Neutral Citation Number: [2008] IEHC 253

THE HIGH COURT

2000 No. 10372 P

BETWEEN

SEAN O'LEARY

PLAINTIFF

AND

THOMAS A. WALSH, PADRAIG J. BUTLER, JAMES A. MURPHY AND SUSAN B. ROBERTS

DEFENDANTS

Judgment delivered by Ms. Justice Dunne on the 24th day of July 2008

1. The plenary summons in this case was issued on the 7th September, 2000. The first and second named defendants herein are solicitors who were at relevant times to these proceedings in practice and partnership together. The third named defendant is also a solicitor who was the principle of the firm Huggard, Brennan and Murphy at relevant times. It is not intended to proceed against the fourth defendant and she has not been served with the plenary summons herein.

2. An order was made herein on the 30th January, 2006, (Peart J.) renewing the plenary summons herein. A motion was issued on the 13th July, 2006, on behalf of the third named defendant pursuant to O. 8, r. 2 of the Rules of the Superior Courts seeking to set aside the renewal of the summons.

3. The first named defendant also issued a motion on the 12th October, 2007, seeking to set aside the renewal of the summons and seeking to dismiss the proceedings for want of prosecution and on grounds relating to the lapse of time.

4. Finally the second named defendant issued a motion on the 5th June, 2008, seeking similar relief against the plaintiff. The three motions were listed together and heard on the 12th June, 2008.

5. The plaintiff s claim herein is for damages alleged to have been suffered by him as a result of the negligent breach of duty and breach of contract of the defendants and each of them. The defendants acted for the plaintiff at different times in respect of proceedings commenced by the plaintiff in 1991 against Agricultural Credit Corporation Plc (ACC) and an accountancy firm, Reynolds McCarron, one of whose members, James Kavanagh, was appointed a Receiver of the plaintiff's lands by ACC in 1986 on foot of a Deed of Charge made between the plaintiff and ACC.

Background

6. The background to this matter is set out in some detail in the affidavit of Augustus Cullen grounding the application of the third named defendant herein. He referred to the affidavit of Padraig J. Ferry, sworn herein to ground the application to renew the summons. From the affidavits it appears:

1. The plaintiff was a fruit farmer, he was in financial difficulties and owed large sums to ACC.

2. In mid 1985, he owed approximately £50,000 to ACC. In July 1985, ACC appointed John P. Kavanagh as a Receiver over the lands comprised in the Charge.

3. Negotiations took place between the plaintiff and ACC following the appointment of the Receiver and during those negotiations the fact of the appointment of the Receiver was not published. Negotiations failed and in July 1986, notice of the appointment of a Receiver was published.

4. The plaintiff alleges that the Receivership was negligent and that as a consequence he suffered substantial losses. He also alleges that the lands the subject of the charge were subsequently sold by ACC at an undervalue.

5. On the basis of legal advice, proceedings were issued in March 1991, against ACC and the firm of which Mr. Kavanagh was a member, Reynolds McCarron. The proceedings were served on ACC but not at that time on Reynolds McCarron.

6. Those proceedings should have issued against Mr. Kavanagh in his personal capacity and not against the firm of which he was a member.

7. The solicitors originally acting for the plaintiff, O'Flahertys, were taken over by Butler Walsh, solicitors, in which firm the first and second named defendants were partners.

8. It appears that Butler Walsh filed a notice of change of solicitors on the 28th September, 1992. They continued to act until approximately 3rd April, 1995. It is probable that they were acting for the plaintiff in those proceedings for some time before filing the notice of change.

9. Huggard Brennan and Murphy, solicitors, then came on record for the plaintiff. The third named defendant was a principle of that firm.

10. That firm of solicitors remained on record until late 1999, when Ferrys, Solicitors, came on record for the plaintiff.

7. The Receiver, Mr. Kavanagh, was never properly served with the 1991 proceedings. A renewal of the summons in the 1991 proceedings took place on the 15th July, 2000, and it was then served on the firm of Reynolds McCarron. On the 23rd July, 2001, the service of the proceedings on Reynolds McCarron and Mr. Kavanagh, a partner in the firm of Reynolds McCarron, was set aside by order of the High Court, (Johnson J.) on the grounds that the proceedings had not been validly commenced against him in his personal capacity. As a result of that ruling, the plaintiff was left without any possible remedy against the Receiver in his personal capacity, the matter have long since become statute barred against the Receiver.

8. It appears that Ferrys, solicitors, had advised the plaintiff of this likely outcome and that there was a risk that the proceedings against ACC were also at risk and could be dismissed for want of prosecution. The plaintiff was further advised that if this occurred, he would have a good cause of action against his former solicitors. That advice resulted in the issue of these proceedings on the 7th September, 2000.

9. Letters dated the 27th July, 2000, were written to the defendants herein advising, in error, that the proceedings had, at that time,

issued. It was pointed out in that letter, that these proceedings were not going to be served "for the moment" and they were issued in order to protect the plaintiff s interests. It is acknowledged that the defendants in these proceedings were kept informed as to the progress of the 1991 proceedings.

10. Ultimately, following the hearing of a motion brought by ACC to dismiss the 1991 proceedings for want of prosecution, a judgment was delivered by Kelly J. in which he did not dismiss the proceedings as a whole, but the plaintiff was restricted to proceeding with one part of his claim only. On that basis the plaintiff entered into negotiations with ACC and a settlement was reached between them in July, 2005. It was only then that it was sought to pursue these proceedings.

The Affidavits

11. A number of affidavits were sworn to ground the various applications on behalf of the defendants herein. Augustus Cullen swore an affidavit on behalf of the third named defendant herein. Having described the background, he proceeded to set out a number of matters upon which he relied as to why the renewal of the summons herein should be set aside.

12. They could be summarised as follows:

> 1. The claim against the Receiver became statue barred before the third named Defendant's firm became involved in the proceedings; therefore he could do nothing about it.
>
> 2. The fact that the plaintiff was not advised of a possible action against the other defendants is now moot given the existence of these proceedings.
>
> 3. The firm of Huggard Brennan and Murphy had not been inactive over a four year period as contended.
>
> 4. No steps taken by the plaintiff for 6 years after the issue of the plenary summons herein.
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> 5. Delay of 18 months after judgement of Mr. Justice Kelly in renewing summons.
>
> 6. Settlement with ACC was in full and final settlement of "all issues".
>
> 7. The factors giving rise to Mr. Justice Kelly's decision to disallow two strands of the plaintiff s claim against ACC were equally applicable to the 3rd named defendant.
>
> 8. There is prejudice by reason of the lack of recollection on the part of the Receiver, a fact acknowledged in the 1991 proceedings.

13. Similar matters are relied on by the other defendants. So far as may be necessary, I will refer later in this judgement to other points raised by the 1st and 2nd named defendants.

14. I should refer briefly to the reasons given by Kelly J. in disallowing two strands of the plaintiff's claim in the 1991 proceedings. I propose to refer to extracts from the judgment of Kelly J. in the 1991 proceedings, which extracts were set out in the affidavits of Mr. Walsh and Mr. Butler. Kelly J. in his judgment delicxvered on the 24th June, 2004, noted that there were three aspects to the plaintiff's claim therein, namely:

> 1. Alleged negligence of the Receiver and alleged vicarious liability of ACC for that negligence;
>
> 2. Alleged negligence in the leasing of the plaintiff's lands by ACC and
>
> 3. Alleged sale by ACC of the plaintiff s lands at an undervalue.

15. Kelly J. dealt with the first aspect of the plaintiff's original case namely the alleged negligence of the Receiver and the vicarious liability of ACC for that negligence in the following terms at pp. 8 - 9 of his judgment:

> "On any view of [the allegations made] they amount to serious complaints against him [the Receiver] in his professional capacity. They are damaging to his professional reputation and business. It is not surprising that the Receiver has little or no recollection of the events in question at this remove in time. That is particularly so having regard to the very limited functions which a Receiver appointed under the Conveyancing Acts has. . .
>
> The evidence of the Receiver would be crucial to the proper defence of these proceedings both from the point of view of defending the claim to damages and his professional reputation ...
>
> I conclude that to allow this part of the claim to proceed would involve a real and serious risk of an unfair trial."

16. Mr. Cullen on behalf of the third named defendant had asserted that the foundation of the judgment of Kelly J. in disallowing two strands of the plaintiff's claim was that it would have been virtually impossible to isolate and quantify the losses of the plaintiff in respect of the two strands of the claim being made (being the income derived from the business and the rental values on the property to be derived therefrom at the time. On that basis, Mr. Cullen asserted that the third named defendant was prejudiced in the same way as the claim in respect of the loss arising in respect of those claims and the claims made against the third named defendant now would be subject to the same difficulty.

17. I have read the judgement of Kelly J. in the 1991 proceedings and I find it difficult to see how the judgement could be said to support the contention put forward by Mr. Cullen in the previous paragraph. The clear import of the judgement was that because of the delay in prosecuting the proceedings, the receiver was not in a position to defend the proceedings given that it was accepted that he had no recollection of the facts. I do accept that the receiver will not now be able to assist any of the parties to this action in relation to his conduct of the receivership.

18. Thomas Walsh in the affidavit grounding his application also referred to the history of the original proceedings. He pointed out that Messrs Butler Walsh, solicitors, took over the firm of O'Flahertys , solicitors, who originally acted for the plaintiff. A notice of change of solicitors was filed in September 1992, although it is likely that Butler Walsh, solicitors, commenced to act on behalf of the plaintiff prior to that date. The deponent had no specific recollection of the filing of that notice or of a notice of intention to proceed. He left the firm of Butler Walsh on the 26th February, 1995. The partnership is now dissolved. Butler Walsh continued to act for the plaintiff

until early 1995. Messrs Huggard Brennan and Murphy then took over as solicitors for the plaintiff.

19. He added that he did not think he had ever met the plaintiff and that his recollection of the details of the plaintiff's case was non existent. He did note that there was in existence a letter dated 15th May, 1991, from the then solicitor to ACC agreeing to accept service on behalf of the Receiver. Ultimately, as previously indicated the service actually affected on the Receiver was qua? partner in the firm of Reynolds McCarron and the same was set aside by order of the High Court (Johnson J.) on the 23rd July, 2001. There was correspondence between the plaintiff's present solicitor and him between 2001 - 2004, but he had no other involvement in the proceedings.

20. He made a number of other points. He referred to the judgment of Kelly J. to which reference has already been made and he asserted that the evidence of the Receiver would be crucial to the determination of these proceedings. In order to succeed, the plaintiff would have to prove what loss arose out of the negligence alleged against the first named defendant and in order to determine that, it would be necessary to asses what damage or loss flowed from the alleged negligence of the Receiver. As the Receiver does not have a clear recollection of the case in 2004, Mr. Walsh submitted that it was even less likely that he would have a recollection now.

21. Mr. Walsh also made the point that at the time that his firm took over the file from O'Flaherty's solicitors, the claim against the Receiver would already have been statute barred. This assertion was made on the basis that the Receiver's appointment was made in 1985 and he would have ceased to have an involvement in 1988 or 1989.

22. Mr. Walsh in his affidavit went on to set out in detail the difficulty he would have in piecing together his involvement in the plaintiff's original case at this remove. He commented that he was seriously prejudiced by the cumulative delay on the part of the plaintiff and he summarised that delay. He also pointed out that his recollection was non existent that he held no files in relation to the matter and whilst he has been assisted by reading the pleadings he is hampered by a lack of recollection in relation to how his former firm dealt with the plaintiff's original case.

23. The affidavit of Mr. Butler was very similar in terms to that of Mr. Walsh and I do not propose to refer to it in any detail save to note that he referred as indeed did Mr. Walsh to the statement of claim delivered herein in which it appears that the claim against the first named defendant and the second named defendant alleges:-

1. A failure to progress the plaintiffs original proceedings.

2. A failure to give the plaintiff proper advice in relation to the merits of his original claim or to progress it.

3. A failure to take steps to join the Receiver as a defendant to the original proceedings.

4. A failure to rectify the alleged mistake in the naming of the Receiver in the original proceedings.

5. A failure to advise the plaintiff in relation to the alleged potential liability of O'Flaherty's solicitors, in relation to their alleged failure to name the Receiver as a defendant to the original proceedings.

6. A failure to serve the original proceedings on Reynolds McCarron and

7. A failure to prepare or deliver a statement of claim in those proceedings.

24. Mr. Ferry has sworn affidavits in reply to the affidavit of Mr. Cullen and to the affidavit of Mr. Walsh. He makes a number of points. The first point he makes is that the claim against the Receiver became statute barred at the latest by the end of 1994.

25. He then referred to the alleged prejudice caused by the unavailability of evidence in relation to the Receiver's activities and submits that this was due to the delay of the third named defendant. There is some merit in this argument in that Mr. Cullen's client, the third named defendant, was acting on behalf of the plaintiff between 1995 and some time late in 1999. To that extent it would appear to be difficult to conclude that the third named defendant was not in part responsible for the plaintiff's delay during that period and especially insofar as it contributed to the inability of the Receiver to have a recollection of the case.

26. Mr. Ferry frankly accepts that there is delay between the handing down of the judgment of Kelly J. and the application to renew the summons. He admits that it is not possible to offer any good excuse or justification for the delay. He added however, that he was of the view that it was not possible to demonstrate any significant prejudice arising from the delay between the date of settlement of the ACC proceedings and the date of the renewal of the summons or indeed from the date of the judgment of Kelly J. and the date of the application to renew the summons.

27. Mr. Ferry commented on the reaction of Mr. Walsh to the letter of the 27th July, 2000, informing him of the progress of the plaintiff s proceedings and notifying Mr. Walsh that there was a potential negligence claim against him. He stated that his reason for not proceeding against the first named defendant and the other defendants is set out in the affidavit sworn to ground the application to renew the plenary summons. The plaintiff did not wish to sue his former solicitors unless it was necessary to do so and that could not be ascertained until it was known whether his action against ACC had been prejudiced by their alleged negligence. Mr. Ferry contends that this is a reason and an excuse of the delay in prosecuting these proceedings. On that basis he asserts that the delay which has occurred is for the most part excusable and that that delay which is not excusable is not inordinate.

Legal principles

28. Order 8, r. 2 of the Rules of the Superior Courts allow the defendant to serve a notice of motion to set aside the renewal of a summons. The basis upon which a summons can be renewed is set out in 0. 8, r. 1 it provides *inter alia*:

> "The Court or the Master, as the case may be, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed summons."

29. This is not a case in which the plaintiff had a difficulty in serving the defendants; it is a case in which the plaintiff must rely on 'other good reason'. Two approaches are now dissemble in considering the nature of the other good reason that needs to be advanced to support an application to renew a summons and more particularly what a defendant must show in order to set aside the renewal of the summons. The judgment of Morris J. in the case of *Behan v. Bank of Ireland* (Unreported, High Court, 14th December, 1995), is the basis of the first approach taken in relation to these kinds of applications. In that case at p. 3 of the judgement, Morris

J. said:

> "In my view in moving an application of this nature the defendant takes upon itself the onus of satisfying the court that there are facts or circumstances in the case which, if the court which made the order in the first instance, *ex parte*, had been aware it would not have made the order. It is clear, in my view beyond dispute, that this application is not to be dealt with on the basis that it is an appeal from the original order and accordingly it is incumbent upon the moving party to demonstrate that facts exist which significantly alter the nature of the plaintiff's application to the extent of satisfying the court that, had these facts been known at the original hearing, the order would not have been made."

30. That case was followed most recently by O'Neill J. in the case of *O'Grady v. S.H. B. and Tralee General Hospital* (Unreported, High Court, 2nd February, 2007). In that case O'Neill J. was asked to consider that the case of *Behan v. Bank of Ireland* was wrongly decided. O'Neill J. at p. 10 of this judgment stated:

> "I am not in agreement with the submission made by Mr. McGrath on this issue. In my view the original order having been made, the party affected by it, i.e. the defendant cannot treat the application under O. 8, r. 2 as an appeal. Hence, a defendant cannot simply seek to persuade the court hearing the r. 2 application, to reach a different conclusion on the same evidence adduced on the ex paste application. A defendant must adduce new evidence which, had it been before the court on the ex paste application would have persuaded the court to have refused the renewal. In this regard I agree with the judgment of Morris J. in the case of *Behan v. The Bank of Ireland* (Unreported, High Court, 14th December, 1995)."

31. In that case, O'Neill J. went on to say at p. 18:

> "Notwithstanding the inordinate and in my view inexcusable delay on the part of the plaintiff, as so found, I am of opinion that the time barring of the plaintiffs claim by the non-renewal of the plenary summons, in the absence at this stage of evidence of actual substantial prejudice to the defence of the defendants, is a result which would be in the nature of a pure penalty imposed on the plaintiff, and at this stage of the proceedings is not warranted in the overall interest of achieving a just outcome to the dispute between these parties."

32. For that reason he did not set aside the renewal of the summons in that case.

33. It is interesting to note that O'Neill J. was not referred to the authorities which give rise to the second approach to applications pursuant to O. 8, r. 2. He commented at p. 13 of his judgment:

> "All this tends to persuade me as indicated earlier, that unless a defendant demonstrates on a r. 2 application the clearest case of actual substantial impairment of his defence, a court should at that stage relieve against the ultimate actual prejudice to a plaintiff, namely the time barring of his claim, unless his summons is renewed."

34. A different approach was taken by the court in the case of *Chambers v. Kenefick* (Unreported, High Court, Finlay Geoghegan J., 11th November 2005). She noted at p. 3 of the judgment as follows:

> "It appears to me that in addition to the approach set out by Morris, J. it is open to a defendant, by submission, to seek to demonstrate to the court that even on the facts before the judge hearing the ex parte application, upon a proper application of the relevant legal principles the order for renewal should not be made. This appears to me to be necessary having regard to the purpose of an application under O. 8, r. 2. It only relates to orders which have been made ex parte. On any ex parte application by a plaintiff a defendant has not had an opportunity of making submissions to the court as to why the court should not exercise its discretion under O. 8, r. 1 to renew a summons. It appears to me that the purpose of including O. 8, r. 2 is to accord to a defendant fair procedures in the High Court, and to permit a defendant where he considers it necessary to make submissions to a judge even on what might be described as an agreed set of facts that the court should not exercise its discretion to renew a summons, and therefore I propose considering this application from the defendant on that basis."

35. Finlay Geoghegan J. noted that she had been furnished with helpful submissions in relation to the cases of *Baulk v. Irish National Insurance Company Limited* [1969] I.R. 66, *McCooey v. The Minister for Finance* [1971] I.R. 159, *O'Brien v. Fahy t/a Greenhills Riding School,* (Unreported, Supreme Court, 21st March, 1997), and *Roche v. Clayton* [1998] 1 I.R. 596.

36. She then went on:

> "Whilst some of the submissions focussed on the proper consideration to be given by the Court to Statute of Limitation difficulties, . . . the submissions made on behalf of the defendant lead me to the conclusion that the proper approach of this court to determining whether or not it should exercise its discretion under O. 8, r. 1 where the application is based upon what is referred to therein as 'other good reason' is the following. Firstly, the court should consider is there a good reason to renew the summons. That good reason need not be referable to the service of the summons. Secondly, if the court is satisfied that there are facts and circumstances which either do or potentially constitute a good reason to renew the summons then the court should move to what is sometimes referred to as the second limb of considering whether, because of the good reason, it is in the interests of justice between the parties to make an order for the renewal of the summons. Thirdly, in considering the question of whether it is in the interests of justice as between the parties to renew the summons because of the identified good reason the court will consider the balance of hardship for each of the parties if the order for renewal is or is not made."

37. The matters relied on principally on behalf of the plaintiff in this regard are those set out in the affidavit grounding the application to renew a summons sworn herein by Padraig Ferry on the 25th January, 2006. At para. 21 he stated as follows:

> "I say and believe that there was a good reason for not serving the plenary summons herein, before the original proceedings had been concluded. There was a real possibility of the plaintiff being allowed to prosecute those proceedings and of his claim being determined on its merits. Indeed, the fact that Kelly J. reserved his judgment after a full days hearing and allowed the plaintiff to proceed with part of his claim establishes that this issue was never clear cut. If the plaintiff had succeeded in his claim on the merits, he would not have pursued the defendants and if he had failed on the merits he could not have done so. It was, therefore reasonable to ask the defendants to co-operate with a 'wait and see' approach. This was done in consultation with the defendants and in this regard the correspondence exhibited above speaks for itself. The defendants had every opportunity to object to the manner in which the plaintiff was proceeding but

never did so. Having acquiesced in this manner, I believe that they are probably estopped from objecting to the renewal of the plenary summons, but even if I am wrong in that belief, I believe that the balance of justice is heavily weighted in favour of allowing the plaintiff to proceed with his action. In this regard, if the summons is not renewed, the plaintiff s claim against the defendants is clearly statute barred."

38. It is clear from that affidavit that, whilst there may be a dispute between the parties as to whether the defendants acquiesced in that approach, the approach taken by the plaintiff was a "wait and see" approach. The issue of a protective writ together with a "wait and see" approach cannot be a licence to a plaintiff to litigate at a snail's pace. Having said that, I am satisfied that the matters outlined by Mr. Ferry in the affidavit sworn herein to ground the application to renew the summons constitutes a good reason for the renewal of the summons. That being so, it is necessary to consider whether it is in the interests of justice between the parties to make an order for the renewal of the summons and in so doing it is necessary to consider the balance of hardship for each of the parties if the order for renewal is or is not made. The balance of hardship in this case for the plaintiff is quite clear. It is the case that if the summons is not renewed the claim against the defendants is statute barred.

39. The prejudice set out by the defendants in their respective affidavits sworn herein to ground the application to set aside the renewal of the summons could be summarised shortly as follows:-

1. Lack of recollection.

2. The absence of files relating to the plaintiffs claim in his original proceedings.

3. The general affect of the lapse of time caused by reason of the delay herein. There is also an issue as to the lack of availability of the Receiver in the sense that it is clear from the decisions of both Johnson J. and Kelly J. in the original proceedings that his position is that he has no recollection of the details of the Receivership.

40. In considering all of the facts and matters put before the court on affidavit in respect of these issues it has to be borne in mind that the claim being made in these proceedings against defendants is relatively straightforward. So far as the first and second named defendants are concerned the allegation made is that they failed to progress the proceedings over the three years during which they acted for the plaintiff and failed to take the appropriate steps to join the Receiver as a defendant in the proceedings and failed to rectify the mistake which had been made in naming Reynolds McCarron, as a defendant in the proceedings. It is also alleged that they failed to prepare or deliver a statement of claim. Other allegations are made but those are the principal matters alleged. The case against the third named defendant is similar, namely that inter alia he failed to progress the proceedings, failed to take appropriate steps to join the Receiver in the proceedings and failed to rectify the mistake which had been made in naming Reynolds McCarron as a defendant in the proceedings. It was also alleged against them that they failed to prepare or deliver a statement of claim and failed to advise the plaintiff in relation to the potential liability of O'Flaherty's and Butler Walsh, arising out of their conduct of the proceedings.

41. It will be seen therefore that the negligence alleged against the defendants is very much related to the failure to progress the case and the failure to join the Receiver properly as a defendant in the proceedings.

42. In considering the issues in this case, one of the matters to bear in mind is that the claim against the defendants herein is not statute barred. There is certainly no suggestion to that effect on the part of any of the defendants herein. It is the case that there has been some delay on the part of the plaintiff in these proceedings but I think it was open to the plaintiff to await the decision of Kelly J. in the 1991 proceedings and following his decision it seems to me that the delay in bringing the proceedings on while negotiations took place with ACC and the plaintiff was not excessive. It is also the case that the plaintiff s current solicitors kept the defendants informed as to the progress of the original proceedings at all times. It is accepted that there was some delay on the part of the plaintiff being the delay between the handing down of Kelly J's judgment and the application to renew the summons. While that delay is inexcusable I would hesitate to say that in the circumstances of this case, given that in the intervening period the plaintiff settled the proceedings with ACC, that the delay was inordinate.

43. I accept that long delay in the prosecution of proceedings can give rise to prejudice. In this case the position in relation to the Receiver and the possibility of pursuing the Receiver for damages concluded in 2001. The issue of the vicarious liability of ACC for the actions of the Receiver was determined against the plaintiff in the original proceedings in 2004. The proceedings against ACC were finalised in 2005. The case against the defendants herein seems to me having regard to the pleadings herein and to the affidavits sworn herein to be a relatively straightforward case. It is clear that the defendants were advised by letter of the 27th July, 2000 that the plaintiff intended to prosecute the original proceedings and that he would only bring these proceedings against the defendants if the original proceedings failed as a result of the alleged negligence of the defendants. The defendants had the opportunity for a considerable period of time to take steps to acquaint themselves with the allegations of the plaintiff and to locate the files relevant to the original proceedings. That being so I think this Court should attach little weight to that ground of prejudice.

44. Although there could be some difficulty for the defendants in recollecting all of the details of the original proceedings, the core complaint against them is, as I have already said, straightforward. Bearing that in mind I do not think that the balance of justice in the current proceedings is such as to necessitate the setting aside of the renewal of the summons herein.

45. I should for the sake of completeness add that I do not think it would be appropriate on the facts of this particular case to dismiss the proceedings for want of prosecution or on the grounds of inordinate and inexcusable delay.

46. Accordingly, I am refusing the reliefs sought herein.