**THE HIGH COURT**

**[2016 No. 166 P.]**

**BETWEEN**

**SAVERIO BELLANTE**

**PLAINTIFF**

**AND**

**MARGRET FITZGERALD AND HEALTH SERVICE EXECUTIVE**

**DEFENDANTS**

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 26th day of June, 2017**

1. The plaintiff in this case alleges certain shortcomings in his medical treatment, culminating in the discontinuation of anti-psychotic medication on 9th January, 2014. On the night of 11th to 12th January, 2014, the plaintiff killed Mr. Tom O'Gorman "*after a dispute over a game of chess*" (para. 24 of the personal injuries summons) and then cannibalised part of his body.

2. On 31st July, 2015, the plaintiff was found not guilty of murder by reason of insanity.

3. A personal injury summons was issued on 8th January, 2016. I am informed by Ms. Mairéad E. Smith B.L. for the plaintiff that his solicitors have a medical report stating that he has the capacity to give instructions.

4. The personal injury summons expired on 7th January, 2017.

5. Prior to the expiry of the summons on 20th December, 2016 the Master renewed the summons for a period of six months "*from the date of such renewal inclusive*" in accordance with O. 8 r. 1 of the Rules of the Superior Courts.

6. The renewed summons thus expired on 19th June, 2017.

7. Order 8 r. 1 provides that an application to renew during the original twelve months may be made to the Master, but that "*after the expiration of twelve months, an application to extend time for leave to renew the summons shall be made to the court*". The rule is however something short of absolutely explicit as to whether a second or subsequent renewal after the 12 month period can be made to the Master. Fortunately I do not have to decide that question here, so I can limit myself to simply noting that there is a question over whether the plaintiff was correct in seeking the second renewal from the Master, and not the High Court.

8. The affidavit of Ms. Niamh Kelly grounding that application sets out the reason for the extension on the basis that "*the defendants have not been served with the personal injury summons due to the complexity and nature of the claims against the defendants. I say that the inquest into the death of Mr. O'Gorman has been adjourned on a number of occasions and is awaiting a date for hearing*" (para. 6); and that "*the plaintiff and his legal representatives are of the opinion that the particularisation of the claims against the defendants cannot be completed sufficiently without the knowledge of the outcome of this inquest*" (para. 7).

9. Unfortunately these matters do not remotely come within the scope of the "*good reason*" envisaged by O. 8 r. 1. The complexity and nature of the claims against the defendants is not a reason not to serve the summons, even if the claims were as complex as implied, which they do not appear to be. The fact that the inquest has been adjourned and is awaiting a date for hearing is also neither here nor there in terms of whether the summons should be served. No rational basis has been put forward as to why the plaintiff cannot serve this summons before completion of the inquest process. As regards the claim that "*the particularisation of the claims against the defendants cannot be completed sufficiently without the knowledge of the outcome of this inquest*", there is no basis for this assertion. The plaintiff's claim is that he has suffered personal injury due to negligent acts by the defendants. What the outcome of the inquest is is really neither here nor there in relation to that claim. Either the defendants in this case have been negligent or not, and no verdict of the coroner one way or the other is going to affect that, given that the coroner is not concerned with issues of legal liability, especially not downstream issues such as whether alleged negligent treatment of the plaintiff caused him to kill Mr. O'Gorman. Even if the coroner were concerned with this issue, which she is not, that is not a reason to delay service of the summons. Any opinion hypothetically formed by a coroner on such a question is not determinative of the personal injuries proceedings.

10. The notion that the plaintiff's claim cannot be particularised rings hollow in any event given the level of detail in the nineteen page personal injury summons which sets out 36 particulars of negligence, breach of duty, breach of contract and breach of statutory duty as well as five full pages of particulars of personal injury. So I do not think there is any validity to the suggestion that the plaintiff's claim cannot be particularised at this stage, but even if there was, those particulars can always be updated by separate notice as the case proceeds. There was nothing properly preventing the summons being served.

11. The Master purported to make an order dated 14th June, 2017 on foot of the foregoing application renewing the summons for a second time. According to the grounding affidavit of Niamh Kelly in the present application, sworn on 20th June, 2017, "*the Master did state that, in his opinion, that as the 12 months had lapsed, it was the Court that should grant the extension*". Taking that account at face value, it seems perplexingly contradictory having stated that opinion to then purport to renew the summons in any event.

12. Ms. Kelly says that "*it is in these circumstances and for the avoidance of any doubt that this application is being made*", namely an application to the court to renew the summons in terms similar to that second renewal purportedly granted by the Master.

13. Whether the plaintiff can properly have an "each way bet" by applying to the court when he has already applied for and obtained a purported order from the Master is perhaps a question that might be considered but I will assume (without deciding) that I should consider the application on its merits.

14. A further complication is that the present application was brought on 20th June, 2017, namely outside of the period of duration of the summons, and thus an extension of time is required even for the present application to be made. No real basis for such an extension of time is set out on affidavit. Again I will assume (without deciding) that time should be extended.

15. The fundamental difficulty is that the same inadequate grounds are set forth before me as were before the Master. For the reasons set out above, these cannot constitute the sort of "*good reason*" envisaged by O. 8 r. 1 (see e.g. *Monahan v. Byrne* [2016]

IECA 10).

**Order**

16. Before concluding I might venture the suggestion that the rules committee might consider in due course whether the rule needs clarification in terms of the precise contours of the jurisdiction to grant second and subsequent renewals. Separately, the reference to the "*currency*" of the summons in O. 8 r. 1 may on one view benefit from re-wording to reflect the law as set out by the Court of Appeal in *Crowe v. Kitara Ltd.* [2016] IECA 62.

17. For the reasons set out above I will refuse the application to renew the summons. If the plaintiff purports to serve the summons on foot of the order of the Master of 14th June, 2017 he will be required to serve a copy of this judgment on the defendants simultaneously.