

## THE HIGH COURT

[2012 No. 13033 P]

BETWEEN

CIERAN FARRELL

PLAINTIFF

AND

THE BOARD OF MANAGEMENT OF ST. KEVIN'S CBS ARKLOW

DEFENDANT

**JUDGMENT of Mr. Justice Barrett delivered on the 28th day of February, 2014**

1. The issue in this case is whether a personal injuries action commenced by Mr. Farrell, the plaintiff in this action, is statute-barred.
2. On 5th December, 2007, while he was leaving an examination hall in St Kevin's CBS, Mr. Farrell suffered injury when a pen was thrown at him by a fellow student. Mr Farrell has since commenced a personal injuries action in relation to the injury that he suffered. He maintains that the action was commenced within the applicable limitation period. The Board of Management of St Kevin's, the defendant in this action, contends that the limitation period has expired and that the action is barred from proceeding.
3. The dispute between the parties as to whether or not the proceedings are statute-barred centres on the issuance by the Personal Injuries Assessment Board, pursuant to section 14(4) of the Personal Injuries Assessment Board Act 2003, of an authorisation empowering the Plaintiff to bring proceedings in respect of his injury. The form of authorisation that issues from the Personal Injuries Assessment Board identifies, amongst other matters, the name of the 'claimant', here Mr. Farrell, and the name(s) of the applicable respondent(s). It also bears the date on which the authorisation purports to issue. This last date has a special significance. Under Section 50 of the Personal Injuries Assessment Board Act 2003 the period commencing upon a claimant's formal engagement with the Board under Section 11 of the Act and ending six months from the date of issue of an authorisation under the Act does not count for the purposes of calculating the applicable limitation period. Per Section 50:

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

Put shortly, so far as limitation periods in respect of personal injuries actions are concerned, time stops ticking once a Section 11 application is made and starts ticking again six months from the date of issue of an authorisation under any of a number of provisions of the Act, the relevant provision in these proceedings being Section 14 of the 2003 Act, the provision pursuant to which Mr. Farrell's authorisation issued.

4. In the Plaintiff's case his alleged injury was suffered on 5th December, 2007. At the time he was a minor, so the two-year limitation period now applicable to personal injuries proceedings did not begin to run until he reached the age of majority on 6th February, 2010. Time ceased to run on 19th December, 2011, when the Plaintiff made application under Section 11 to the Personal Injuries Assessment Board. It started running again six months from the date when the Board issued its Section 14 authorisation to Mr. Farrell. At that time Mr. Farrell had one month and 19 days remaining to him to commence proceedings.

5. The parties dispute what date the Section 14 authorisation issued from the Personal Injuries Assessment Board to Mr. Farrell. The Board issued an authorisation dated 11th January, 2012. This named the respondent as "St. Kevin's CBS". On 22nd August, 2012, Mr. Farrell's solicitors wrote to the Personal Injuries Assessment Board and asked if the Board "would please issue a further Authorisation in favour of The Board of Management St. Kevin's CBS Arklow." With a letter of 14th November, 2012, the Board issued, per the letter, an "amended authorisation, reflecting the correct respondent title". Notably, this "amended authorisation" continued to bear the same issue date as its predecessor, viz. 11th January, 2012.

6. The Board of Management looks to the face of the authorisation and contends that the date of issue remains 11th January, 2012 and thus that the period for initiation of Mr. Farrell's action expired on 30th August, 2012. Mr. Farrell contends that the practical reality of matters is that the date on which the authorisation finally issued was 14th November, 2012. This would have the result that the limitation period expired sometime in 2013. As Mr. Farrell issued his personal injuries summons on 20th December, 2012, the Board of Management contends that it was issued out of time; Mr. Farrell contends that it was issued within time.

7. There is case-law that supports the contention made by Mr. Farrell that the date of issue of the section 14 authorisation is 14th November, 2012. In *Figueredo v. McKiernan* [2008] IEHC 368 an issue arose as to when an application had been made to the Personal Injuries Assessment Board. The plaintiff contended that application had been made on one date. The defendant contended that under the applicable rules the document fell to be deemed as received on a later date. Dunne J. considered that the correct date was the date on which the document actually issued, stating, at 5:

*"If the contention on behalf of the defendant is correct, it would appear...that a plaintiff could be statute barred in circumstances entirely outside their control. Clearly, such a consideration could result in significant hardship for a plaintiff... [I]t seems somewhat harsh, to say the least, that having taken every step that one can take in order to commence proceedings, that one could become statute barred by the actions of a third party over whom one has no control, in this case the Personal Injuries Assessment Board".*

Applying the same principles to the present case it would be harsh, to say the least, that despite Mr. Farrell and his solicitors taking every step that they could to commence proceedings, including requesting the Personal Injuries Assessment Board, a party over whom Mr. Farrell has no control, to amend the authorisation, Mr. Farrell should suffer detriment because of the Board's practice

whereby (a) issuing an authorisation to proceed against a party who was differently identified in the initial authorisation is treated merely as an amendment of that initial authorisation, and (b) it is considered appropriate that an amended document should continue to bear the date of issuance of the original document notwithstanding that the amended document in fact issues on a later date.

8. In *Fogarty v. McKeogh Brothers (Ballina) Limited* [2010] 4 I.R. 374, again in the context of a personal injuries action, the court had to decide on what date an authorisation should be treated as having issued when it was dated one date but received by the solicitor for the plaintiff on a later date. Clarke J. states, at 378, that:

*"A document containing an authorisation under s.14, can only be said to have been issued when it is issued to the claimant concerned....It seems to me that the date on which the seal of the Board is affixed is not the relevant date. The relevant date is the date when the document is sent to the relevant claimant."*

In the present case, the authorisation empowering the plaintiff to proceed against the correctly named defendant was sent under an accompanying letter on 14th November, 2012. The court considers that it is this later date and not 11th January 2012, the date which it bears, that should be treated as the relevant date for the purposes of calculating the limitation period arising.

9. For the reasons stated above the court considers that the plaintiff's personal injuries proceedings, as commenced on 20th December, 2012, do not stand barred by the provisions of the Statute of Limitations 1957 (as amended).