

THE HIGH COURT

2016 No. 10518 P

Between:

INGRID LALLY

Plaintiff

– and –

EDRIC BROWNE AND NIAL MORAN

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 28th May, 2019.

1. Mr Moran seeks an order under O.8, r.2/RSC setting aside the *ex parte* renewal of the summons in these proceedings. Order 8, rule 1/RSC allows for renewal if the court is satisfied "*that reasonable efforts have been made to serve...or for other good reason*".
2. This case affords a classic example of a problem touched on in *Moynihan v. Dairygold Co-operative Society Ltd* [2006] IEHC 318, 13-15, viz. a summons issues, work continues on the proceedings, but no service is effected, even as time is ticking on the lifespan of the summons.
3. It cannot be said that reasonable efforts have been made to serve where no efforts have been made to serve, and no good reason has been offered for this want of effort. Even if there was other good reason for renewal (and no good reason has been offered) it would need to (and being non-existent it cannot) outweigh the prejudice occasioned to Mr Moran by the death last March of the first-named defendant, a gentleman whose very advanced years meant that timely progression of these proceedings was always important. Mr Browne's death has deprived Mr Moran of the ability to elicit evidence from him concerning critical issues in this case, e.g., as to (i) a particular horse's temperament and (ii) the placement, guarding, etc. of an electricity pole into which that horse allegedly collided while the plaintiff, it is claimed, was riding it.
4. As to the interpretation that the plaintiff's solicitor has sought to place on an e-mail of 10.10.2017 from Zürich Insurance to her, that interpretation is not credible: it is clear from same that Zürich is labouring in the dark, mistakenly understands that it is being sued by the plaintiff, wrongly expects that a summons naming it will issue and expects to authorise solicitors to accept service on *its* behalf as defendant, nothing more.
5. The court will grant the order sought.