THE HIGH COURT

[2003 No. 14958 P]

BETWEEN

EAMON MORRISSEY

PLAINTIFF

AND
ANALOG DEVICES B.V.

DEFENDANT

Judgment of Mr. Justice Herbert delivered on the 6th day of March 2007

1. In this application the Plaintiff seeks an order extending the time within which to apply to this court from an order of the Master of the High Court dismissing the Plaintiff's action for want of prosecution and, for an order extending the time to allow the Plaintiff to deliver a statement of claim. The salient facts maybe stated as follows:

4th May 2001. The Plaintiff claims that he was walking down a corridor in the Defendant's premises in the course of his employment and as he was passing some workers he was suddenly struck in the face by a metal fluorescent light shield which had fallen from overhead. He claims that he suffered a cut in the area of his chin for which he was first treated by the Defendant's nurse and was then treated at the Accident and Emergency Department of Limerick Regional Hospital where the cut was sutured. He claims to have suffered shock, pain, discomfort and inconvenience and is left with a scar which continues to improve with the passage of time.

18th December 2003. A Plenary Summons was issued by the Plaintiff claiming damages against the Defendants.

29th September 2004. This Plenary Summons was served on the Defendants or on their solicitors on their behalf.

6th October 2004. An appearance was entered by Michael Houlihan and Partners, Solicitors, on behalf of the Defendants.

10th March 2005. The solicitors for the Defendants by a letter of this date wrote to the solicitors for the Plaintiff warning that unless a Statement of Claim was delivered they would move to dismiss the proceedings for want of prosecution.

19th April 2005. The Plaintiff was medically examined on behalf of the Defendants by a Dr. Fehilly.

24th June 2005. On this date the solicitors for the Plaintiff wrote to Dr. D. Boylan seeking a medical legal report at his earliest convenience and, stating that the Plaintiff formerly resided at 14 Crescent Avenue, Limerick, but at the date of writing resided at 11 The Paddocks, Bridge Road, Listowel, and Apt 506, Glenlara, Mount Kennedy Place, Limerick.

23rd September 2005. By a letter of this date the solicitors for the Defendants again notified the solicitors for the Plaintiff of their intention to bring a motion to dismiss the proceedings for want of prosecution unless the outstanding statement of claim was immediately delivered.

12th October 2005. By a letter of this date the solicitors for the Plaintiff informed the solicitors for the Defendant that papers were with Counsel for the purpose of drafting a statement of claim, which they hoped to be able to deliver shortly.

17th November 2005. By a letter of this date the solicitors for the Plaintiff wrote to Dr. D. Boylan reminding him of their letter of 24th June 2005, and requesting that he furnish a medical legal report at his earliest convenience, "as the claim is about to be struck out for lack of filing a statement of claim which we cannot do unless we receive your medical [report?]".

23rd March 2006. The solicitors for the defendants issued a motion on notice to dismiss the Plaintiff's claim for want of prosecution in failing to deliver a statement of claim.

24th March 2006. By a letter of this date, received on 27th March 2006, Dr. D. Boylan informed the solicitors for the Plaintiff as follows:-

> "In relation to providing a report on the above named I need to make contact with Mr. Morrissey prior to completion of my report.
>
> To date I have been unable to do so. I would be most grateful if you could arrange for Mr. Morrissey to contact me."

11th April 2006. At para. 8 of his affidavit sworn in this matter on 14th November 2006, Mr. Mark Potter, Solicitor, avers that officers or agents of the Law Society of Ireland commenced an inspection of his Firms Accounts on this date.

20th April 2006. In the same paragraph of his said affidavit, Mr. Potter states that his secretary went on maternity leave on this date. Because of these two events, Mr. Potter states that the notice of motion was not entered into his office diary and was overlooked.

23rd June 2006. The motion to dismiss the Plaintiff's action was heard by the Master of the High Court on this day. There was no appearance by or on behalf of the Plaintiff and the Master of the High Court made an order dismissing the action with costs to the Defendants.

26th June 2006. The order of the Master of the High Court was on this date passed and perfected.

11th July 2006. By a letter of this date the solicitors for the Defendants notified the solicitors for the Plaintiff of the order of the Master of the High Court. No letter in reply was received. In para. 5 of a replying affidavit sworn by Mark Potter on 29th January 2007, it is averred that at a sitting of the Circuit Court at Ennis, Counsel retained by him to represent the Plaintiff in the dismissed proceedings, had a conversation with Rachael Dobson, Solicitor, of the firm of Michael Houlihan

and Partners, solicitors for the defendants, and had advised her, "of the Plaintiff's error or oversight and the intention to bring this Motion". At the hearing of this application before me to set aside the order of the Master of the High Court, it was accepted on behalf of the solicitors for the Defendants that such a conversation did in fact take place.

21st November 2006. The solicitors for the Plaintiff issued a motion on notice pursuant to the provisions of O. 27 r. 14 of the Rules of the Superior Courts seeking to have the order of the Master of the High Court set aside and, seeking also an extension of time within which to make that application. The application was grounded upon an affidavit of Mark Potter, principle of the firm of Mark Potter and Company, Solicitors, the solicitors on record for the Plaintiff, and dated 14th November 2006.

28th November 2006. The notice of motion was stamped "Received" on this day by the solicitors for the Defendants.

15th December 2006. A replying affidavit was sworn on this date by Rachael Dobson, Solicitor on behalf of the Defendants.

29th January 2006. A further affidavit in reply to the affidavit of Rachael Dobson was sworn by Mark Potter on this date.

12th February 2007. On this date the application of the Plaintiff came on for hearing before this court.

2. At para. 6 of his affidavit sworn on 14th November 2006, the solicitor for the Plaintiff accepts that there was delay in processing this action but claims that it was neither inordinate or inexcusable in the circumstances of the difficulty in obtaining a medical report from Dr. Boylan, without which Counsel had advised that he could not properly complete the statement of claim. He further asserts that the Defendant has not suffered any material prejudice as a result of the delay, particularly as the Plaintiff was treated by the company nurse immediately after the alleged incident and, was later examined on behalf of the Defendant by Dr. Fehilly. He also asserts, (without pre-judging the matter), that the Plaintiff was not in any way responsible for the alleged incident and, in such circumstances to dismiss his claim on grounds of delay would be disproportionate, unjust and unfair.

3. At para. 8 of this affidavit, the solicitor for the Plaintiff accepts that the notice of motion returnable before the Master of the High Court to dismiss the Plaintiff's claim for want of prosecution and, the affidavit grounding that motion were served on his firm on or about 5th April 2006. He then continues as follows:-

> "My secretary at the time was preparing for a Law Society Inspection of Accounts prior to her departure on Maternity Leave. The inspection of accounts took place commencing on 11th April. My secretary went on Maternity Leave on or about 20th April, on [sic] unfortunately was not put in the diary and we therefore missed the Motion date. Had the matter been diaried we would have notified our town agents, M. Roche and Company who would have been in attendance."

A draft Statement of Claim is exhibited in this affidavit.

4. At para. 5 of her replying affidavit sworn on 15th December 2006, the solicitor for the Defendants points to the fact that no explanation in provided as to why Dr. Boylan was unable to contact the Plaintiff prior to 26th March 2006, or, for the delay since that date. At para. 4 of this affidavit the solicitor for the Defendants asserts that the draft statement of claim discloses no obvious necessity to have waited for a medical report from Dr. Boylan prior to its being delivered and avers that the Plaintiff could have proceeded by setting out details of the alleged incident and later furnishing any further particulars of personal injury upon receipt of a medical report from Dr. Boylan. At para. 10 of her said affidavit the solicitor for the Defendants claims that the Plaintiff has been guilty of inordinate and inexcusable delay between the service of the plenary summons on 29th September 2004, and the hearing of the motion before the Master of the High Court on 23rd June 2006. At para 7 of her affidavit she states that the Defendant intends to defend this action fully on the basis that independent electrical contractors who were carrying out work in the corridor at the time when the Plaintiff suffered the alleged injuries and, additionally or alternatively, the suppliers and the manufacturers of the particular light fittings, were responsible for the alleged injuries to the Plaintiff. The solicitor for the Defendants states that she believes and, is so advised, that the Defendants would suffer material prejudice if these potential Third Parties could successfully rely upon delay in order to defeat a claim for contribution made against them by the Defendants.

5. Having regard to the limits of an employer's non-delegable duty of care as indicated by the Supreme Court, to the period of limitation provided for actions for contribution between concurrent wrongdoers, by s. 31 of the Civil Liability Act, 1961 and, to the provisions of s. 27(1)(b) of that Act of 1961, and O. 16 r. 1(3) of the Rules of the Superior Courts 1986, with regard to the joinder as Third Parties of persons not already parties to an action, in my judgment, while this claimed risk of actual prejudice to the Defendants cannot entirely be disregarded, it must nonetheless at best represent a rather remote possibility. In addition, while accepting the important difference between culpable delay on the part of a Plaintiff in failing to take a crucial step in an action and, inactivity on the part of a Defendant in failing to seek to dismiss that action for want of prosecution, as identified by Fennelly J., in *Anglo Irish Beef Processors Limited and Another v. Montgomery and Others* [2003] 3 I.R. 510, - Supreme Court, this court must nonetheless remain conscious of the fact that a claim for contribution, including a claim for contribution amounting to a total indemnity, is essentially a separate claim by a Defendant connected with, but at the same time distinct from, the Plaintiff's claim against that Defendant. In my judgment inactivity on the part of a Defendant in moving to dismiss a tardily prosecuted action by a Plaintiff which manifestly raises an issue of contribution from a legal or actual person not a party to the proceedings, is much more culpable in that Defendant as it amounts to a failure, even if an indirect failure, to safeguard and to prosecute that Defendant's own right of action for contribution.

6. Prior to the decision in *McMullen v. Ireland* (ECUR 442.97/98. July 29th, 2004), the law with regard to the dismissal of an action for delay in prosecution was established in this jurisdiction by the decision of the Supreme Court in *Primor plc v. Stokes Kennedy Crowley* [1996] 2 I.R. 459. The Court held as follows:-

> "(1) that the courts had an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice so required;
>
> (2) that the party who sought the dismissal on the ground of delay in the prosecution of the action must establish that the delay had been inordinate and inexcusable;
>
> (3) that even where the delay had been both inordinate and inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice was in favour of or against the case proceeding;
>
> (4) that when considering this obligation the court was entitled to take into consideration and have regard to —

(a) the implied constitutional principles of basic fairness of procedures,

(b) whether the delay and consequent prejudice in the special facts of the case were such that made it unfair to the defendant to allow the action to proceed and made it just to strike out the action,

(c) any delay on the part of the defendant, because litigation was a two party operation and the conduct of both parties should be looked at,

(d) whether any delay or conduct of the defendant amounted to acquiescence on the part of the defendant in the plaintiff's delay,

(e) the fact that conduct by the defendant which induced the plaintiff to incur further expense in pursuing the action did not, in law, constitute an absolute bar preventing the defendant from obtaining a dismissal but was a relevant factor to be taken into account by the court in exercising its discretion whether or not to dismiss, the weight to be attached to such conduct depending on all the circumstances of the particular case,

(f) whether the delay had given rise to a substantial risk that it was not possible to have a fair trial or it was likely to cause or had caused serious prejudice to the defendant,

(g) the fact that the prejudice to the defendant referred to in (f) might arise in many ways and be other than that merely caused by the delay, including damage to the defendant's reputation and business."

7. Since the judgment was delivered in that case the provisions of O. 27 of the Rules of the Superior Courts 1986, were amended and new Rules substituted by the provisions of the Rules of the Superior Courts (O. 27) (Amendment) Rules 2004, (Statutory Instrument No. 63 of 2004), which came into effect on 17th February 2004 and which provides as follows:-

"[1]. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, subject to the provisions of rule 1A, at the expiration of that time, apply to the Court to dismiss the action, with costs, for want of prosecution; and on the hearing of the first such application, the Court may order the action to be dismissed accordingly, or may make such other order on such terms as the court shall think just; and on the hearing of any subsequent application, the court shall order the action to be dismissed as aforesaid, unless the Court is satisfied that special circumstances (to be recited in the order) exist which explain and justify the failure and, where it is so satisfied, the Court shall make an order –

(a) extending the time for delivery of a statement of claim,

(b) adjourning the motion for such period as is necessary to enable a statement of claim to be delivered within the extended time,

8. and on such adjourned hearing –

(i) if a statement of claim has been delivered within the extended time, the Court shall allow the defendant the costs of and in relation to the motion at such sum as it may measure in respect thereof;

(ii) if a statement of claim has not been delivered within the extended time, the Court shall order the action to be dismissed, with costs, for want of prosecution.

[1A] (1)No notice of motion to dismiss the action for want of prosecution in actions claiming unliquidated damages in tort or contract may be served, unless the defendant has at least 21 days prior to the service of such notice, written to the plaintiff giving him notice of his intention to serve a notice of motion to dismiss the plaintiff's claim and at the same time consenting to the late delivery of statement of claim within 21 days of the date of the letter."

9. As was pointed out by Murphy J., in *Hogan v. Jones* [1994] 1 I.L.R.M. 512. applying the principle stated by Lord Diplock in *Birkett v. James* (1977) 2 A.E.R. 801 at 808:-

"To justify dismissal of an action for want of prosecution the delay relied on must relate to the time which the Plaintiff allows to lapse unnecessarily after the [plenary summons] has been issued. A late start makes it the more incumbent on the Plaintiff to proceed with all due speed and a pace which might have been excusable if the action had been started sooner may be inexcusable in the light of the time that has already passed before the [plenary summons] was issued."

10. In the instant case the alleged incident occurred on 4th May 2001, but the plenary summons was not served until 29th September 2004, (though issued on 18th December 2003). No explanation or excuse has been offered for this lapse of three years, four months and twenty five days. It therefore behoved the Plaintiff to prosecute his action with vigour and without any unnecessary delay.

11. In *Gerald J.P. Stephens v. Paul Flynn Limited* (Unreported, High Court, April 28th 2005), Clarke J. referred to the decision of the Supreme Court in *Mark John Gilroy v. Mary Flynn* [2005] 1 I.L.R.M. 290, where Hardiman J., delivering the judgment of the Court, having referred to the decision of then Supreme Court in *Primor plc v. Stokes Kennedy Crowley* (above cited) and, to the provisions of SI No. 63 of 2004, held as follows:-

"Secondly, the courts have become ever more conscious of the unfairness and increased possibility of injustice which attach to allowing and action which depends on witness testimony to proceed a considerable time after the cause of action accrued. Thirdly, following such cases as *McMullen v. Ireland* ECHR 422 97/98, July 29th, 2004 and the European Convention on Human Rights Act 2003, the courts, quite independently of the action or inaction of the parties have an obligation to ensure that rights and liabilities, civil or criminal are determined within a reasonable time.

These changes and others mean that comfortable assumptions on the part of a minority of litigants of almost endless indulgence must end. Cases such as those mentioned above will fall to be interpreted and applied in light of the countervailing considerations also mentioned above and others and may not prove as easy to escape from the consequences of dilatoriness as the dilatory may hope. The principles they annunciate may themselves be revisited in an

appropriate case. In particular, the assumption that even grave delay will not lead to the dismissal of an action if it is not on the part of the Plaintiff personally, but of a professional adviser may prove an unreliable one.

In the circumstances of this case, and in particular because of the uncontradicted assertion that it will be an assessment, I would allow the appeal, set aside the order of the High Court and substitute for it an order giving the Plaintiff one week from today's date to file a statement of claim.

It hardly needs saying that any further delay in the taking of any step in this action in the context of the gross delay that has already occurred will expose the plaintiff to a very serious risk of the dismissal of his action."

12. The delay in the instant case between the date when the statement of claim ought to have been delivered in accordance with the provisions of the O. 20 r. 3 of the Rules of the Superior Courts 1986 (as Amended) and the pronouncement of his order by the Master of the High Court dismissing the action for want of prosecution, was one year and eight months give or take a few days. All of this delay occurred after the decision of the European Court of Human Rights in the case of *McMullen v. Ireland* (above cited) on July 29th, 2004 and, all but a month and a few days of the delay occurred after the decision of the Supreme Court was delivered in the case of *Gilroy* and *Flynn* (above cited) on December 3rd, 2004. A delay of eight months, give or take a number of days, occurred between the latest date when the statement of claim ought to have been delivered and the date when the solicitors for the Plaintiff wrote to Dr. Boylan seeking a medical legal report and giving Dr. Boylan the Plaintiff's former address and current address. During this time the solicitors for the Defendants had written to the solicitors for the Plaintiff warning that unless the statement of claim was delivered they would move to dismiss the action for want of prosecution and, the Plaintiff had also been examined on behalf of the Defendants by Dr. Fehilly. No explanation or excuse was offered for this delay. When the solicitors for the Defendants again wrote to the solicitors for the Plaintiff on 23rd September 2005, warning that unless the statement of claim was delivered immediately they would bring a motion to dismiss the action for want of prosecution, the solicitors for the Plaintiff explained on 12th October 2005, that the papers were with Counsel to draft a statement of claim. At para. 4 of his affidavit, sworn on 14th November 2006, Mark Potter avers that Counsel had advised that he could not complete the drafting of the statement of claim without a medical report dealing with the injuries claimed to have been suffered by the Plaintiff. A further letter of reminder was sent to Dr. Boylan on 17th November 2005, warning that:-

"The claim is about to be struck out for lack of filing a statement of claim which we cannot do unless we receive your Medical [Report?]."

13. By letter dated 24th March 2006, (stamped "Received" 27th March 2006), Dr. Boylan wrote to say that he was unable to make contact with the Plaintiff and required to see him prior to completing his report. The order of the Master of the High Court dismissing the Plaintiff's claim for want of prosecution was made on 23rd June 2006. At para 5 of his affidavit sworn on 14th November 2006, Mark Potter does not state when the Plaintiff made contact with Dr. Boylan or when Dr. Boylan's medical report was received by the solicitors for the Plaintiff, and merely states that these events occurred prior to 14th November 2006.

14. By letter dated 11th July 2006, the solicitors for the Defendants notified the solicitors for the Plaintiff of the order of the Master of the High Court. The present motion seeking to have that order set aside was not received by the solicitors for the Defendants until 28th November 2006, despite the admitted communication by Counsel for the Plaintiff to Ms. Rachael Dobson, Solicitor, at the sittings of the Circuit Court at Ennis, that it was intended to bring this motion. No explanation or excuse is offered for this delay of four months in moving to seek to have the order of the Master of the High Court, dismissing the Plaintiff's action for want of prosecution, set aside.

15. Apart from this delay on the part of the solicitors for the Plaintiff in seeking to appeal the order of the Master of the High Court to this court, I an satisfied, on the affidavit evidence, that the criteria for granting liberty to appeal, despite a failure to appeal within the time permitted by the Rules of the Superior Courts, were otherwise satisfied. In the case of *Eire Continental Trading Company Limited v. Clonmel Foods Limited* [1955] I.R. 170, Lavery J., delivering the judgment of the Supreme Court held that the court had a full and free discretion to extend the time to enable the appeal to be made if it considered that the interests of justice so required and, the only question was whether upon the facts of the particular case that discretion ought to be exercised. The Court would have regard, (but not solely or rigidly), to such matters as:-

"1. Whether the applicant was able to demonstrate that he had a *bona fide* intention to appeal within the permitted time.

2. Whether he had not so appealed because of something like mistake.

3. Whether he could establish that he had an arguable ground of appeal."

16. In the instant case the time allowed by O. 63 r. 9 of the Rules of the Superior Courts within which to appeal the order of the Master of the High Court to this court had expired before the solicitors for the Plaintiff had been notified of the order of the Master of the High Court by the solicitors for the Defendants. While no specific date was given, it was accepted at the hearing before this court, that shortly thereafter Counsel retained by the Solicitors for the Plaintiff to advise the Plaintiff, had informed Ms. Rachael Dobson the Solicitor having carriage of the case on behalf of the solicitors for the Defendants that an appeal would be made to this court against the order of the Master of the High Court. In the absence to any evidence to the contrary, I must assume that Counsel had been so instructed by the solicitors for the Plaintiff and that they were acting within the scope of their retainer. I am satisfied on the affidavit evidence to which I have already adverted, that the solicitors for the Plaintiff did not appear and were not represented at the hearing of the motion before the Master of the High Court and did not appeal to this court from that order within the permitted time because of a mistake. I am satisfied, on the affidavit evidence that the Plaintiff has an arguable ground of appeal.

17. Given the serious consequences for the Plaintiff and, indeed for themselves, flowing from the decision of the Master of the High Court, I find the entirely unexplained and unexcused delay in bringing this application, from the date after 11th July 2006, when the letter from the Defendant's solicitors would have been received in the ordinary course of post and 21st November 2006, when the motion was issued seeking, inter alia an extension of time, almost totally incomprehensible. However, for reasons which I shall explain in considering the merits of this application I am satisfied that it would in the very special circumstances of this case be unjust and disproportionate to refuse to grant an extension of time on this ground alone.

18. I find, that the delay of two and a half years, from the date of issue of the plenary summons on 18th December 2003, to the date of the hearing before the Master of the High Court on 23rd June 2006, would not, by reference to the jurisprudence of these courts as developed and applied in very many reported cases from the decision of the then Supreme Court in *Dowd v. Kerry County Council* [1970] I.R. 27 to the decision of the present Supreme Court in *Gilroy v. Flynn* (above cited), delivered on 3rd December 2004, and despite the very considerable delay in initiating the proceedings, be considered inordinate or on the facts I have already identified,

inexcusable. The Defendants have not established on the facts of this case that they would be prejudiced in their defence of the Plaintiff's claim. The Defendants have not sufficiently demonstrated that the delay will cause or is likely to cause such prejudice to them in seeking contribution from some non-party to the action, for limitation or evidential reasons, that it would be unjust to permit the action to proceed. This is particularly so, having regard to the nature of a claim for contribution and to the forbearance on the part of the Defendants to move to dismiss the action from mid December 2004 to 23rd March 2006, despite the warning letters of 6th October 2004, 10 March 2005, and 23rd September 2005.

19. This in undoubtedly a very borderline case. The provisions of the of the Rules of the Superior Courts (Order 27) (Amendment) Rules, 2004, which came into effect on 17th February 2004, clearly in my view signalled a change of attitude to procedural delay. This material and significant change was further indicated and strongly emphasised by the judgment of the Supreme Court in *Gilroy v. Flynn* (above cited) delivered on 3rd December 2004. The delay on the part of the Plaintiff in prosecuting the instant case occurred after October 2004. However, in my judgment it would be neither reasonable nor just for this court to immediately enforce such a significantly changed approach to procedural delay on the part of a claimant by reference to facts developing at the same time as this new jurisprudence was itself evolving. In the above identified very special circumstances this court will, but with considerable reluctance, extend the time for an appeal to this court against the order of the Master of the High Court despite the failure on the part of the solicitors for the Plaintiff to explain or excuse the delay of four months in bringing this motion.

20. It appears to me that the only proper inference for this court to draw is that this continuing delay, in circumstances where the action of the Plaintiff had actually been dismissed by the Master of the High Court, could only be referable to a generally lax approach amongst some legal practitioners to the procedural time limit stipulated by the Rules of the Superior Courts 1986 (as Amended). Unfortunately, the perceived reluctance on the part of these courts over the course of more than thirty years to deprive a claimant of a hearing on the merits even in the face of almost unbelieveble delay, may have contributed more than somewhat to this malaise. The necessity for certainty, justice and reasonableness in the law requires in my view, that material changes in the administration of justice arising from the manner in which these courts exercise their statutory or inherent jurisdiction to address procedural delay cannot be permitted to operate in such a manner as to prejudice those who however foolishly have, at least for a reasonable period following upon the adoption and notification of those changes, continued to rely on what was previously generally perceived to have been the former practice of the courts with respect to procedural delay.

21. I adopt the passage from the judgment of Clarke J., *in Gerald J.P. Stephens v. Paul Flynn* (Unreported, High Court, 28th April 2005), where the learned judge held as follows:-

> "However it seems to me that for the reasons set out by the Supreme Court in Gilroy the calibration of the weight to be attached to various factors in the assessment of the balance of justice and, indeed, the length of time which might be considered to give rise to an inordinate delay or matters which might go to excuse such delay are issues which may need to be significantly re-assessed and adjusted in the light of the conditions now prevailing. Delay which would have been tolerated may now be regarded as inordinate. Excuses which sufficed may no longer be accepted. The balance of justice may be tilted in favour of imposing greater obligations of expedition and against requiring the same level of prejudice as heretofore."

22. The court will therefore with considerable hesitation and for the very special reasons above explained extend the time for the delivery by the Plaintiff of a statement of claim for a period of one week from the date of this judgment. The court will hear the parties on the question of costs.