

Between:

WILLIAM MERRIMAN

Plaintiff

– and –

DAVID EGAN and THE MOTOR INSURERS BUREAU OF IRELAND

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 17th April, 2018.

1. These are personal injury proceedings in which the Circuit Court (1) ordered a renewal of the summons on 29th March, 2017, for a period of six months, (2) on 3rd November, 2017, refused a further renewal of the summons, on the basis that the application for the further renewal was not made within the period of the initial six-month renewal period. The events at the heart of the personal injury proceedings are claimed to have occurred on 7th September, 2013. So were new personal injury proceedings to be commenced at this time, they would be out of time. The cause for the plaintiff's seeking a repeated renewal of the summons is that, despite considerable efforts being made, great difficulty has been encountered in serving the defendant.

2. Order 12, rule 1 of the Circuit Court Rules deals with the renewal of the civil bills. It provides as follows:

"No Civil Bill shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may apply before the expiration of twelve months to the County Registrar for the County in which the Civil Bill was issued for leave to renew the Civil Bill. After the expiration of twelve months, an application to extend time for leave to renew the Civil Bill shall be made to the court. The court or the County Registrar, as the case may be, if satisfied that reasonable efforts have been made to serve the defendant, or for other good reason, may order that the Civil Bill be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed Civil Bill..."

[Emphasis added].

3. At first glance, having regard solely to the just-quoted text, one might be inclined to conclude that (i) the Circuit Court could not have proceeded other than it did, with the sole point of distinction being that (ii) it is not the time when the application for further renewal is made that ousts the jurisdiction to grant such further renewal, but rather the fact that order for further renewal cannot, if one has regard to the black-letter text of O.12, r.1 alone, be made outside the currency of the previously renewed Civil Bill. However, the decisions of the Supreme Court in *Baulk v. Irish National Insurance Co Ltd* [1969] IR 66 and *McCooley v. The Minister for Finance* [1971] IR 159, both of which drew dissenting judgments and even occasioned something of a (failed) revolt by the High Court in *McCooley*, have the effect that: (i) when, as here, the blackletter application of the court rules would have the effect of ending altogether the personal injuries claim to which the civil bill applies (because freshly commenced proceedings would be out of time), and (ii) the initial summons duly commenced within time, a different approach falls to be adopted than what exclusive regard to the above-quoted text might suggest to be the correct approach.

4. What those cases, as expanded upon in later case-law such as *Prior v. Independent Television News* [1993] 1 I.R. 399 and *O'Brien v. Fahy* (Unreported, Supreme Court, 21st March, 1997) require of a court faced with an application such as that now presenting is, to borrow from the learned authors of Dowling and McDonnell on *Civil Procedure in the Circuit Court* (2nd ed.), para. 3-39, "first [to] decide where the balance of justice lies, i.e. what prejudice would the plaintiff suffer if the Civil Bill was not renewed and equally, what prejudice will be suffered by the defendant if the Civil Bill is renewed?" As Dowling and McDonnell move on immediately to note "In terms of prejudice to the plaintiff, it goes without saying that if a plaintiff's claim will be statute-barred if the proceedings are not renewed, then he will be severely prejudiced by this". So much so that the court suspects that notwithstanding such further factors of relevance as (a) the date on which the defendant first became aware of the plaintiff's cause of action and (b) the issue as to whether the lapse of time prejudices the ability to defend proceedings, the inability to bring a fresh claim will in most instances be a factor of very great weight, as indeed it was in *Baulk*, Walsh J. observing in that case as follows, at 72:

"In the present case it does not appear to me that any injustice would be done, in the wide sense of the term, to the defendants by the granting of the renewal in this case. They have been aware from the very beginning of the plaintiff's intention to sue them, as they were parties to the motion which resulted in leave being given to name them as defendants. If the plaintiff's injuries were caused by the negligence of the defendants' deceased driver, and if the present proceedings have been commenced within the statutory period (as was the case), it is no injustice to ask the defendants to pay the damages in the amount awarded. If, on the other hand, the plaintiff's action fails to establish any negligence against the deceased driver, the defendants will succeed in the action notwithstanding a renewal of the plenary summons. On the other hand, if the plaintiff can establish negligence against the deceased driver but does not have his summons renewed because the period of limitation for the institution of a new action has already expired, the plaintiff will suffer an injustice by a refusal to renew this summons through being deprived of such damages as he would be entitled to. In my view, in the circumstances of this case, it would be an injustice to the plaintiff to employ the rules of court for the purpose of preventing him from proceeding with the action which he commenced within time when there is no other course open to him which will enable him to have his claim against the defendants determined."

5. If the facts are as claimed by the plaintiff (and they remain to be established) then the first-named defendant cannot but have become aware of the cause of action on the date the alleged facts occurred (if they occurred) with the second-named defendant becoming duly apprised of same in due time thereafter. Given that the events occurred in the third-quarter of 2013, it does not appear to the court that any issue as to (in-) ability to defend the proceedings presents. And, for the reasons outlined by Walsh J. in *Baulk*, it is difficult to see how any injustice results to the defendant from the further renewal of the summons.

6. For the various reasons outlined above, the court will respectfully reverse the order of the Circuit Court and, consistent with the order made by the Supreme Court in *Baulk*, order the renewal of the summons for six months from the date of delivery of the within judgment.

