THE HIGH COURT

[2024] IEHC 677

RECORD NO. 2019/10R

BETWEEN

JOSEPH HOWLEY

PLAINTIFF

AND

LIAM MCMAHON

DEFENDANT

Ex tempore judgment of Mr. Justice Mark Heslin delivered on 21st November 2024

Application to adjourn

1. Counsel for the defendant seeks an adjournment on the basis that her instructing solicitor wishes to come off record, given that "*the instructions received from the defendant are not sufficient*" for the solicitor in question "*to provide a reasonable service*" and in circumstances where "*certain documents*" are outstanding. As I understand it, a motion to come off record has recently been issued but has not yet been served on the defendant.

Present in court

2. The defendant is not here in court. As things stand his solicitors who remain on record and his counsel are, as is his daughter whom I understand has travelled from Fermanagh.

Objection

3. An objection is made, by counsel for the plaintiff, to the defendant's daughter making submissions to the court today. I can readily understand why such an objection is made. There are two very obvious reasons: the defendant's daughter is not a party to these proceedings; furthermore, he is someone who has solicitors on record.

Submissions

4. It is also I think appropriate to say that, although it is not a criticism, there were submissions made by counsel for the defendant to the effect that the instructions received from the defendant's daughter are that he is ill.

No evidence

5. When I enquired, counsel very appropriately and immediately pointed out that there is no evidence tendered this morning of a medical kind.

Notice

6. There is, however, an affidavit before the court which was sworn on the 20th November by Mr. Fergal McManus Solicitor and principal of Mercantile Solicitors, being the solicitors on the record for the defendant. It is clear from the averments in that affidavit that the defendant has at all material times been on notice of today's application and also on notice of the fact that, whilst an adjournment would be sought by his solicitors in circumstances where they are now seeking to come off record, it was perfectly conceivable, if not likely that the matter would proceed.

Likelihood the application would proceed

7. The said solicitor wrote to the defendant on the 18th November and, in a letter which is addressed to the defendant and his daughter, Mercantile Solicitors state *inter alia*:-

> *"Before the current turn of events we note your pre-existing instruction to fight Revenue's motion to amend the summons. We have asked counsel to attend this Thursday to seek an adjournment of the motion to amend the summons until after our motion to come off record which has a return date of the 27th January 2025. While we have asked Revenue's solicitors to consent to this adjournment, we expect it will be very unlikely they will consent. Equally the hearing date of this Thursday the 21st November 2024 for the motion to amend was specially allocated time on this date by the court and having regard to your prior history of adjournment requests there is every likelihood the court will decline to adjourn the matter and proceed to give judgment on the issue of amending the summons."* (emphasis added)

Called on

8. I am entirely satisfied that, in circumstances where this matter was 'called on' for hearing for half a day and assigned a judge, a registrar and a court specifically for that purpose, I should proceed to hear the application today of which the defendant has long been aware.

Nature of the application

9. I also take that view, in declining the adjournment request, given the nature of the application itself. The underlying claim is made by the Collector General of the Revenue Commissioners on behalf of the Minister for Finance in respect of income tax which is said to be due by the defendant for the years 2012, 2013 and 2014. The application is to make minor amendments to the summary summons. As currently pleaded, the defendant's liability for 2012 is said to relate to a 2012 tax "*return"* whereas it is now averred on behalf of the plaintiff that this liability in fact flows from a 2012

tax "*assessment*". To correct this, the plaintiff seeks in the present application no more than the deletion of the word "*return*" and its replacement with the word "*assessment*" in relation to the alleged liability for tax in respect of 2012; and to insert a sentence to read "*a notice of assessment for income tax for the year 2012 was sent to the defendant by ordinary post on the 15th November 2017*". That is the extent of the amendments which are sought in today's application and it seems to me that I should decline the application to adjourn so that the court which is ready, willing and able to deal with today's application of which the defendant is aware can do just that and deal with it.

No prejudice

10. That is the ruling in relation to the adjournment application and I can see no conceivable prejudice in proceeding as I propose to do.

Order 28, rule 1

11. Turning to the application before the court today, the question is a very discrete one, namely, to permit amendments or not. It is fair to say that this Court has a very wide discretion in light of O. 28 r. 1 of the Rules of the Superior Courts. In simply terms, the focus of the court in an application of this type should be to bring about a situation where the real issues in dispute, the real questions, can be determined at a trial.

Not a trial

12. As I said earlier, this is not a trial. It is simply an application concerning the wording in the summary summons which articulates the claim which will ultimately be the subject of a hearing on the merits. Today is not such a hearing. Although it is going to take a little bit of time to do so, it seems to me that I should in this ruling address the procedural history because, for reasons which will become obvious, it seems to me to be highly relevant. This can be summarised as follows.

Procedural history

13. A summary summons issued on the 14th January 2019 comprising a claim for unpaid income tax for 2012, 2013 and 2014 specified to be a total of €93,289.14, excluding interest.

2012, 2013, 2014 Tax "returns"

14. In its original form, the claims were said to relate to tax returns for each of those years. In other words, under the heading "*tax type*" the particulars for each year used the word "*return*" opposite the relevant amounts.

Service outside the jurisdiction

15. On the 20th May 2019, this court made an order pursuant to O. 68 r. 4 of the Rules of the Superior Courts permitting the plaintiff to serve notice of the summary summons out of the jurisdiction at an address in county Fermanagh.

Appearance not filed

16. On the 17th January 2020, the defendant 'in person' signed a memorandum of appearance, in other words indicating that he would represent himself and no reference to a firm of solicitors was made in that document. It appears that this memorandum of appearance was never entered in the Central Office.

Plaintiff's motion for judgment

17. The plaintiff issued a motion for liberty to enter final judgment against the defendant and this was initially returnable for October the 24th, 2022.

18. That motion was grounded on an affidavit sworn on the 4th August 2022 by a Nano Ryan who averred *inter alia* to being advised and believing that the defendant had no *bona fide* defence to the plaintiff's claim.

Substituted service

19. The order made by this court, on the 24th October 2022, records *inter alia* that there was no appearance before the court by or on behalf of the defendant but that the court was informed that an Appearance on behalf the defendant had been emailed to the plaintiff's solicitor by the defendants daughter. The curial part of that order deemed service good in relation to the notice of the summary summons and granted an order for substituted service of the relevant motion which, of course, was the motion seeking liberty to enter final judgment. I pause to say that that motion has not yet been determined.

Defendant's solicitors come on record

20. The next element in the sequence of the procedural history was the filing, on the 19th January of last year, of a formal Appearance in the Central Office by Messrs. Mercantile Solicitors who came 'on record' for the defendant.

2013, 2014 Tax "assessments"

21. On the 23rd February 2023, Ms. Ryan swore a supplemental affidavit on behalf of the plaintiff averring *inter alia* that the plaintiff's claim in respect of income tax for the year 2012 is made on foot of an income tax return; and that claims for 2013 and 2014 arise on foot of notices of assessment raised by the Inspector of Taxes, in circumstances where the defendant failed to make a return.

22. It was further averred that the defendant did not appeal the assessments within the relevant time period specified in the Taxes Consolidation Act, 1997 and that the taxes therefore had become final and conclusive.

23. Ms. Ryan also made averments concerning notices of assessment as sent to the defendant, in November 2017, and copies were exhibited. That affidavit also referred to letters of demand from February 2018 by the plaintiff and demands of December 2018 and January 2019 by the plaintiff's solicitors. There were further averments in relation to the manner in which interest on tax had been calculated.

Plaintiff's first motion to amend

24. The next element in the procedural history is, in my view, an important one. On the 7th March 2023, the plaintiff issued a motion returnable for the 8th May 2023 for an order pursuant to a O. 28 r. 1 of the Rules of Superior Courts to amend the summary summons.

Similar in substance

25. I pause to say that this was an application which, in substance, is virtually identical to today's application albeit that it concerned the years 2013 and 2014, rather than 2012.

Clerical error

26. This initial application to amend was grounded on an affidavit sworn on the 3rd March 2023 by Ms. Elizabeth Quinn, solicitor for the plaintiff. She averred *inter alia* that arising from "*a clerical error*" the summary summons incorrectly pleaded that the income tax due and owing by the defendant for 2013 and 2014 is due on foot of income tax returns whereas, in fact, the liabilities fall due on foot of notices of assessment as raised by the Inspector of Taxes.

27. Ms. Quinn exhibited a proposed draft summons in which the word "*assessment*" is substituted for the word "*return*". Additional narrative was included which pleads in greater detail how interest was calculated; as well as pleading service of the assessments on the defendant and the defendant's failure to appeal; as well as pleading reference to the demands made.

Defendant consents to amendments

28. Of some relevance is that, on the 8th May 2023, this court made an order, by *consent,* granting liberty to the plaintiff to amend the summary summons in accordance with the draft, a copy of which comprised a schedule to that order. In other words, not only were those amendments very clearly appropriate for the court to make they were made with the consent of the defendant.

Same type of amendments sought today

29. It is fair to say that today's application is one which seeks amendments of the very same type, albeit with reference to 2012, namely, to reflect the fact that the liability is said to relate to a tax *assessment* rather than a tax *return*. Just as was the case in the May 2023 order to amend, there is no change to any amount being claimed; and there is no change to the underlying nature of the claim itself which is, of course, a dispute relating to tax said to be due.

Defendant's affidavit

30. The amended summons was endorsed on the 24th May 2023. On the 23rd June 2023, the defendant sworn an affidavit in which he averred *inter alia* that he did not object to the plaintiff's application seeking leave to amend the summary summons. In the context of seeking additional time to meet the motion, which sought liberty to enter final judgment, the defendant asserted that his daughter organises his tax affairs and averred that she advised him that she made the required returns.

Defendant's daughter

31. On the 13th June of last year, the defendant's daughter swore an affidavit in which she averred *inter alia* that the defendant is in his 80's and in poor health; that she was responsible for the arrangements of his tax affairs and that of the family farm generally; and that she made the required returns for 2013 and 2014. She sought an adjournment of the claim against the defendant to facilitate the preparation of a substantive replying affidavit in relation to the motion which sought to enter judgment.

Nil liability

32. The defendant swore a further affidavit, on the 23rd October 2023, averring *inter alia* that in each of the years 2012, 2013 and 2014 he declared a "nil" liability. He further averred that his daughter was ill and that difficulties arose as a consequence for his advisers due to what was characterised as the absence of full and complete records and instructions from her.

2012 assessment

33. On the 18th January of this year Mr. John Grehan swore an affidavit on behalf of the plaintiff in which he averred *inter alia* that, having reviewed the plaintiffs file in careful detail, the defendant made a nil return for 2012, as alleged by the defendant. However, Mr. Grehan went on to aver that, following an audit on 15th November 2017, the plaintiff raised a notice of assessment in respect of the year 2012, which assessment is the source of the defendant's indebtedness to the plaintiff as regards the income tax claim for 2012. Mr. Grehan exhibited a copy of that notice of assessment and averred that an application was being issued to further amend the summary summons to reflect the fact that the defendant's liability for 2012 arose on foot of a tax assessment, not a tax return.

34. Paragraphs 6 – 12 of the affidavit comprised the plaintiff's response to the assertions made by or on behalf of the defendant. I emphasise again, today is *not* a hearing on the merits and nothing I say or have said in this ruling is to be taken as any view whatsoever on the underlying merits. However, for the sake of completeness Mr. Grehan averred that, having diligently reviewed the plaintiff's file, there is no record whatsoever of returns been filed in relation to the income tax for 2013 or 2014. Reference was also made to the notices of assessment for those years previously exhibited.

Appeal

35. Reference was made to the defendant's right to appeal within 30 days and to the absence of such appeals. Averments were also made in relation to a particular issued raised by the defendant, namely, the collection by the plaintiff of certain subsidy payments in reduction of the defendant's income tax debt. It is averred specifically that this collection relates to indebtedness for 2015, and I pause to say that the present claim does not concern liabilities in respect of 2015. It is further averred, at para. 13, that Mr. Grehan is advised and believes that none of the matters set out in the affidavits filed by or on behalf of the defendant are capable of giving rise to a defence to the

proceedings. That question is not for this court to determine today but it did seem appropriate for me to set out that background for the reasons I have mentioned but also reasons I will presently come to.

The present motion

36. Turning to today's application, it was issued on the 18th January 2024, being the very same day Mr. Grehan swore the affidavit which I touched on a moment ago. The affidavit grounding that application was made by Ms. Elizabeth Quinn, solicitor for the plaintiff. She averred that at that time of the first amendment to the summons - and that of course was dealt with in May 2023 by consent - her instructions were that the defendant's liability in respect of income tax for the year 2012 arose on foot of a tax return, unlike the position as she understood from her instructions concerning 2013 and 2014, which arose on foot of assessments. She proceeded to make averments which, in substance, reflect those made by Mr. Grehan. In essence, she explains that due to "*a clerical error*" incorrect information was provided to her office in respect of the year 2012.

Identical

37. She exhibited a draft amended summons and, in the manner I touched on earlier, the amendments sought in the draft are, in substance, identical to the amendments the defendant consented to last summer, albeit in respect of 2012. In other words, the draft as exhibited in today's application deletes the word "*return*" as regards 2012 and inserts the word "*assessment*".

Assessments exhibited

38. The draft also contains a plea that a notice of assessment for income tax as regards 2012 was sent to the defendant by post on the 15th November 2017 and I pause to say that the relevant assessments are all exhibited.

Service of the motion on 23 January 2024

39. The papers also contain an affidavit of service which was sworn on the 7th of February 2024 and it evidences service of today's motion on the defendant's solicitors as of the 23rd January 2024. That, of course, is almost 9 months ago to the day.

No affidavit by defendant

40. In the months since, there has been no affidavit sworn by the defendant setting out any facts which are said to constitute a basis for an objection to today's application. In other words, there is no assertion by the defendant that he is prejudiced in any way, there is no articulation of any facts by the defendant from which an inference of prejudice could be drawn. There is simply, insofar as any affidavit is concerned, silence from the defendant in the entire 9 months since the application was made.

Part-heard

41. On the 25th March 2024, Ms. Quinn swore a further affidavit. That arose in circumstances where the present motion was part heard but adjourned in order that the plaintiff could put on affidavit an explanation of the circumstances which gave rise to the mistake. In her 25th March 2024

affidavit, Ms. Quinn set out in some detail the chronology of relevant events as regards the instructions given to her and understood by her.

Explanation

42. In particular, she acknowledged and apologised for a mistake averred to arise from "*human error*" whereby it was incorrectly alleged at para. 5 of her 3rd March 2023 affidavit that the income tax liability for 2012 was due and owing pursuant to a return made by the defendant to the plaintiff, rather than an assessment.

43. Furthermore, an affidavit was sworn within days of that, on the 27th March 2024, by Mr. Declan Histon an Assistant Principal Office of the Collector Generals Office and he averred *inter alia* that Revenue carried out an audit of the defendant's income tax liabilities for the years 2011 to 2015, inclusive. On the basis of very detailed averments made by Mr. Histon including in relation to the internal computer and recording systems utilised by Revenue, he explained the circumstances which gave rise to incorrect instructions being provided to the plaintiff's solicitor.

Minor amendments

44. Today's application is simply an application to make minor amendments to the summary summons in order that it will accurately reflect the claim being made by the plaintiff. As I have said perhaps more than once it is, in substance, identical to an application previously made and granted by this court with the defendant's consent, albeit with regard to 2013 and 2014, whereas now the application concerns 2012.

Just

45. Order 28 r. 1 which is invoked provides that this court may "*at any stage of the proceedings"* allow either party to amend their pleadings "*in such manner and on such terms as may be just.."*. While I am entirely satisfied that it is necessary in the interests of *justice* to allow these amendments, I am also very satisfied that I can and should come to this view *today.*

46. In other words, for the reasons I gave at the outset, the interests of justice would not have been consistent with adjourning today's application despite the fact that the solicitors currently on record intend to come off record.

47. As I touched on earlier, the defendant is someone who at all material times has been aware of this application and at all material times has had solicitors on record. Order 28 r. 1 also provides that all such amendments shall be made as may be "*necessary for the purpose of determining the real questions"* in controversy between the parties and, as I have said again more than once, this court is not making any decision on the merits or on the controversy, but I am very satisfied that it is necessary to permit the proposed amendments so that the real questions in controversy can be determined by the court in due course.

48. I take this view very satisfied that it reflects the principles which emerge from relevant authorities, including, for example the Supreme Court's decision in *Croke v Waterford Crystal Limited* [2004] IESC 97. That is in circumstances where the evidence before the court provides a clear and a cogent explanation for the mistake which brought about the need to amend the proceedings. The evidence explains why the application was not made sooner. This is not a situation where there is undue, unexplained delay and a very late-in-the-day amendment which could conceivably give rise to prejudice.

49. In other words, this is not a situation where, for example, a trial would need to be halted and an adjournment of a trial given so that a defendant could engage with a very recently amended statement of claim, for example. There is no trial of the underlying merits in prospect.

Submissions of prejudice

50. On the question of prejudice, counsel for the defendant made submissions to the effect that the defendant would be prejudiced were this amendment to be permitted as it would prevent an appeal in respect of the assessment.

Appeals

51. That submission was made with reliance on *Gladney v Grehan* [2016] IEHC 561. However, to use the terminology very appropriately and helpfully used by both counsel, a 'late appeal' against assessment can be brought within 12 months whereas an appeal itself can be brought within 30 days. However, what's characterised as a 'very late appeal' can be brought after 12 months.

3 conditions

52. However, as the defendant's counsel very appropriately accepts, the 3 conditions which apply in respect of a very late appeal would have to be satisfied; and they are at the risk of over simplification: first, the need to file relevant returns; second, to *pay* the tax as assessed by Revenue - and I emphasise that requirement- as well as third, to satisfy the appeal commissioner that it was appropriate to entertain the very late appeal.

No payment

53. The first condition is met by a nil return being filed in respect of 2012, as has been averred and indeed it appears to be accepted. However, the sum on foot of the assessment has *never* been paid, despite the many years which have elapsed since.

54. Even if that were not so, this is a motion which issued in January and was part-heard months ago and at the first outing of this motion the self-same argument was canvassed. Despite this, in the months which have intervened since it is a matter of undisputed fact that the defendant has *not* paid the taxes assessed by Revenue. In other words, he has had every opportunity to, but has simply failed, refused or neglected to pay the taxes assessed which is a *sine qua non* of any very late appeal. So the idea that he could be prejudiced by this amendment being permitted today is utterly undermined by the very facts in this case.

55. It is also appropriate to say that there is a statutory process by which Revenue determines liabilities and it is simply not open to this court to interfere with or look behind that process and that is a process which includes appeals. If the defendant wished to appeal to the tax commissioners, the reality is that he has had years to do so prior to this motion even being issued and months to do so or seek to do so since this motion was part-heard and has come for hearing again, today. I say that bearing in mind that the notices of assessment are exhibited and go back as far as 2017.

Facts

56. In other words, it is simply a matter of fact that the defendant in the present case has never sought to make an appeal either (i) within time; or (ii) late; or (iii) very late and, in this regard, s. 933 of the Taxes Consolidation Act,1997 deals with "Appeals against assessment" and s.s. 7(a) merits quotation:-

> "*A notice of appeal not given within the time limited specified by subsection* (1)…" [that of course is a 30 day time limit] "…*shall be regarded as having been so given where, on an application in writing having been made to the inspector or other officer in that behalf within 12 months after the date of the notice of assessment, the inspector or other officer, being satisfied that owing to absence, sickness or other reasonable cause the applicant was prevented from giving notice of appeal within the time limited and that the application was made thereafter without unreasonable delay, notifies the applicant in writing that the application under this paragraph has been allowed*." (emphasis added)

57. In light of the foregoing, despite the great skill with which the submission is made, it is with respect lacking in an *evidential* basis to underpin it. There is simply no question of prejudice.

58. Similar comments arise in relation to the submission made, with no little ingenuity, to the effect that depending on what a 2018 letter *may* have said the defendant *may* have misunderstood his position as regards appealing.

Bare assertion / no evidence of prejudice

59. Even if I were wrong in all the foregoing, it is incontrovertible that the defendant is someone who, in May 2023, consented to amendments which in substance are identical to the ones sought today; and, as was very appropriately clarified by counsel for the defendant, the basis for any objection by the defendant has never been averred to. There is simply no *evidence* to underpin a suggestion of prejudice which, to my mind, goes no further than a 'bare' or mere assertion, lacking an evidential foundation.

Opportunity to file replying affidavit

60. Furthermore, this is not a situation where the defendant can be prejudiced in 'time' terms. He is not facing an imminent or immediate hearing on the merits. Rather, he will have an opportunity to file such affidavit as he wishes in relation to the claim in its amended form.

Not to punish

61. It is also appropriate to say that another theme which emerges from the authorities is that it is no function of this court to punish anyone for mistakes made during the conduct of their proceedings. Mistakes can and do happen in a world of human frailty and the relevant mistake has been explained in the present case.

Interests of justice

62. The court's function and duty will be ultimately to determine the merits of the underlying dispute; and permitting the amendments today is entirely consistent with that function and with the interests of justice.

63. It should also be said that this court leans in favour of permitting amendments which are otherwise appropriate. The exception to that general proposition is where it is *manifest* that the issue sought to be raised in an amendment must *necessarily fail*; and that is a principle which was articulated in this court by Clarke J. (as he then was) in *Woori Bank v KDB Ireland Limited* [2006] IEHC 156.

No new claim or amount

64. I mention it because, in the present case, there is simply no question of it being manifest that the issue canvassed in the amendment must necessarily fail. Why is that so? Because, in truth, the amendment does not introduce any new claim, it does not introduce any new amount, it simply corrects the basis for the liability previously pleaded, insofar as the 2012 liability asserted on the basis of a tax return is, in fact, asserted on the basis of a tax assessment; and although it involves repetition this is the self-same amendment with respect to 2013 and 2014 which the defendant consented to.

No prejudice asserted in May 2023

65. If, it seems fair to say, there was any merit whatsoever in an argument of prejudice it seems inconceivable that the defendant would not have raised it, as opposed to consenting in May 2023 to amendments which in substance are precisely the same.

Discretion

66. To draw this ruling to a conclusion, the question of determining an application of this type - in other words to permit or not an amendment - involves the exercise by this court of its discretion and to be validly exercised this courts discretion must be exercised in the interests of justice and viewed through that lens. I am entirely satisfied that permitting the amendments is an appropriate exercise of this courts discretion.

Limited court resources

67. Returning to where we began, namely, the hearing of an application to adjourn - which I refused for the reasons which are set out - the alternative would have been, to my mind, very

obviously wasteful of limited court resources which have, very understandably, major demands put on them by the need for the public to get access to justice.

Costs

68. It would also have been entirely wasteful of costs to bring the parties back a second - but perhaps more accurately a third - time to conclude this motion. It is also fair to say that the 'root' of the application to adjourn can be traced to the defendant himself who, as articulated by his counsel, has not been in a position to provide instructions sufficient to permit a reasonable service to be provided, as well as failing to provide documentation. While I am not making any decision today whatsoever on an application to come off record, it does seem to me appropriate to have said the foregoing because it is clearly no fault of the plaintiff that an application to adjourn was made.

Conduct of court business

69. Finally, it is a very well established principle that this court has jurisdiction to govern the conduct of its own business and that is, of course, underpinned by the proposition that dealing with scarce resources and focusing on the proper administration of justice, this Court has a certain 'band-width' within which it can made decisions of a 'housekeeping' nature. In other words, this includes allocating time, and this is a case which was fixed some time ago and allocated resources in the form of myself, [the Registrar] and a court.

70. That is the ruling in relation today's application from which I hope the reasons are clear.

Costs

71. On the question of costs, counsel for the defendant submits that the defendant is entitled to costs or, failing that, at least an order for costs up to today, in circumstances where the submission is made that when the application first came for hearing, Mr. Justice Nolan gave time for the defendant to explain the mistake in Ms. Quinn's affidavit and it is contended, in substance, that the defendant was correct or has been vindicated in some fashion.

72. With respect, I take a different view. First, it is common case that no order with respect to costs was made when the matter was part-heard. It is also the case that the defendant chose to resist this application and in that approach the defendant has been entirely *unsuccessful*. Had the defendant taken, in respect of this application, the very same approach the defendant took to the May 2023 application to amend, there would have been a very obvious and material saving of costs as well as a very material saving in the scarce court resources available. Why I say that flows from the fact that, not only has there been one, there have been two hearing dates and today has taken half a day of court time.

73. In light of the foregoing, it seems to me that the guiding principle must remain that rule of long-standing that 'costs follow the event'. I am fortified in that view by the reality that s. 169 of the Legal Services Regulation Act creates, in statutory terms, a presumptive right in favour of the entirely successful party to an order for costs.

74. In other words, the default position - reflecting the will of the Irish people - is that *per* s. 169, the plaintiff in this case would be entitled to their costs, being entirely successful, unless there were reasons which would need to be clear and stated to depart from that principle, such as conduct in respect of the proceedings etc. So, far from there being any question of the defendant having any entitlement to costs, there would be force in an application for costs by the plaintiff.

No order for costs

75. However, it was made clear during the course of the hearing that no order for costs was being *sought* by the plaintiff and no order is sought and, therefore, no order is going to be made in relation to today's application.

For mention listing on 5th February

76. In circumstances where the plaintiff's motion for judgment is listed for mention today, and bearing in mind that the application by the defendant's solicitors to come off record has a late January hearing date, I will list this case 'for mention only' on Wednesday 5th February [in the Non-Jury List].

Service of amended Summary Summons

77. Service by the plaintiff of the amended summary summons shall be on the defendant's solicitors within the next 7 days. I am also giving the plaintiff liberty to serve, by ordinary prepaid post and by email to the defendant, at the address employed by the defendant's solicitors in their letter to the defendant dated 18 November 2024, which was exhibited by the defendant's solicitor in his affidavit sworn yesterday.

Replying affidavit by 24 January 2025

78. I am also granting liberty to the defendant to provide such replying affidavit as he may wish to swear and he has until Friday 24th January 2025 to do so.