, I was keep working, yeah.

Q. During this time I think you were attending your G.P, Dr. Lynch all the time weren't you?

A. Yeah.

Q. Because you had other medical things, as we all do?

A. Yeah.

Q. When did this become—when did you develop a rash?

A. It was on around June 2017.

Q. Okay. You didn't go to see your doctor at that stage?

A. It didn't was really bad, like you know? I'm tough girl. So I think that will be gone and I will manage with that.

Q. Okay.

A. I just using more cream and I know that I have to moisturising.

Q. Okay. Did it get better?

A. No.

Q. Did it get worse?

A. Yes.

Q. By Christmas of 2017 what was it like?

A. It was hurt, more red, and started – the skin start cracking.

Q. Okay, was it bleeding?

A. It was bleeding, yeah.

Q. On which hands?

A. The most, the right hand because I am the right hand, yeah.

Q. Are you right-handed?

A. Yeah.

Q. Was it on the left hand as well?

A. It was, but it was really not too bad like, you know, the left hand was really okay.

Q. Okay. What did you do to ease the symptoms, what did you do to make it better?

A. The first thing I was in doctor.

Q. Is that your G.P., Dr. Lynch?

A. Yes. Yes, the GP doctor. He give me—

Q. When did you go to see him?

A. In 2018.

Q. Just after Christmas I think, is that right, in 20 January?

A. Yes, yes, that was after Christmas, yeah.

Q. Okay?

A. And he gives me the cream which I start using. That was help me when I using the cream, but when I just stop that come back again.

Q. Okay. Did you tell your employers about it?

A. Yes, I tell.

Q. What – when did you tell them?

A. That was the end of 2017.

Q. Do you think you might have told them in January 2018?

A. Yes.

15. The evidence in relation to this issue continued in the course of cross-examination (Transcript page 38, line 18):

Cross-Examination of the Plaintiff

Q. You told your Vocational Rehabilitation Expert who is Dr. Patricia Coughlan, do you remember seeing her?

A. I didn't saw her. I just spoke – she spoke with me by the phone.

Q. On the phone. I think she assessed you on 9th May 2022?

A. Yes.

Q. So that's what, two years and a month ago?

A. Yes.

Q. You told her, I'm just going to quote from what you told her: "Circa late 2016, Ms. Kepa began to notice the back of her hands and fingers became red and sore after work."

A. No red, no sore, maybe I didn't understand her properly but it was dry. It was dry just-

Q. Okay. Well apart from that difficulty, do you agree that you said to her that it was after work that your hands became-

A. It was after work, yeah.

Q. After work. That was in late 2016?

A. Yes.

Q. So you didn't institute these proceedings until – I think you didn't make your application to the Injuries Board for some considerable time after that, is that right? 4th April 2019. So at the time you applied to the Injuries Board you knew that – according to you at least – that your work was causing you difficulties. You had known that since the end of 2016?

A. Yeah, but like I said before, I didn't realise that it's from the work. That was—

Q. Sorry I interrupted you and I said I wouldn't, so I will stop.

A. You're okay. I didn't realise that it's from the work. An when I realise, when I known that it's something wrong with the work, like I said I even can't finish the work because I was the only one person who have the work in family. And I have a little one at home so I couldn't leave the job.

Q. I appreciate that. When was your little one born?

A. 2015.

Q. In fairness to you, I'm just going to continue what Ms. Coughlan says.

A. Yeah

Q. She says: "Circa late 2016, Ms. Kepa began to notice the back of her hands and fingers became red and sore after work." So, is it fair to say that at the end of 2016 you, in your own mind, were saying that it was your work which was causing the problem?

A. I know that it's from the work, but I didn't know like you know that it will be worse like. That is was – I didn't realise that it's from the chemicals I just wonder maybe I work too much or something like this, but I didn't realise that it's from the chemicals.

Q. It's from?

A. Chemicals.

Q. Chemicals. Sorry, I beg your pardon.

A. Sorry, sorry, my English. I'm so sorry.

Q. No, no, it is not – it's actually my hearing rather than your English. But what you have said here is that you began to notice the back of your hands; sorry, this is what Ms. Coughlan says: "Circa late 2016, Ms. Kepa began to notice the back of her hands and fingers became red and sore after work." And then she says: "While she wore gloves all the time, these are very thin and ripped regularly, sometimes without her notice." So, to me at least, and I want to give you a chance to explain your position, it sounds like you knew that it was something to do, in your mind at least, with the gloves that you had back in 2016?

A. I'm so sorry, maybe I won't understand or my English, (inaudible), like I said to my even solicitor, it's the not perfectly, and maybe I said something like you know different when the lady was hearing. But I know that I have something, but I didn't realise that it's from the work.

Q. But you told Ms. Coughlan that it was after work that these problems had occurred and you said that you wore gloves and sometimes they were thin and ripped regularly. So surely and, ultimately it is a matter for the Judge to make the decision on this issue, but surely you knew in 2016, late 2016, that I was your work that you maintain was causing you problem. You are shaking you head. Are you agreeing or disagreeing?

A. No. I don't agree with that.

Q. Okay. Well can I ask you this, why did you say it to Ms. Coughlan then?

A. Like I said before, maybe I don't understand by the phone or maybe I wrong tell by the phone.

Q. Yeah. You see, unfortunately I have to suggest to you, Ms. Kepa, that in these circumstances you should have brought your claim within two years of that date by making

an application to the Injuries Board. In other words, some time in or around the end of 2018. Do you agree or disagree?

A. I don't understand, sorry.

Q. Looking back at it now, don't you agree that you should have brought your claim by the end of 2018?

MR. KENNEDY: I wonder is that a fair question for a layperson.

MS. JUSTICE JACKSON: I wonder is that a fair question for a layperson.

MR. MAHER: May it please the Court.

MS. JUSTICE JACKSON: Particularly given the, there are linguistic language issues.

Q. MR. MAHER: So what I'm saying to you is, that given that you were saying to Ms. Coughlan that your problem arose after work and how you described the gloves ripping, that in 2016 when you first notice that you should have gone then to a solicitor?

A. Like I said, I probably give the – like, you know, I understand what the lady say because that's what you said Missus, Mister, it was on 2017.

Q. Well that's what it says here?

A. I know.

Q. Ms. Coughlan, she is not my expert, she is your expert. So are you saying that what you told your own expert was incorrect?

A. Maybe I wrong say or wrong understand.

Q. Yeah. You see, you didn't in fact send what is known as a letter. You didn't send a solicitor's letter until I think 20th March 2019. Are you aware of that?

A. About letter?

Q. Complaining about your employment and the fact that you have been exposed to detergents?

A. My solicitor?

Q. Send that on the 20th. I will show you the letter of 20th March. I'm sure Mr. Kennedy has seen it. It is a letter of 20th March 2019. I will let you see that. DO you see that letter?

(Document handed to witness)

A. Yeah.

Q. That's two years, if we take December 2016 as the date when you became aware of the fact that you had a problem with your hands due to your work, that letter was not sent for two years and three months later, isn't that right?

A. But on 2019 I was already on the sick pay.

Q. Maybe you were, but you didn't consider then bringing a claim until March of 2019, isn't that right?

A. What do you mean I didn't not claim?

Q. When did you and see a solicitor?

A. In 2018.

Q. 2018?

A. Yes.

Evidence of Professor Kirby

16. Professor Kirby's report of the 6th June 2023 states:

"This lady developed a hand rash in 2017."

Evidence of Dr. Bourke

17. Dr. Bourke prepared two reports, the first dated the 27th November 2018 and the second dated the 30th April 2020.

18. The first such (prepared well prior to the institution of proceedings) is stated to be based on *"Examination at my rooms in South Terrace on the 6th November 2018"*. In this regard, it is stated:

> *"Ms. Kepa gave an eighteen month history of dermatitis starting in the web spaces of her hands and spreading to the dorsum of her hands. She noticed*

that the rash cleared quickly when she was off work. She had been treated with Dermovate ointment and emollients which helped transiently."

On the basis of the timescale recorded by Dr. Bourke in his report, the Plaintiff's injury started in or about May 2017, some 23 months prior to the institution of proceedings. It must further be noted that in his oral evidence to me, Dr. Bourke indicated that his notes indicated a 16-month history of dermatitis and that the reference to 18 months in his written report was in error. This would be a date of July 2017.

19. The second report of Dr. Bourke dated the 30th April 2020 is an updating report and does not reference at information concerning the commencement date of the Plaintiff's injuries.

Notes of Dr. Patrick Lynch, GP

20. The notes of Dr. Patrick Lynch, the Plaintiff's General Practitioner were discovered in the context of the within proceedings. It is clear from these notes that Dr. Lynch has been the Plaintiff's GP over a prolonged period and the Plaintiff has attended Dr. Lynch with normal regularity for a variety of ailments and in various medical circumstances. In this regard, a perusal of the notes of Dr. Lynch shows that, despite visits to him on a number of occasions for unrelated issues in 2016 and 2017, there is no reference whatsoever to ailments relating to the Plaintiff's hands during this period. It is demonstrably clear from these notes that, whatever the nature or extent of the skin issues suffered by the Plaintiff over the 2016/2017 period, this was not sufficient to cause the Plaintiff to visit her GP in this regard, to discuss this issue with her GP ancillary to visiting him in respect of another ailment and was not sufficient to cause the GP to note or remark upon such issues in patient notes, at least so far as such notes are concerned and there is no suggestion that there was inaccuracy in respect of such medical notes. It is to be noted that there would not appear to have been any GP visits between June 2016 and March 2017. There were visits in March, April and November 2017. The first reference in these notes to the injuries the subject matter of the within proceedings was on the 11th January 2018. The notes at this time reflect:

"RASH on both hands – worse on the right – on dorsum of hand – from PIPJs to a line proximal to MCPJs – also a little on right thumb ulnar aspect –

Work as a cleaner (in Bulmers) –

Gets better when off work

Uses E45, Neutrogena, Vaseline".

Analysis of evidence

21. It is clear that there is some conflict in the evidence as to the date when the Plaintiff's symptoms first emerged. I have no doubt as to the accuracy of Ms. Coughlan's recording of the information relayed to her by the Plaintiff at interview. However, I must have regard to the totality of the evidence before me. I likewise have no doubt as to the accuracy of Professor Kirby's or Dr. Bourke's recording of the information relayed to them by the Plaintiff, including Dr. Bourke's clarification as between his notes and his report given in oral testimony. I must also record that, while the Plaintiff has admirably good spoken English, this is not fluent and it was clear when she was giving evidence that she sometimes becomes slightly confused in this respect. Additionally, the interview with Ms. Coughlan was a remote and not an in person interview.
22. It is clear that injury such as that of which the Plaintiff complains does not usually emerge at a definitive time but over a period of time. Having regard to the evidence of the Plaintiff and with regard to the contemporaneous GP notes, it is my finding that the Plaintiff had some redness and soreness to her hands from late 2016 but that her condition deteriorated over time and such disimprovement in the latter half of 2017 led to her seeking medical advice in early 2018. The issue for determination therefore is how this onset, development and deterioration of her condition fits within the statutory provisions of sections 2 and 3 of the Statute of Limitations (Amendment) Act, 1991 ("the 1991 Act") as amended by second 7(a) of the Civil Liability and Courts Act, 2004?

23. Section 3(1) of the 1991 Act states:

3.—(1) An action, other than one to which section 6 of this Act applies, claiming damages in respect of personal injuries to a person caused by negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision) shall not be brought after the expiration of F1[2 years] from the date on which the cause of action accrued or the date of knowledge (if later) of the person injured.

Date of Accrual

24. The Plaintiff says that she suffered hand soreness at a modest level which did not cause her to take action in that regard but that her irritant dermatitis did not manifest itself until the second half of 2017. It is clear that there was symptomology at some minor level prior to this date. On the basis of the evidence, it appears that the cause of action accrued in excess of two years prior to April 2019.

25. However, section 3 of the 1991 Act is clear that time runs from date of knowledge (if later) and "date of knowledge" is as defined in section 2 of the 1991 Act.

Date of Knowledge

Section 2 of the 1991 Act, as amended, states:

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.

26. The Defendant herein submits that section 2(1)(b) and (c) and section 2(2) of the above legislation are engaged.

27. Section 2(1)(b)

It is my finding on the evidence set out above that the Plaintiff did know of her injury prior to the spring of 2017. Her hands were red, dry and subject to some

degree of soreness which she knew related to her work. However, the issue herein is at what date/time did she know that the injury in question was significant?

28. In this regard, I have been referred to a number of decisions. I found the **Whitely v. Minister for Defence** [1998] 4 IR 442 to be particularly useful in circumstances in which that case also involved an injury with a gradual and graduated onset. This was an army deafness case; the Plaintiff having served in the army until 1978. It is clear that the Plaintiff's deafness in that instance must have been progressively deteriorating over the period of his service and there was evidence of hearing consequences experienced by him during the course of his service. The judgment records that he became conscious of his disability in 1993 and sought medical advice and had hearing loss diagnosed in September 1995. The Plaintiff stated that he was not aware that the injury was significant until sometime between 1993 and 1995. Quirke J. considered the provisions of section 2 of the 1991 Act in detail and referenced the lack of statutory definition therein of the term "significant". He stated:

> *"... I take the view that by excluding any definition it was the intention of the legislature to avoid confining the sense in which the word "significant" ought to be understood to the terms of the definition contained in s. 14(2) of the English Act, or to any particular terms. If I am correct and if it was intended that a broader test should be applied than was contemplated by the definition contained within the section 14(2) of the English Act, then it would seem to follow that the test to be applied should be primarily subjective and that the court should take into account the state of mind of the particular plaintiff at the particular time having regard to his particularly circumstances at that time.*
>
> *As I have indicated, I believe the appropriate test to be primarily subjective, because it must be qualified to a certain extent by the provision of section 2(2) of the Act of 1991, to which I have already referred. That sub-section introduces a degree of objectivity into the test and potentially requires the additional consideration of whether or not the particular plaintiff at the particular time ought reasonably to have sought medical or other expert*

advice having regard to the symptoms from which he was suffering and the other circumstances in which he then found himself."

The learned Judge then proceeded to evaluate the evidence before him in that case and determined that he had formed the

"strong impression that as early as 1979 or 1980, the plaintiff would have considered his hearing loss and his tinnitus sufficiently serious to justify his instituting proceedings for damages against "a defendant who did not dispute liability and was able to satisfy a judgment". I formed the further impression from the plaintiff's testimony and his demeanour that his failure to institute proceedings against the defendants did not result from any belief that his injury was not sufficiently serious to justify instituting proceedings for damages."

This decision supports the following approach:

(a) The subjective test – what was the state of mind of the Plaintiff at the particular time in terms of the significance of the injury?

(b) The objective element – ought the particular plaintiff at the particular time reasonably to have sought medical or other expert advice having regard to the symptoms from which she was suffering and the other circumstances in which she then found herself?

29. I was also referred to **Bolger v. O'Brien** [1999] 2 IR 431 and **Martin v. Irish Express Cargo** [2007] IEHC 224. Both of these involved very different types of injury to that in **Whiteley** or in the case presently under consideration being date specific, single event injuries. In these cases, the courts distinguished between significance and full significance or realisation of the full extent of injury. The statutory provisions relate to the former, not the latter. As Canny, "Limitation of Actions" (3rd Ed., 2022) states at paragraph 13-45:

"This section can apply in cases where an injury is initially not serious but becomes significant over time, and also where an injury was at all time significant but the plaintiff only became aware of this fact at a later time."

30. Having regard to the evidence before me, I do not find that the Plaintiff, subjectively, was aware of the significance of the injury prior to the summer of 2017. She had some redness and dryness on her hands but this was not at a level

which would have caused the Plaintiff to believe that her symptoms were sufficiently serious to justify the institution of proceedings. I furthermore do not consider the preponderance of evidence before me in terms of the symptomology of the Plaintiff in late 2016/early 2017 to justify a determination that the plaintiff at that time ought reasonably to have sought medical advice in respect of her symptoms and circumstances. I have had regard to the test of constructive knowledge elucidated by Finlay Geoghegan J. in **O'Sullivan v. Bon Secours** [2019] IESC 33 wherein she stated:

> *"it is the date upon which, on the evidence, the court decides that "he might reasonably have been expected to acquire" the relevant factual knowledge if he had taken steps to ascertain the facts with or without expert advice. That is the date of knowledge for the purpose of section 2 and not simply the date upon which he might reasonably have been expected to set about ascertaining the relevant facts, with or without the assistance of medical or other expert advice."*

On the evidence before me, it is my conclusion that the date upon which the Plaintiff might reasonably have been expected to acquire knowledge of significant injury was subsequent to April 2017. I do not consider that the Plaintiff ought to be imputed with constructive knowledge of significance at an earlier date.

31. I am of the view that the facts herein are analogous to those in **Whiteley**. I find that the date of knowledge that the injury in question was significant was most likely in the Summer/Autumn of 2017 and, in any event, after April 2017. In contrast with the authorities to which I have been referred, here there is no evidence of attendance with her doctor in relation to her complaints, there is no evidence of communication with her employer concerning same, there is no evidence she missed work and there is no evidence of any particular incident occurring during the period when the Defendant asserts that there was knowledge of significance. I would note that in **Whitely**, the Court determined that the date of knowledge of significance of injury was 1979 or 1980, being one to two years after the Plaintiff left service in the army. However, there was evidence of some symptomology during the Plaintiff's time in service –

"... the plaintiff testified to the intent that whilst he was in the army he noticed that he was encountering a problem with his hearing and a ringing in his ears immediately after the range practice and butt duty and that these symptoms would continue for "a day or two"."

It is my view that the situation of the Plaintiff herein between late 2016 and the summer of 2017 was analogous to the position of the Plaintiff in **Whitely** during this pre-discharge period.

32. Section 2(1)(c)

The Defendant herein seeks in addition to rely upon section 2(1)(c) of the 1991 Act, arguing that the Plaintiff had knowledge (actual or constructive) prior to April 2017 that her injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty. I do not consider that it is necessary for me to determine whether or not this is so as the requirements in respect of date of knowledge as listed in section 2(1) of the 1991 Act are cumulative and I have found that the date of knowledge of significance was subsequent to April 2017. However, on the evidence which I have heard, I conclude that the Plaintiff was actually aware that she had an injury attributable in whole or in part to the act of omission of the Defendant prior to April 2017 albeit she did not have knowledge, actual or constructive, of the significance of such injury.

33. In consequence, I find that the Plaintiff's claim is not statute barred.

CAUSATION

34. McMahon and Binchy's "Law of Torts" (4th Ed. 2013) defines causation as follows:

"In the law of torts a person cannot be liable unless he caused the injury to the plaintiff. There must be some causal connection between the defendant's actions or omissions and the plaintiff's injury. If P is run over by D he may have an action against D because D caused the injury in a factual or scientific sense. Conversely, of course, P cannot sue an innocent bystander who in no way contributed to the accident or a person who, having no connection with the accident, was miles away in another city. These latter persons cannot be held liable simply because

they were in no way causally connected to the event which is the basis of the plaintiff's complaint. In many ways it is the negative formulation of the causation rule that is most helpful to the lawyer at this point. We may say that if there is no factual causal link between the defendant's conduct and the plaintiff's injury, then the defendant cannot be liable."

35. In essence, this is the link between the breach of duty on the part of the Defendant and the injury sustained by the Plaintiff. The Defendant herein admits breaches of duty. It is amply clear from the evidence that the Plaintiff's injuries were occasioned by these breaches. I therefore find a clear causal link between the injuries of the Plaintiff and the acts or omissions of the Defendant.

QUANTUM

36. The final issue for determination by me relates to quantum. I must say that I found the evidence of the Plaintiff, while very satisfactory in many respects, most unsatisfactory in this regard. I am also mindful that when the Plaintiff was initially examined by her GP, it would not appear that he considered referral to a specialist consultant to be necessary but rather such referral had been requested by the Plaintiff's solicitor. In this regard, I refer to the notes of Dr. Lynch in respect of the Plaintiff's attendance with him on the 1st February 2018 in which it is indicated that the Plaintiff had been to a solicitor and *"Wants referral to private dermatologist"*. In addition, Dr. Bourke in his first report references the referral to him of the Plaintiff being *"by her solicitor"* and in this report he did not recommend subsequent review by him but concluded *"With careful hand care and protection both at work and at home, her dermatitis should gradually settle and she should be able to continue in her job."* In his second report, Dr. Bourke indicates that review was also at the request of the Plaintiff's solicitors, referencing Ms. Kepa as having been re-referred. I make no adverse comment in this regard it being a matter of some dispute as to the appropriateness of specialist referrals by solicitors, but I reference this simply in the context of assessing the medical evidence before me as to the *sequalae* arising for the Plaintiff from her injuries. On both occasions, Dr. Bourke described the examination of the Plaintiff as having revealed *"dermatitis of the web spaces and knuckles on both hands"*.

37. Professor Kirby opined that the Plaintiff had *"chronic irritant dermatitis"* and that this *"is consistent with exposure to detergents whilst at work in conjunction with excessive hand washing which is necessary as part of that work"*. At the time of his examination of the Plaintiff (in March 2023), he described the condition as *"mild"* but did indicate that *"she may need to use appropriate hand care and occasional topical steroids for some time into the future".*

38. Dr. Bourke opined gradual settling in his first report (which largely aligns with the report of Professor Kirby) and, indeed, the Plaintiff informed him that *"the rash cleared quickly when she was off work"*. The prognosis was more negative in Dr. Bourke's second report although I note that this was due to reportage from the Plaintiff for the most part. There were photographs produced and proved which clearly showed that the issue was ongoing in January 2020 and it must be borne in mind that the Covid pandemic[1] followed shortly thereafter with the very considerable use of hand sanitizers which was mandated/necessitated in that context.

39. I heard oral evidence from Professor Kirby and Dr. Bourke and this evidence substantially demonstrated that the medical experts were ad idem in this matter. They agreed that the Plaintiff was suffering from mild to moderate irritant dermatitis which was persistent and was causing and had caused ongoing problems. It is fair to say that Professor Kirby was somewhat more optimistic in relation to recovery and the likely timing of same. It was agreed that the Plaintiff would face "wet" work restrictions going forward.

40. I found the evidence of the Plaintiff in relation to her work opportunities to be unsatisfactory. The evidence of the vocational assessor is clear that there are

[1] It was unclear as to whether the Report of Dr. Michelle Murphy of the 13th May 2020 (prepared in the context of the PIAB assessment) was being admitted or not. The references to it were somewhat erratic. I have not had regard to it save to note that it reflects "Ms Kepa developed hand dermatitis while working as a cleaner. This has persisted now although she has left that job and her hand are very sensitive to any irritant factors. They are flaring now with the frequent hand washing due to COVID-19". This was also reflected in Ms. Kepa's GP notes from October 2020. I would reference also the Transcript of the Plaintiff's evidence at page 28 line 23ff.

numerous "dry" employments which the Plaintiff could undertake and, in this context, I found the evidence concerning her experience working in the Polish shop somewhat incomprehensible, in particular as to why she had to cease working therein. This employment seemed to involve "dry" work (*"putting the products on the shelf"*). The evidence of the Plaintiff seems to indicate that she wished to set up her own business (balloon business) and there is an indication of dissatisfaction with the shop work hours. The evidence in relation to the Plaintiff's failure to engage with State employment assistance agencies with a view to obtaining suitable employments was also unconvincing. While clearly skin ailments of this nature are uncomfortable and require care and attention, I found the evidence of the Plaintiff in relation to the impact of her injuries on normal family life somewhat incomprehensible. While obviously one might have to take care about exposure to chemical substances, I do not consider the evidence of interference with her mothering role to her daughter to be compelling. I formed the view from the evidence of the Plaintiff that she had determined that she wished to commence a business in the area of the manufacture of natural cosmetic creams and other products and that other occupational avenues were not being proactively explored in this context (Transcript page 29 line 2ff and page 49 line 10ff). It is my finding that the injury in this case was of a moderate intensity, but at the upper levels of this category, and that the Plaintiff was in a position to resume appropriate employment no later than January 2021.

41. Having so found, I am of the view that 17,500 euro is the appropriate award of general damages herein having regard to the Book of Quantum which is the applicable reference point for such assessment having regard to the date of these proceedings. I find that the dermatitis in this instance included both hands but that, with treatment, a full recovery is to be expected. The intensity of the condition has clearly significantly diminished over time as was observed at hearing.

42. In relation to special damages, I have been informed that the sum of €1072 for medical expenses has been agreed as has the sum of €350 for travel expenses. The loss of earnings figures for 2019 and 2020 which were provided to me were €24,398.40 (2019) and €25,438.40 (2020). From these figures must be deducted

the income received from the Polish Shop (5,055.71 euro) within this period. I confirm that the relevant period for the purpose of issues pertaining to relevant social welfare benefits is the two years 2019 and 2020.

43. I will therefore list this matter for a short hearing period at a date convenient to Counsel when the deductions from lost earnings figures may be accurately calculated. I will also hear any application in respect of costs at that time.