

THE HIGH COURT

[2015 No. 2276 S]

MARY BRENNAN

The Plaintiff

AND

JOHN BYRNE, MICHAEL SILKE AND JEAN FLYNN

The Defendants

Judgment of Ms. Justice Ní Raifeartaigh delivered on the 4th of December 2017

1. The background to this case is that the plaintiff, Mrs. Brennan, suffered very severe injuries in an exceptional accident at the Old Conna golf club several years ago. She brought a personal injury action which resulted in a substantial award of damages. Subsequently, in 2015, the plaintiff issued a summary summons bringing a claim for a discrete amount of money, €14,000 which related to her club joining fee. She claims that she had been told in 2015 for the first time she would never be able to play golf again and could not avail of that membership, and certain documents have been exhibited in that regard.
2. Proceedings could have been issued in District Court, given that the amount claimed was €14,000. However, the plaintiff expressed a view that it was her entitlement to issue proceedings in the High Court. The plaintiff then brought a motion for summary judgment in the Masters' Court.
3. The Master has a very specific jurisdiction to deal with cases where there is no arguable defence within the meaning of the authorities such as *Harrisrange Ltd. v. Duncan* [2003] 4 IR 1 and *GE Capital Woodchester Ltd v Aktiv Kapital Asset Investment Ltd* [2009] IEHC 512. The merits of the defences in this case are not a matter for this Court today, but it may be noted that they include a statute of limitations issue; a conflict of fact between the parties as to whether an oral agreement was reached that the fee would be refunded; and an issue of res judicata as to whether the concluded personal injury proceedings did or should have included a claim for the joining fee. Given the existence of these defences, the Master was correct in my view to strike out the motion. Only the motion was struck out; the overall proceedings themselves are still live and currently awaiting trial in the High Court.
4. However, having determined the motion for summary judgment in favour of the defendants, the Master then made no order as to costs. The appeal currently before this Court is an appeal by the defendants relating solely to this issue of costs. The defendants say that the rule that costs follow the event applied, and that the Master made an error in making no order as to costs and had no legal basis for doing so. I am told by the plaintiff that the Master expressed considerable sympathy at the hearing for the plaintiff and advised her to bring her proceedings in the District Court.
5. Strictly speaking, the defendants were out of time for bringing this appeal. The order of the Master had been drawn up on the day it was made but did not appear on the Courts Service website for some time. The solicitor swore an affidavit that they were not aware that the order had been perfected until 28th June, 2016. The appeal issued one day after the six day time-limit, and was served 12 days later.
6. When this matter came before me on the 30th November, 2017 and after hearing submissions, I allowed an enlargement of time for the appeal in the circumstances.
7. Counsel for the defendants and the plaintiff then made submissions in relation to the issue of costs of the motion before the Masters' Court. An issue also arose of whether the case could now be remitted to the District Court, and whether the Court could do this of its own motion or if a party first had to make an application.
8. In relation to the issue of costs, Counsel laid before the Court authorities such as *Dunne v Minister for the Environment* [2008] 2 IR 755, *Collins v Minister for Finance* [2014] IEHC 79, *McCaffrey v. Central Bank of Ireland* [2017] IEHC 659, and *Denis O'Brien v. Clerk of Dail Eireann* [2017] IEHC 377. These authorities make it very clear that under Order 99 rule 1.(4) costs must follow the event, and that while the court does have discretion to depart from this rule, this discretion must be carefully exercised: it has to have a legal basis and reasons must be given. The type of reasons that have led to the exercise of discretion in the past have been, for example, whether an exceptional point of law is raised which would clarify the law for other plaintiffs, or whether there is an issue of public interest involved.
9. Unfortunately for the plaintiffs this is not one of those cases. What is exceptional in this case is that any person observing this matter cannot but have sympathy for the plaintiff in the accident she endured and the consequences she has suffered to her health. It does seem harsh that the golf club is insisting on what one might call a hardline position in relation to the amount of €14,000. They may be correct in law in adopting this position, that is not a matter for me to decide, but it certainly does seem harsh as Ms. Brennan's exceptional accident is hardly likely to set a precedent in relation to joining fees for golf clubs. However I do not think I am entitled to take these sympathetic circumstances into account when assessing the appropriate order for costs from the Master's Court. The plaintiff expressed in very strong terms what she saw as her entitlement to bring her case in a court of her choosing. While it is true that the High Court does enjoy full original jurisdiction, the Oireachtas has expressed equally strong views that people should be discouraged from issuing proceedings in the High Court when the same matter can be dealt with by a lower court. This policy can clearly be seen in legislation by the Courts Act 1981, S.17 and this policy is attended by financial consequences.
10. What I have decided to do in order to balance the justice of the situation on all sides is that I will award the costs of the Master's motion to the defendants but will measure the costs. I measure the costs of the proceedings in the Master's Court at €1,000 to include solicitor and counsel, plus VAT.
11. As a result of this ruling, it is also inevitable that the costs of this motion will also be awarded to the defendants. I will also measure these costs. I measure them at €2,000 including solicitor and counsel, plus VAT. This brings the entire costs to €3,000 plus VAT.
12. I am going to put a stay on the execution of these costs and so the three named defendants will not be allowed to recover these costs until this entire case has come to the end. If the plaintiff is successful in her action, these costs can be offset against any award of costs she receives.
13. In relation to the question of remitting the matter to the District Court, Counsel referred me to the Courts of Justice Act 1924 s.

25 . This is a slightly ambiguous section, it says a Court may remit or transfer on an application by the party, but it also states "provided that the High Court shall have jurisdiction to remit or transfer any action", which may support the view that the High Court can remit of its own motion. However my attention was also drawn to O. 70A r. 15 of the Rules of Superior Courts. This states that an application must be made for the court to exercise its discretion as to whether or not a matter should be remitted. There is no formal application before this Court in relation to remittal, but in order to keep costs down, I am inclined to treat what Ms. Brennan described at the hearing as consent to remittal to the District Court as an application for remittal, and I am making the order to remit this matter to the District Court in which Old Conna golf club carries out its business.