

THE HIGH COURT

RECORD NO. 2000 7989 P

BETWEEN

J.B.

PLAINTIFF

AND

**SOUTHERN HEALTH BOARD, THE MINISTER FOR HEALTH AND CHILDREN, THE MINISTER FOR EDUCATION AND SCIENCE,
IRELAND AND THE ATTORNEY GENERAL**

DEFENDANTS

Judgment of Mr. Justice de Valera delivered on the 20th day of July, 2007

1. This matter came before the court on the 14th March, 2006. There are two separate applications now being heard together. These are:-

1. A notice of motion dated the 18th March, 2003, in which the first named defendant seeks an order that:-

- a. The plaintiff's claim is statute barred;
- b. The plaintiff's claim has been the subject of such delay that the interests of justice require it to be dismissed, and

2. A notice of motion dated the 19th day of December, 2005, seeking an order that the plaintiff's claim should be dismissed on the grounds that previous proceedings initiated by plenary summons dated 17th September, 1998, between the plaintiff and the Brothers of Charity, the Bishop of Cork and the named perpetrators resulted in the plaintiff receiving as a consequence of the settlement of the proceedings, damages in satisfaction of any claim the plaintiff may have had. These previous proceedings were compromised at a relatively early stage and a note of discontinuance was served on the 14th September, 1999.

2. The plaintiff's claim in this matter commenced by way of a plenary summons dated the 10th July, 2000, followed by a statement of claim dated the 12th October, 2000, and seeks damages for personal injuries, loss and damage as a result of:

- (i) Assault;
- (ii) Breach of duty;
- (iii) Breach of constitutional rights; and
- (iv) Negligence.

3. Defence on behalf of the first named defendant has been filed/was filed on the 5th January, 2001.

4. A notice of trial for the 22nd June, 2001, dated the 31st May, 2001, has been served.

5. To date no defence has been filed on behalf of the second, third, fourth and fifth named defendants.

6. The first named defendant and the second, third, fourth and fifth named defendants are separately represented and the three sets of submissions have been received. These address the matters at issue under the headings:

- (a) Statute of limitations;
- (b) Delay; and
- (c) Civil Liability Act 1961 (previous settlement)

7. Certain relevant facts alleged by the plaintiff have not been contradicted by the defendant and these are:-

1. The plaintiff was admitted to the residential institution at ['X'] (operated by the Brothers of Charity) in April, 1961, aged almost nine years. The plaintiff was then described as suffering from a mild mental sub-normality.
2. Between 1961 and 1968 the plaintiff was subjected to physical and sexual abuse by a Brother A (a member of the teaching staff and a supervisor) and a Brother E (Principal of the Institution at the time).
3. The plaintiff was able to read but was not able to write on admission to ['X'] and received no further education.
4. The plaintiff developed severe alcoholism and depression from early adult life which has been professionally diagnosed as having been caused by the abuses suffered at ['X'].
5. The plaintiff is psychologically inhibited and was unable to disclose abuses until 1997. A complaint by the plaintiff led to the conviction of Brother A on charges relating to the abuse of the plaintiff in November, 1999.
6. The plaintiff instituted proceedings against the Brothers of Charity and the named perpetrators in 1998, (the first proceedings), seeking damages for personal injuries, loss, damage and distress sustained by him as a result of trespass to the person, assault, battery, sexual assault and gross indecency, negligence and breach of duty including fiduciary duty and statutory duty on the part of the Brothers of Charity. He received a settlement of £25,000, general damages, plus £3,000 special damages in September, 1998.

Civil Liability Act 1961 (previous settlement)

8. By a notice of motion dated the 22nd November, 2005, the second, third, fourth and fifth named defendants sought, *inter alia*, "an order directing that the preliminary application be determined in the above matter prior to the fixing of a date for trial therein in respect of":-

(a) Whether or not the plaintiff proceedings herein should be dismissed to the extent that the Christian Brothers of Ireland and their servants or agents were responsible for the damage done to the plaintiff;

(b) Whether or not pursuant to s. 16 of the Civil Liability Act, 1961, the second, third, fourth and fifth named defendants are entitled to be discharged in respect of liability to the plaintiff (if any) on the basis of satisfaction of the plaintiff's claim.

9. The plaintiff issued proceedings commenced by plenary summons dated the 17th September, 1998, against the Brothers of Charity and Others claiming damages for personal injury, loss and damage as a result of:-

(i) Trespass to the person;

(ii) Assault;

(iii) Battery;

(iv) Sexual assault;

(v) Gross indecency;

(vi) Negligence; and

(vii) Breach of duty.

10. These proceedings were settled at a relatively early stage and a written record of this settlement, headed "discharge form" was produced "in full and final settlement of all claims" and dated the 26th August, 1999. This settlement was declared to be for £28,000 and made without any admission of liability. It should be noted that at all material times the plaintiff was professionally represented.

11. I am satisfied that the defendants in this action are "concurrent wrongdoers" pursuant to s. 2 of the Civil Liability Act, 1961, and that s. 16, 17 and 35(1)(h) of that Act apply, as submitted by the defendants.

12. The relevant sections of the said Act are as follows:

"16.—(1) Where damage is suffered by any person as a result of concurrent wrongs, satisfaction by any wrongdoer shall discharge the others whether such others have been sued to judgment or not.

(2) Satisfaction means payment of damages, whether after judgment or by way of accord and satisfaction, or the rendering of any agreed substitution therefor.

(3) If the payment is of damages, it must be of the full damages agreed by the injured person or adjudged by the court as the damages due to him in respect of the wrong; otherwise it shall operate only as partial satisfaction.

(4) An injured person who has accepted satisfaction from one alleged to be a wrongdoer, whether under a judgment or otherwise, shall, in any subsequent proceeding against another wrongdoer in respect of the same damage, be estopped from denying that the person who made the satisfaction was liable to him; and the liability of such person shall be conclusively assumed for the purpose of the said proceeding: but the injured person may litigate in the said proceeding any question of law or fact relative to the liability of the defendant to such proceeding, other than, the question whether or not the said satisfaction was made by one liable to the injured person.

17.—(1) The release of, or accord with, one concurrent wrongdoer shall discharge the others if such release or accord indicates an intention that the others are to be discharged.

(2) If no such intention is indicated by such release or accord, the other wrongdoers shall not be discharged but the injured person shall be identified with the person with whom the release or accord is made in any action against the other wrongdoers in accordance with paragraph (h) of subsection (1) of section 35; and in any such action the claim against the other wrongdoers shall be reduced in the amount of the consideration paid for the release or accord, or in any amount by which the release or accord provides that the total claim shall be reduced, or to the extent that the wrongdoer with whom the release or accord was made would have been liable to contribute if the plaintiff's total claim had been paid by the other wrongdoers, whichever of those three amounts is the greatest.

(3) For the purpose of this Part, the taking of money out of court that has been paid in by a defendant shall be deemed to be an accord and satisfaction with him.

35.—(1) For the purpose of determining contributory negligence—

(h) where the plaintiff's damage was caused by concurrent wrongdoers, and after the occurrence of the damage the liability of one of such wrongdoers is discharged by release or accord made with him by the plaintiff, while the liability of the other wrongdoers remains, the plaintiff shall be deemed to be responsible for the acts of the wrongdoer whose liability is so discharged."

13. Section 16(1) of the Act, as set forth above, when applied to the matter under consideration, operates to discharge the concurrent wrongdoers in circumstances where the plaintiff's claim has been fully satisfied.

14. The plaintiff has submitted that the settlement of his original claim was not in full satisfaction of the plaintiff's claim and was limited to those (first) proceedings and in support of this contention suggests that the sum of £28,000 could not fully compensate the plaintiff for the damage he suffered. I do not accept this submission. The phraseology of the discharge form is clear and unambiguous. It reads, at the relevant part:-

"I J.B. accept the sum of £28,000 in full and final settlement of all claims..." (Emphasis added).

15. These claims, with the exception of the claim for damages for breach of constitutional rights (in relation to which Costello J. in *W. (No. 2) v. The Attorney General* [1997] 2 I.R. 141 held that no action lies for breach of a guaranteed constitutional right where, as in this matter, existing laws protect that right), are identical to the other headings of claim maintained in the year 2000 (second) proceedings and the words "in full and final settlement" are clear and unambiguous in their meaning.

16. It may well be that the sum of £28,000 does not represent the full value of the damage suffered by the plaintiff – I am not in a position to say what that quantum might be in the absence of any evidence which would allow me to form even an overall view of an appropriate amount.

17. It is, I think, safe to say that if the plaintiff had proceeded with his case to trial and succeeded fully in his claims, that he might have expected to recover a sum well in excess of £28,000, perhaps a multiple of this figure but that is not the issue. The very fact of settlement "the complete or partial resolution by agreement of differences before final adjudication by a court" encompasses the concept of compromise. The word "compromise" is defined in the Oxford dictionary as "settlement of dispute by mutual concession". The idea of concession is fundamental to the whole procedure of settling differences between parties to litigation and to quote Delaney and McGrath, the learned authors of "Civil Procedure in the Superior Courts", 2nd Edition, on the subject:-

"There is a strong public policy in favour of settlement of proceedings"

and

"the courts are strongly supportive of settlements..."

18. I have no way of knowing what view the legal advisors in the 1998 proceedings took of the strengths and weaknesses of their respective cases but it is, on the balance of probabilities, likely that concessions were made by one or both sides based on their view of these matters. Both sides had the benefit of competent legal advice (it has never been suggested otherwise) and where settlement is properly reached, as in this case, the fact that the final sum recovered is not the sum which the plaintiff might expect to achieve if fully successful on both liability and quantum is immaterial.

19. I am satisfied, therefore, that the settlement of the 1998 proceedings was in full and final settlement of the plaintiff's claim and that the plaintiff's claims against the defendants in the instant proceedings should be dismissed.

20. In the circumstances of my finding on this point (of previous settlement) there is no requirement for me to proceed to findings on the statute of limitations and delay.