Neutral Citation: [2014] IEHC 488

THE HIGH COURT

[2006 No. 362 P]

BETWEEN

BOLIDEN TARA MINES LIMITED

PLAINTIFF

AND

IRISH PENSIONS TRUST LIMITED

DEFENDANT

JUDGMENT of Ms. Justice Baker delivered on the 30th day of October, 2014

1. This is an appeal by the plaintiff from a decision of the Master of the High Court made on 5th February, 2014, wherein he refused the application by the plaintiff for the extension of time for the delivery of a statement of claim in the within proceedings, and by which he dismissed the claim and awarded the costs of the proceedings and of the motion to the defendant.

2. The plaintiff is a company carrying on a mining business in Co. Meath. These proceedings relate to an employee pension scheme which has been in place for a long number of years and is operated through a trust. The defendant was at all material times the sole trustee of the pension trust scheme.

3. The present proceedings commenced by plenary summons issued on 30th January, 2006 and served on 24th January, 2007. The proceedings arose in the context of other, now concluded, proceedings had between the plaintiff and the defendant which sought rectification of the then pension trust deed and rules, and in particular a deed of amendment to the trust deed executed under seal on 19th October, 1999.

4. Rectification proceedings were commenced by the plaintiff against the defendant and a representative defendant seeking rectification of the deed of amendment and these proceedings were commenced in the Commercial Court on 6th day of April, 2006. The Supreme Court finally determined the appeal in those proceedings on 21st December, 2010, as a result whereof rectification of the deed of amendment was directed.

5. These proceedings seek damages from the defendant for negligence, breach of contract and breach of duty by reason of what is alleged to be the failure to draft a deed of amendment to the pension trust deed in accordance with the instructions and intentions of the plaintiff. The special damages are quantified in the sum of €2,300,000, calculated at €1,650,000 being the costs of bringing the rectification proceedings, and of allied proceedings seeking directions as to payments to certain employees, together with the sum of €650,000 paid by way of back entitlements and interim payments to these employees.

The timeframe in these proceedings

6. The plenary summons issued in January 2006 and it is clear from the affidavit grounding this application sworn by Connor Quigley on 26th July, 2013, that the proceedings were issued to protect the position of the plaintiff having regard to the Statute of Limitations. The plenary summons was not served until almost a year after issue, and it is not argued that the defendant was aware of the existence of the proceedings until they were served in January 2007.

7. It is further not argued that there was an agreement reached between the parties to these proceedings that the determination and prosecution of these proceedings would await the outcome of the rectification proceedings. It is, however, argued by the plaintiff that it was necessary to await the conclusion of the rectification proceedings in both the High Court and Supreme Court, as without the clarification ultimately afforded by those proceedings, it would not have been possible for the plaintiff to quantify its losses. It is further argued that the High Court and Supreme Court proceedings were a mitigation by the plaintiff of the loss and damages which it now seeks, and had the rectification proceedings not been brought, it seems likely that the special damages element would have been significantly larger, as the effect of the rectification was to reduce the pension obligations of the plaintiff to some of its employees.

8. It is clear that a conversation was had at the time of the service of the plenary summons in January 2007, between the solicitors acting for each party in the course of which the solicitors for the defendant, Messrs. A&L Goodbody & Co., were made aware that the issue of these proceedings was a form of "protective measure" and where it was said that the plaintiff did not intend to pursue these proceedings against the defendant "for the time being". No agreement was reached that the proceeding could be held in abeyance until the rectification proceedings had been brought to their conclusion, but the defendant was aware of the proceedings, and that they had been issued, initially at least, as a protective measure.

9. The Supreme Court delivered its judgment ordering rectification on 21st December, 2010 and it was not until 6th November, 2012, that a notice of intention to proceed was served on Messrs A&L Goodbody in accordance with the Rules of the Superior Courts. The almost two year gap between December 2010 and November 2012, is explained by the plaintiff as arising because commercial negotiations were being had with the administrators of the pension plan, albeit these discussions were not had with the defendant.

10. The solicitors for the defendant upon receipt of the notice of intention to proceed wrote on 21st November, 2012, acknowledging receipt of the notice and pointing out no steps had been taken in the proceedings since January 2006, a period at that stage of more than five years. The letter pointed out that no explanation had been furnished as to why the plaintiff was seeking to restart the proceedings after such a lengthy period and that the defendant was "considering its options, which include applying to strike out the proceedings for want of prosecution." All of the rights of the defendant were reserved by that letter.

11. By letter dated 17th December, 2012, some three weeks after the letter by which the defendant expressly reserved its position, Messrs. A&L Goodbody wrote a letter expressing surprise that the statement of claim had not been served despite the expiration of the period stipulated in the notice of intention to proceed and pointing out that more than ample time was available to the plaintiff to finalise the statement of claim. This letter is important and I set out the relevant extract:

"In the circumstances, please note we are only prepared to consent to the late delivery of your client's Statement of Claim provided it is delivered on or before Friday, 4 January, 2013. In the event that you fail to deliver your client's Statement of Claim within that time period, we reserve the right to require you to seek an Order from the High Court extending the time for delivery of your client's Statement of Claim.

In the meantime, all our client's rights in relation to the proceedings are fully reserved, including the right to apply to the High Court for an Order that the proceedings be struck out. "

12. McCann Fitzgerald Solicitors wrote on 7th January, 2013, identifying the reason for the delay as being that it was "necessary to dispose of the proceedings in respect of the rectification", and that discussions had taken place over the previous number of years.

13. A reply of 8th January, 2013, again made reference to the letter of 17th December, 2012, which contained an agreement for an extension of time and which reserved the position of the defendant.

14. The statement of claim was not delivered until 9th April, 2013, almost four months after the letter agreeing to the extension of time, and three months after the deadline, and that was done under cover of letter seeking a further extension, beyond that contained in the letter of 17th December, 2012. A reply of 15th April, 2013, from A&L Goodbody was sent to the effect that the firm was seeking instructions and was followed on 23rd April, 2013, by a letter refusing to consent to late delivery and pointing out that the proceedings had been subject to inordinate and excusable delay, and that the plaintiff had failed to comply with "the deadline previously set by our client".

15. An affidavit of Tadg Farrell, the Finance Director of the plaintiff was sworn in this application on 24th July, 2013, and it avers that the defendant was aware at all times as to why the proceedings were not progressed between issue and the date of the end of 2012 when they were reactivated by the service of the notice of intention to proceed. It suggests that the defendant was "fully aware of the within proceedings and entirely familiar with the factual background" and it is expressly stated that the defendant supported the plaintiff in the rectification proceedings. This particular fact does not seem to be in dispute and was central to the argument of the plaintiff in the course of the motion before me.

Areas of factual dispute

16. Peter Law, solicitor of A&L Goodbody, swore a careful affidavit in which he said he did not believe, but "cannot recall", that he was informed that any decision by the plaintiff to progress the proceedings was dependent on the outcome of the rectification proceedings. He points out that the plaintiff made a unilateral decision to await the rectification proceedings and he is clear that he did not at any time indicate that such an approach would be acceptable to the defendant.

17. An equally careful affidavit was sworn by in-house counsel of the defendant, Elizabeth Davis, who again avers to the fact that the plaintiff unilaterally made a decision to postpone or delay the prosecution of the proceedings and points out, more by way of argument than evidence, that an intention to do so ought to have been expressly communicated to the defendant and an agreement reached before the plaintiff could safely proceed on that basis. She does not say that the defendant firm were unaware of the existence of the proceedings, nor that they did not implicitly accept, whether as matter of fact or of logic, that the within proceedings had to await the conclusion of the rectification proceedings. Of more significance is the fact that she avers that the discussions or negotiations that were had between the plaintiff and Mercer (Ireland) Limited which took over the business of the defendant in 1999, were not had with regard to the litigation itself but rather with regard to the ongoing management of the pension trust, and accordingly that those negotiations could not be seen as a justification or rationale for the delay in the prosecution of these proceedings between the delivery in December 2010, of the Supreme Court judgment and November 2012, when the notice of intention was to proceed was served. Ms. Davis points to this two year period as being inexcusable, and points further to what she says was the clear onus on the plaintiff to move with reasonable expedition following the Supreme Court proceedings.

The law

18. The plaintiff seeks an extension of time for the delivery of a statement of claim and counsel for both parties agree that the applicable law is the well established law applicable to a motion to dismiss proceedings for want of prosecution. The modem law commences with the decision of the High Court in *Rainsford v. Limerick Corporation* [1995] 2 ILRM 561 where Finlay P. identified the approach of the court as follows:-

- The court should first inquire as to whether the delay has been inordinate, and if it is inordinate the court should then ask if the delay is inexcusable.

- An inordinate and inexcusable delay may still be excused, and the court may still exercise a discretion in favour of or against the continuation of the proceedings.

- The balance of justice is the key to the exercise by the court of its discretion.

- Personal blameworthiness is material.

- Delay in seeking an order of the court, whether to dismiss the proceedings or to extend the time may be an ingredient in the exercise of the court's discretion.

19. The principles in *Rainsford v. Limerick Corporation* were endorsed and extended by the Supreme Court in *Primor Plc v. Stokes Kennedy Crowley* [1996] 2 I.R. 459, where the Court confirmed the principles outlined above and where the focus was on the discretion of the court and how the balance of justice was to be seen. Certain considerations were identified as relevant to the question of the balance of justice and these may be summarised as follows:-

(a) The implied constitutional principles of fairness and procedures.

(b) Whether on the facts of the case there is prejudice by virtue of the delay such that it is unfair to allow the proceedings to continue.

(c) The conduct of both parties should be looked at.

(d) Whether there has been any acquiescence on the part of the non delaying party.

(e) Whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or where it is likely to cause

or to have caused serious prejudice to the defendant.

20. Some argument was had in the course of the trial as to whether the decision of the Supreme Court in *Comcast International Holdings Incorporated & Ors v. Minister for Public Enterprise & Ors* [2012] IESC 50, involves a tightening of the test such that the court would be less likely to indulge an inordinate and inexcusable delay. The Court in that case expressly approved both *Rainsford* and *Primor* and this express endorsement was clear from judgments delivered by all members of a five member court. It is noteworthy, however, that McKechnie J. in referring to what he described as the *Rainsford/Primor* line of authority, and which he termed the "*Primor* principles" made it clear that while that the question of the balance of justice involved the factual list identified by the Chief Justice in *Primor Plc v. Stokes Kennedy Crowley*, the list was "evidently non-exhaustive". This flows from the nature of the exercise of a discretionary jurisdiction linked to the balance of justice. All such discretionary jurisdictions, or a jurisdiction linked to the balance of justice, must depend on the facts and factors in an individual case, and any list is necessarily non exhaustive in those circumstances. As McKechnie J. said at para. 27 in *Comcast International Holdings Incorporated & Ors v. Minister for Public Enterprise & Ors*:-

> *"All will depend on specific circumstances. However, what must be emphasised is that, at the level of principle, the position of both parties must be appraised and evaluated All relevant material must be looked at, with no single or individual matter being conclusive save that as mandated by the particular case."*

21. The ultimate test then is that identified by McKechnie J.:-

> *"What does justice, between the particular parties and in the particular circumstances, demand? Such is the end line of this type of analysis. "*

A question that arose in various judicial comments since the passing of the European Convention on Human Rights Act 2003, is whether the enactment of that legislation meant that the court would be less benignly disposed to overlooking dilatoriness. McKechnie J. having referred to the judgment of Geoghegan J. in *Desmond v. MGN Limited* [2009] 1 I.R. 737, which affirmed the *Primor* principles, and the same judge's comments in *McBrearty & Ors v. North Western Health Board & Ors* [2010] IESC 27 where the learned judge said that, even against the backdrop of any case law from the European Court of Human Rights, there was "no justification for any major departure from these well established and well tried principles" expressly asked whether there was any need for a formal reassessment of the *Primor* principles.

22. Clarke J. whose judgments in some earlier cases, particularly in *Stephens v. Flynn* [2005] IEHC 148, suggested a less benign approach and asked whether there should properly be a recalibration or tightening up of the criteria by reference to which the actions of the parties might be judged, expressed the view that the overall test remains the same, but pointed out that, while the principles remain the same, the application of those principles might require some "tightening up or recalibration" a phrase that he had used in the earlier judgment of *Rodenhuis & Verloop BV v. HDS Energy Ltd* [2011] 1 I.R. 611.

The analysis

23. These legal principles, called by McKechnie J. the "*Primor* principles" and briefly summarised by me above, remain the law in this jurisdiction. It does seem however that the courts have become somewhat stricter in the application of the tests as there identified, not least because of the enactment of the Human Rights Act 2003. This approach is consistent with the approach of the courts in various other procedural questions that come before the courts from time to time, and is found for example in the approach of the courts to costs exemplified in the probate case of *Elliot v. Stamp* [2006] IEHC 336 and in the decision in *Veolia Water UK plc v. Fingal County Council (No. 2)* [2006] IEHC 240. The jurisprudence in those cases suggests that the courts no longer take a broad sweep in considering the questions of costs, or prejudice, and will look to the conduct of litigation and the effect on the parties and on the administration of justice in considering a motion before it.

24. The question of whether the time for the delivery of a statement of claim should be extended, or whether proceedings should be dismissed for want of prosecution is never a matter that can be answered merely by a routine application of the principles or weighing of individual factors. The courts will look to the behaviour of both parties, the actual and potential facts of the delay, the specific prejudice and general prejudice that will be suffered or likely to be suffered. The courts do not take the view that the blame can easily always be laid at the door of one party only, the party who has delayed, and the court will look to the entire matrix of the facts.

25. Further, the Supreme Court has made this clear that a decision will be made in the context of not merely the principles of justice *inter partes*, but the administration of justice in general. Thus the courts jealously guard their own procedures and to avoid the development, or the perceived development, of what Clarke J. called in *Comcast International Holdings Incorporated & Ors v. Minister for Public Enterprise & Ors* "a culture of delay". The courts do not operate in a vacuum, and while a court must consider the question before it in the light of the facts before it, it must also have regard to the likely impact not merely of a decision of the court in an individual case, but also of the general approach that the court should take, and Clarke J. made the observation, with which I agree, in *Comcast International Holdings Incorporated & Ors v. Minister for Public Enterprise & Ors* that an unduly lax or indulgent approach by the court:-

> *"... has the potential to create injustice by delay across a whole range of cases whose facts may never come to be considered by a judge, but whose progress is adversely affected by a culture of delay. "*

26. The test, then, involves looking to the specific facts of the application, the behaviour, whether it be faulty behaviour or otherwise, of each party to the proceedings, the likelihood of actual prejudice, and the fact that the court is charged with the protection of the common good in the interests of justice, not merely in its administration of justice in an individual case but in its societal role as a protector of the interests of justice.

27. I turn now to the factors and facts which I regard as relevant in the course of this litigation for the purposes of the exercise of my discretion in the light of the authorities. I will deal with these in sequence.

The first factor: the institution of proceedings

28. The plaintiff is not guilty of any delay in instituting the proceedings and it would be fair to say that the difficulty with regard to the pension only came to light in 2002 when the first income continuance beneficiary reached retirement age, and when it became clear that his claim cast doubt as to the meaning of the provisions of the deed of amendment. The amendment deed was executed in 1999, and while I accept that between that date and 2002 there was no event which occurred or which might have alerted the plaintiff to a difficulty, the plaintiff did delay more than three years in issuing the plenary summons after the problem came to light and a further one year in serving these proceedings. Having regard to the fact that there is a six year time limit for the institution of proceedings for breach of contract, or in regard to the negligent act complained of in these proceedings, I do not regard the delay

between October 1999 and November 2002, if these be the relevant dates for this purpose, as being culpable. The matters were complex, and in fact it may have been possible in the intervening period for the parties to have reached a compromise with the Union members who asserted a claim to the full income continuance payment. Furthermore, and this seems to me to be critical, the amount if any of loss that might have been suffered by the plaintiff as a result of the inaccurate recording of its intentions and/or instructions in the deed of amendment was contingent upon the happening of the event which did happen in November 2002, namely a particular beneficiary reached retirement age whilst still in employment with the plaintiff.

The second factor: the delay between issue and service
29. The proceedings were issued as a holding device to prevent the plaintiffs action being statute barred. The Rules of the Superior Courts permit issue without service, subject only to the requirement that a plenary summons has to be renewed if it is not served within a one year period. The plenary summons was served within one year, albeit only just within this time limit. The delay in service is not culpable.

The third factor: the response of the defendant
30. In its letter of November 2012, the defendant threatened to bring a motion to strike out the proceedings. This was not done, and it is now clear from the case law, and in particular from the statements of McKechnie J. in *Comcast International Holdings Incorporated & Ors v. Minister for Public Enterprise & Ors*, that the court will look at the behaviour of both parties. The court in determining the motion, particularly where the delay is not in any sense an intermediate case and where the delay has been in objective terms at least, lengthy, will look to the behaviour and approach taken by each of the parties, in the context of the fact that each party had remedies available to it to put an end to the proceedings. The defendant was clearly aware of this and threatened in November 2012 to seek to strike out the proceedings. It did not do so, and indeed took what has to be regarded as a commendable step in agreeing to extend the time.

The fourth factor: the existence of the other proceedings
31. In *Comcast*, the Court was also faced with a situation where the full prosecution of the plaintiff's case had to await development in another forum, in that case, the Moriarty Tribunal. The Court took particular note of this fact and while it was the case that the plaintiff had not informed the defendants that it was intending to "park" the proceedings, Clarke J. took note of the fact that the Minister was aware of the fact that the plaintiff was awaiting developments of the Moriarty Tribunal before processing the claim. Clarke J. in that case considered the approach of issuing proceedings and then parking those proceedings as an "unorthodox" approach to litigation, and suggested that such an unorthodox approach would have to at least be identified to the other party, and that it was not "legitimate for a party to adopt an unorthodox approach to litigation on a unilateral basis".

32. The defendant argues that the absence of an agreement to "park" these proceedings is significant, and I accept that general proposition. But it seems to me to be relevant that in this particular case, that the "parking" of the litigation was done pending the resolution of other proceedings to which the defendant was a party and which the defendant had a significant and active involvement. Further, to borrow the language from para. 5.9 of the judgment of Clarke J. in *Comcast* the unorthodox action was "signalled contemporaneously and not contested" by the plaintiff and this again must weigh with my decision.

33. One difference can be noted between the instant proceedings and Comcast, namely that in *Comcast*, the court held, at para. 5.11 that there was no reasonable basis on which the plaintiff could be expected to have had sufficient information to formulate a statement of claim in any meaningful way. The defendant in this application makes particular argument in regard to this distinction and in particular points out that the plaintiff could have delivered a statement of claim as early as 2006 or indeed as early 2002, because the alleged negligence and breach of duty was identified by that date, albeit the precise extent of the losses which are claimed to have flowed therefrom did not crystallise until after the Supreme Court delivered its judgment in December 2010, and its decision as to the costs of the rectification proceedings in February 2011. The defendant argues that the plaintiff had sufficient information to deliver a statement of claim, which could have been amended and refined in the light of subsequent events.

34. I agree with this proposition, but if, as it seems from the case law to be, one purpose of the jurisprudence is to ensure the balance of justice between parties to litigation, and another, perhaps more in aid of the general public interest in the efficient use of court resources, is to avoid unnecessary costs and procedures, then the service by the plaintiff of what might be termed a "holding" statement of claim pleaded in general terms, and which might require to be amended in substance, necessitating an application to the court, and the service of further amended pleadings, is unnecessarily wasteful and not an effective use of court time or of that of the parties. Accordingly, I accept that it was not unreasonable for the plaintiff to await the conclusion of the rectification proceedings before preparing a statement of claim.

The fifth factor: the letter of November 2012, the limited extension of time
35. In *Comcast* at para. 5.25, Clarke J. said that there could little doubt that by choosing to write a letter extending time, the defendant moving party in that motion would have conveyed the impression that it was more concerned about moving the proceedings on than seeking to terminate the proceedings. The defendant by a similar letter of 17th December, 2012, agreed to extend the time, albeit for a short period running through the Christmas vacation. The letter of 17th December, 2012, is important for a number of reasons.

> (a) It must have been written following the taking of a considered view, and of instructions, by the solicitors for the defendant that no actual prejudice existed at that time or would exist during the short period for which the extension of time was allowed.
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> (b) It must have been taken by the plaintiff as an indication, in precisely the same way as happened in *Comcast*, that the defendant was not then contemplating seeking to have the proceedings dismissed for delay.
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> (c) The letter has to be seen as a broad acceptance of inaction, albeit an acceptance which indicated that the defendant patience was close to running out.
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> (d) I must have regard to the weight of all of the factors and I give particular weight to the fact that competent, commercial solicitors as late as December 2012, on their clients instructions, agreed to a limited extension of time.

The sixth factor: prejudice
36. It is settled law that likely or actual prejudice to another party is a matter of significant weight in the discretion of the court in hearing an application to dismiss proceedings or extend time for the service of pleadings. The law does not go so far to say that there must be actual prejudice and it is sufficient that prejudice be likely or probable. Prejudice may be either specific or general and again

this is clear from the case law. In *Rogers v. Michelin Tyre Plc & Anor.* [2005] IEHC 294, Clarke J. made it clear that the court would look at both general prejudice that would be expected to occur in any case in particular or specific prejudice, the actual prejudice which is found or argued to be found in an individual case. The prejudice, having regard to the characterisation of the jurisdiction of the court, is not merely specific to an individual case but also one which the court must exercise in the context of evolving jurisprudence and the desire to prevent a culture of delay in litigation and accordingly, both forms of prejudice are relevant to me, and actual prejudice does not have to be shown.

37. However, it has not been said that any likely witnesses are not able to give evidence, nor has it been said that any of those witnesses is no longer available to the defendant as a witness. At its height, what the defendant says, and very fairly says, is that these persons are no longer working for the defendant company and have retired, with all the attendant difficulties that might, but have not as yet, come to arise as a result. I take note of the test as applied by Hanna J. in the High Court case of *Campbell-Sharp Associates Limited v. MVMBNI JV Limited & Ors* [2013] IEHC 470 and the related proceedings, where the Court took note of the fact that there was no difficulty in maintaining the documentation and records, and taking witness statements and also noted that there was sufficient documentation available to refresh memories. I am of the view that in this case an even greater degree of refreshment of flagging memories, should they indeed be in any way fragile, has taken place in the recent past for the purposes of commercial proceedings in which both parties were involved, and where the defendant would have had every reason and opportunity to consider the documentation surrounding the execution of the deed of amendment.

Summary and analysis
38. In short it is undoubtedly the case, and not to require much analysis on my part, that the delay in this case by the plaintiff has been inordinate. The delay was excusable up to such time the Supreme Court concluded the rectification proceedings, but thereafter it was not excusable. The fact that the delay is inexcusable is a significant factor in the exercise by me of my discretion in deciding whether to extend the time in this case. On the particular facts of the case, I find that there is no individual prejudice, and that no one was identified in correspondence. At best, there is an averment that prejudice is likely. There is no prejudice sufficient on the evidence before me to come to a conclusion that the defendant cannot have a fair trial.

39. It is my view that the plaintiffs delay has been on the extreme end of the scale. Had the proceedings been progressed after the Supreme Court case had concluded, it would have been on a moderate, perhaps even on the slight or light, part of that scale. The conclusion of the Supreme Court case, or at best the determination of the costs application in that case, was a key date at which it was encumbent upon the plaintiff to progress the case.

40. The defendant has behaved in the most appropriate manner in this case but the fact remains that the defendant did not bring a motion to strike out the proceedings at the time when this might have been apposite, namely after the service of the notice of intention to proceed or after 5th January, 2013, the date of the deadline it set in correspondence.

41. The key determining factor in directing me in the exercise of my discretion is the letter of 17th December 2012. By that letter, the defendant's solicitor impliedly accepted that he did not consider that there was actual prejudice, and it could be said that that letter would suggest that the solicitor for the defendant did not even believe that the delay was inexcusable or inordinate, and that his main focus was to get the matter progressed to trial.

42. Accordingly I am of the view having weighed the factors that the plaintiff should be given a further short period of time to serve the statement of claim, but in doing so I believe I must facilitate the defendant in any application it might make for the case management of the proceedings with a view to bringing them in to a conclusion. I will hear counsel on such an application.

Is the claim statute barred?
43. Finally, the plaintiff makes the argument that the proceedings are statute barred and in those circumstances, I should not accede to an application to allow statute barred proceedings to continue. This claim was made for the first time in a replying affidavit by Ms. Davis of 17th October, 2013. It was suggested that the plaintiffs claim was not a contingent loss and that the claim comes fairly within the recent Supreme Court decision of *Gallagher v. ACC Bank* [2012] IESC 35, where the date of the accrual of the cause of action was found to be the date when negligent advice was given. If the defendant seeks to pursue this as a preliminary issue then I give liberty to bring a motion for a trial of the issue and it does not seem to me appropriate that the question of the Statute of Limitations be weighed by me in the absence of full argument on this point.