THE HIGH COURT

[2013 No. 11250P]

BETWEEN

CATHERINE WHELAN

PLAINTIFF

AND

THE HEALTH SERVICE EXECUTIVE AND ELIZABETH DUNN

DEFENDANT

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 31st day of May, 2017

Introduction

1. This is the defendants' application for an order pursuant to O.8, r.2 of the Rules of the Superior Courts setting aside an order of this court (O'Connor J.) of 21st December, 2015 renewing the personal injuries summons which was issued on 16th October, 2013.

2. There are a number of disquieting aspects concerning both the evidence put before O'Connor J. and the circumstances in which the order was sought.

Factual background

3. It is common case that the plaintiff was admitted to Wexford General Hospital on 12th November, 2011 and underwent a total abdominal hysterectomy. She was discharged on 17th November, 2011 with a planned outpatient review for six weeks later.

4. The plaintiff presented to Wexford General Hospital on 6th December, 2011 with a complaint of urinary incontinence. She was admitted to the hospital. A subsequent C.T. scan showed a high vesico-vaginal fistula. On 10th February, 2012 she underwent a repair operation for that condition and a post-operative cystogram confirmed a successful repair.

5. Even before that repair was carried out the plaintiff's previous solicitors on 20th January, 2012 requested the plaintiff's medical records. These were furnished to the then solicitors on 6th March, 2012.

6. It is accepted that on 11th March, 2013 the plaintiff's previous solicitors received an independent medical report from Mr. Tom Creagh, Consultant Urologist. On 16th October, 2013 the personal injuries summons was issued.

7. At some time in the month of April 2014 the plaintiff's present solicitors took over the file from their predecessors. They did not come on record until 4th November, 2015.

8. The plenary summons issued on 16th October, 2013 had to be served not later than 15th October, 2014, otherwise it would expire. It was not served within that time.

August 2015 – December 2015

9. In August, 2015 the plaintiff's current solicitors wrote to the State Claims Agency concerning the litigation. That letter was responded to on 20th August, 2015. This letter of response was exhibited in an affidavit sworn by Peter G. Crean, the plaintiff's solicitor on 13th November, 2015. The letter read as follows:-

> *"We acknowledge receipt of your letter dated 13th August, 2015 enclosing a Personal Injury Summons issued on behalf of your client Ms. Catherine Whelan on 16th October, 2013.*
>
> *We note that you have taken over the file from John Synnott & Co., solicitors.*
>
> *We note that the proceedings arise out of your client's treatment in Wexford General Hospital on 12th November, 2011 and that she came under the care of Dr. Elizabeth Dunn, the second named defendant. Please note that under the principle of enterprise liability it is neither necessary nor appropriate to name any individual clinician as a co-defendant. In this regard we refer you to the National Treasury Management (Delegation of Functions) Order 2003. The correct legal defendant to the proceedings is the Health Service Executive on the basis that these proceedings arise solely out of your client's treatment in Wexford General Hospital. Therefore, we would request that you arrange for the title of the proceedings to be amended to reflect the correct defendant as the Health Service Executive.*
>
> *We note that the Personal Injury Summons was issued prior to receipt of an expert report and you might please confirm at this time that you are now in receipt of supportive expert opinion.*
>
> *We also note that the Personal Injury Summons has expired and that you have applied to have it renewed. Given that you have indicated that you will now be serving the summons, we nominate Mason Hayes and Curran solicitors to accept service of proceedings on behalf of the HSE. Please address all correspondence to John Gleeson, Partner at Mason, Hayes & Curran.*
>
> *We would also request at this stage that you provide us with a copy of the pre-claim letter sent by either your firm or John Synnott & Co., solicitors prior to the institution of these proceedings, as required, pursuant to s.8 of the Civil Liability and Courts Act 2004. If you have any queries in relation to this matter please contact Grainne Macdougald, the solicitor/claims manager dealing with this file."*

10. On the following day, 21st August, 2015, Mason Hayes & Curran, solicitors wrote to the plaintiff's solicitors as follows:-

> *"We are instructed to act on behalf of the defendants in the above matter and confirm that subject to renewal of the summons by the High Court we have authority to accept service of proceedings.*
>
> *Please note our authority in this regard should not be construed as a consent on the part of our client to a renewal of the summons or an acquiescence thereto and that our client expressly reserves its entitlement to object to the renewal or to make an application to set aside the renewal. In that regard we should be obliged if you would put us on notice of your application for a renewal of the summons and serve us in due course with a copy of the motion and grounding affidavit.*
>
> *In the event that you are ultimately successful in your application to renew the summons we confirm our client's request that you discontinue the proceedings against the second defendant on the basis that she is fully indemnified by the first defendant."*

11. That letter was responded to on 9th September, 2015 in the following terms:-

> *"We refer to the above matter and your letter of 21st August.*
>
> *We are currently arranging to have the application together with the grounding affidavit drafted by our counsel (NAMED).*
>
> *We confirm that we will put you on notice of the hearing date of the application."*

December 2015

12. On 21st December, 2015 application was made ex-parte to O'Connor J. for the order in suit. This was so despite the confirmation in writing given on 9th September, 2015 that the defendants would be put on notice of the hearing of the application.

13. The application was grounded upon an affidavit of Peter Crean. The following are the relevant extracts from that affidavit.

> *"4. The Personal Injury Summons was issued on 16th October, 2013 by a previous firm of solicitors who were at the time, on record for the plaintiff. In that regard there was a subsequent change of solicitors and this firm came on record for the plaintiff on 4th November, 2015.*
>
> *5. I say and believe and as is recited within the said summons, the proceedings were issued to protect the plaintiff's position with regard to the Statute of Limitations Act 1957 and was issued prior to the receipt of an expert medical report. I say and believe and am so informed that the proceedings were not served within the requisite time period due to the fact that an expert medical report in relation to liability was still awaited by the previous solicitors.*
>
> *6. I say that an expert medical report has now been received from Mr. Tom Creagh, Consultant Urologist and that this firm is now in a position to serve the proceedings, should this honourable court permit the summons herein to be renewed. Solicitors on behalf of the defendants have been nominated by the State Claims Agency and are in a position to accept service. I say, therefore, that there should be no difficulty or delay in serving the proceedings on the defendant. In that regard I beg to refer to a copy of a letter from the State Claims Agency to this firm dated 20th August, 2015 upon which marked with the letters PC2 I have signed my name prior to the swearing hereof.*
>
> *7. I say that should the request be refused, the plaintiff's claim as against the defendants will be statute-barred and as a result she will suffer irreparable prejudice."*

14. There are a number of material misrepresentations contained in that affidavit. First, the proceedings were not issued prior to the receipt of an expert medical report. Mr. Creagh's report was received by the plaintiff's previous solicitors in March 2013 and the Personal Injury Summons did not issue until October 2013.

15. Second, the averment that an expert medical report has "now" been received from Mr. Creagh is also incorrect. This averment clearly gives the impression that Mr. Creagh's report had been received some time shortly prior to the swearing of this affidavit in November 2015. As is now admitted to be the case Mr. Creagh's report had been received in March 2013.

16. It would appear from the letter of 20th August, 2015 from the State Claims Agency that a similar misrepresentation had been made to it since that letter in its fourth paragraph noted that the Personal Injury Summons "*was issued prior to receipt of an expert report*" and asks for confirmation that the plaintiff's solicitors "*are now in receipt of supportive expert opinion*".

January 2016

17. Nothing was heard from the plaintiff's solicitor immediately subsequent to the making of the order in suit. However, on 13th January, 2016 Mason Hayes & Curran wrote to the plaintiff's solicitors in the following terms:-

> *"We refer to the above and enclose a copy of your letter dated 9th September last where you confirmed that you would put us on notice of your application to renew the Personal Injury Summons.*
>
> *We note we have not heard further from you since then but on recently checking the courts website we note, with much disappointment, that it appears you obtained an order to renew the summons on 21st December last.*
>
> *We would be obliged if you would provide an explanation, by return, as to why the application went ahead without notice to this office, despite your assurance last September that you would put us on notice.*
>
> *When responding please forward a copy of your motion papers, together with a copy of the order dated 21st December last and on receipt we will take our client's instructions as to whether we are to bring an application to set aside the renewal, as indicated in our letter of 21st August last.*

We also refer to the second last paragraph of our letter of 21st August last and please indicate if you will be serving a notice of discontinuance against the second named defendant as she is fully indemnified by the first defendant."

18. On 19th January, 2016 the plaintiff's solicitors replied as follows:-

"We refer to the above matter and in particular to your letter of 13th January.

We apologise for not putting you on notice. This was clearly an oversight on our part.

We enclose herewith for your assistance a copy of the ex-parte docket together with a copy of the grounding affidavit of Mr. Peter Crean. We are awaiting receipt of the order to be taken up and will let you have a copy of same as soon as it is to hand.

We confirm that we will be serving a notice of discontinuance as against the second named defendant in circumstances where she has been fully indemnified by the first named defendant.

We apologise for our oversight.

We look forward to hearing from you."

19. On 25th January, 2016 the defendants' solicitors replied as follows:-

"Your letter dated 19th January, together with enclosures, in connection with the above refers and we note you advise that due to an oversight on your part we were not put on notice of your application to renew the summons.

Given the summons was issued on 16th October, 2013 and not renewed until December 2015, please advise why no steps were taken sooner to bring this application. Furthermore, please advise when the expert report was sought from Mr. Tom Creagh and when it was received by you.

Thank you for confirming that you will be serving a notice of discontinuance against the second named defendant and we await a filed copy as soon as it is available.

Please note that the first named defendant still reserves its right to bring an application to set aside the renewal order and we also await a copy of same when to hand."

20. On 27th January, 2016 the plaintiff's solicitors replied. They enclosed a copy of the order and the original plenary summons together with the copy. They requested the solicitors for the defendants to endorse acceptance of service on the original and return it to them. The final paragraph of the letter read:-

"We note the contents of your letter of 13th January. If you have any issue with regard to the renewal of the summons you might please let us hear from you by return."

21. On 29th January, 2016 the plaintiff's solicitors wrote to the defendants' solicitors in the following terms:-

"We refer to the above matter. Unfortunately our letter of 27th January crossed with yours of 25th.

As you are aware, we took this file over from John Synnott & Co. in April 2014.

The medical report from Mr. Tom Creed (sic) was received at that stage. Subsequently we sought advice from senior counsel and obtained necessary advices from him.

We will not be in a position to serve a notice of discontinuance against the second named (sic) until such time as service has been accepted. In the circumstances we look forward to hearing from you."

This letter also misrepresents the position. The report of Mr. Creagh was not received in or about April 2014 when the present solicitors took over the file. It had been received over a year beforehand, seven months before proceedings issued.

February 2016

22. On 29th February, 2016 the defendants' solicitors wrote to the plaintiffs in the following terms:-

"We refer again to the above matter and to your letter of 29th January received here on 1st February.

We note in the above letter you advise that when you took over the file in April 2014 from John Synnott & Co. the expert report from Mr. Tom Creed (sic) was received at that stage.

We note, however, in paragraph 5 of Mr. Peter Creen's affidavit to ground your application to renew, sworn on 15th November, 2015 he avers that the reason the summons was not served within the requisite time period was due to the fact that an expert report in relation to liability was still awaited by the previous solicitor.

On the face of it, in our view, there appears to be a clear discrepancy between your letter of 29th January and paragraph 5 of the affidavit and we seek your further explanation for same."

23. The response to this letter was erroneously dated 19th January, 2016. It was received by the defendants' solicitors on 29th March, 2016. It read as follows:-

"We refer to the above matter and in particular to your letter of 29th February.

We note the contents thereof. The medical report was not received in April 2014. It was in fact received here in April of 2015.

Please let us know if you are in a position to accept service of proceedings.

Please note that unless we hear from you within the course of the next fourteen days we will have no option but to serve the proceedings directly on the defendants."

This letter also misrepresented the time position concerning Mr. Creagh's report. It was not received in April 2015 but over two years earlier on 11th March, 2013.

This application

24. On 9th May, 2016 the defendants issued the motion with which I am concerned. It was grounded on an affidavit of Gemma Coady who is a solicitor in the firm of Mason, Hayes & Curran. In that affidavit she exhibited the correspondence to which I have already referred, pointing out the discrepancies which I have already identified and the various delays which had taken place. She swore that affidavit in the mistaken belief that Mr. Creagh's report was not received by the plaintiff's solicitors until April 2015. That was entirely understandable given what was stated in the letter of 19th January, 2016. Even in that mistaken belief she pointed out the lack of what might be regarded as a "good reason" to renew the summons.

25. Her affidavit was in turn responded to once more by Mr. Crean on 19th July, 2016. In this affidavit he revealed for the first time that Mr. Creagh's report had in fact been received in March 2013.

26. At paragraph 3 of this affidavit he says that the summons issued in October 2013 was issued in order to protect the plaintiff's position under the Statute of Limitations Act without an expert report. It is hard to see how that can be the case given the receipt of Mr. Creagh's report in March 2013 some seven months before the summons was issued. At paragraph 4 he said the following:-

"4. I say that there is unfortunately an error within the affidavit I swore to ground the application to renew the personal injury summons herein.

Paragraph 5 of the said affidavit avers that the proceedings were not served within the time period as an expert medical report was awaited by the previous firm of solicitors on record for the plaintiff herein.

5. I say that this position is not entirely correct. I offer my sincere apologies to this honourable court and the defendant for this error.

6. The position is that a report was received from a Mr. Tom Creagh, Consultant Urologist, dated 11th March, 2013. This report was received by the previous firm on record for the plaintiff. I say that this deponent's firm took over the file in or about April 2014 and a copy of the said report was contained within the file. However, I say that there was also correspondence from the previous firm of solicitors which show that another report had been sought from a consultant obstetrician and gynaecologist. I say that it was therefore unclear whether it would be necessary to obtain a further report prior to serving the proceedings herein and/or whether the report of Mr. Creagh was sufficient to ground the proceedings.

7. I say therefore that it was the position and/or status of this medical report to which I should have averred. I say that it was an error and not a deliberate attempt to mislead the court. I say that I did inform the defendant of the date of receipt of the said report by letter dated 29th January, 2016.

8. I say that the expense of a further report was an issue for the plaintiff and due consideration needed to be given in order to ascertain whether the plaintiff's claim would progress. I say that advice and clarification was sought in relation to the action herein and that this took some time.

9. I say that no further step therefore was taken in the proceedings until this situation was clarified. I say and believe that this position was taken in order to preserve the plaintiff's position and not leave her open to a situation whereby she might be ultimately liable for costs. I say that the decision was ultimately taken to serve the proceedings in August 2015 following advice from counsel."

27. The affidavit concludes as follows:-

"12. I say and believe that any delay which occurred in advancing the proceedings herein has not been inordinate. I further say and believe that any such delay has not prejudiced the defendant in their defence of the action.

13. In that regard I say and believe and am so advised that the balance of justice in relation to this application lies with the plaintiff. If the defendant is successful in their application herein, the plaintiff's claim will be statute-barred and as a result she will suffer irreparable prejudice."

The law

28. An original summons is in force for twelve months from the date of its issue (including that date). If it is not served within that twelve month period then it ceases to remain in force. (See Order 8, RSC). A plaintiff may apply before the expiration of twelve months for leave to renew the summons. An application may be made after the expiry of the twelve months for an extension of time for leave to renew the summons.

29. Order 8 goes on to provide that:-

"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".

30. If an application to renew is made within twelve months of the issue of the summons then the application is made to the Master of this court. However, if that period has expired, the application must be made to a judge. Such an application being made to a judge really requires two orders to be sought. They are first, an order extending time for the making of the application for leave to

renew the summons and second, an order granting leave to renew the summons. Such an extension of time was not actually sought in the present case as is clear from the terms of the *ex parte* docket utilised to ground the application before O'Connor J. However, the fact that he made the order sought necessarily implies that he also granted the extension of time for the making of the application.

31. As is clear from the wording of Order 8 a summons can only be renewed if the court is satisfied that reasonable efforts have been made to serve the defendant or that other good reason exists to justify the renewal.

32. In the present case no efforts at all were made to serve the summons during the twelve months that it remained in force.

33. Thus, the sole basis for contending that the order of O'Connor J. should stand is that "other good reason" exists to justify the renewal of the summons directed by his order.

34. Clearly, there was no reason why the summons should not be served by reference to the absence of any medical report. That report had been received in March 2013 by the plaintiff's previous solicitors and had been passed on to her present solicitors when they took over the file.

35. The only evidence in support of an "other good reason" is to be found at paras. 8, 9, 12 and 13 of the replying affidavit of Peter Crean sworn on 19th July, 2016. I have already reproduced these paragraphs earlier in the judgment. They appear to suggest that a further report was being sought "*in order to ascertain whether the plaintiff's claim would progress*". The expense of such a report was allegedly an issue for the plaintiff. The deponent says that "*advice and clarification was sought in relation to the action herein and that this took some time*". This averment is wholly unspecific as to either date or detail.

36. The reason given for not serving the summons is to be found in paragraph 9. He says "*I say that no further step therefore was taken in the proceedings until this situation was clarified*". One wonders what the situation was that required to be clarified. He goes on "*I say and believe that this position was taken in order to preserve the plaintiff's position and not leave her open to a situation whereby she might be ultimately liable for costs. I say that the decision was ultimately taken to serve the proceedings in August 2015 following advice from counsel*". This appears to be an assertion that the decision not to serve the summons was because of the absence of a second medical report and that the plaintiff was troubled by the expense involved in obtaining that report. In any event the advice of counsel was to serve the proceedings. That advice was given in August 2015 but even then nothing was done until the *ex parte* application was moved before O'Connor J. on 21st December, 2015. The remaining two paragraphs to which I have referred allege that the delay that has occurred has not prejudiced the defendant and that the balance of justice lies with the plaintiff. Her claim will be statute-barred if the order of O'Connor J. is set aside and it is alleged that she will suffer "irreparable prejudice". I believe that to be unlikely since on the facts as known to me she may very well have a remedy albeit not one against the existing defendants.

"Other good reason"

37. At one time it was thought that the mere fact of a plaintiff's claim being statute-barred constituted "other good reason" to justify the renewal of a summons. The high point of that judicial thinking is to be found in the decisions of the Supreme Court in *Baulk v. Irish National Insurance Co. Ltd*. [1969] I.R. 66 and in *McCooey v. Minister for Finance* [1971] I.R. 159. In the latter case Ó Dalaigh C.J. identified the ratio of Baulk's case to be that the plaintiff's claim would be statute-barred if renewal of a summons was refused and that that in itself constituted a good reason for granting a renewal.

38. The effect of these decisions was, of course, to entirely undermine the policy underpinning the Statute of Limitations. A plaintiff might make no effort to serve a summons for a very long time and then rely on the expiration of the limitation period in order to obtain its renewal. Such an approach would defeat the whole thrust of the Statute of Limitations.

39. Subsequent decisions of the Superior Courts have substantially departed from the line of reasoning underpinning *Baulk* and *McCooeys*' cases. By 1997 the Supreme Court in *O'Brien v. Fahy* (21st March, 1997) distanced itself considerably from these two cases with Barrington J. stipulating that the fact that a plaintiff's cause of action would be statute-barred if renewal was not granted was not the only matter to which the court had to pay attention. The following year in *Roche v. Clayton* [1998] 1 I.R. 596 O'Flaherty J. stated that whilst a judge has a discretion whether to renew a summons it was not a good reason to do so simply to prevent the defendant availing of the Statute of Limitations. Thus, the mere fact that a plaintiff's claim would be statute-barred is not of itself "other good reason" for renewing a summons.

40. It is common case that in the present case the plaintiff's claim will indeed be statute-barred if the summons is not renewed.

41. As that of itself is not a sound basis for ordering renewal of the summons, are there other circumstances which would justify the order?

42. Since the decision in *Roche v. Clayton* there have been many judgments delivered on this topic by different High Court judges. They include *Chambers v. Kenefick* [2007] 3 I.R. 526; *Allergan Pharmaceuticals (Ireland) Ltd. v. Noel Deane Roofing* [2009] 4 I.R. 438; and *Moloney v. Lacey Building & Civil Engineering Ltd.* [2010] 4 I.R. 417, all of which are reported in the Irish Reports. There have been many decisions not so reported such as *Moynihan v. Dairygold CoOperative Society Ltd.* [2006] IEHC 318; *O'Grady v. Southern Health Board* [2007] IEHC 38; and *Bingham v. Crowley* [2008] IEHC 453.

43. Finally, there is the decision of the Court of Appeal in *Crowe & Ors. v. Kiltara Ltd. & Ors.* [2016] IECA 62.

44. These cases indicate that the courts have moved from the sort of indulgence demonstrated towards plaintiffs in the *Baulk* and *McCooey* cases to a position which takes account of the injustice which may be visited on a defendant in having to defend a stale claim, the underlying policy of the Statute of Limitations and the obligation on courts to ensure that proceedings progress with reasonable speed.

45. Perhaps the best demonstration of this approach is to be found in the judgment of Peart J. in *Moynihan v. Dairygold CoOperative Society Ltd*. [2006] IEHC 318 where he said:-

> *"The court is required in my view to reach the conclusion not only as to what is the true reason why the summons was not served within the proper time, but also to conclude that that reason justifies the failure to serve. It is in that sense that the word 'good' must be read. Even if the court is satisfied that the reason is a good reason, it must then proceed,*

where prejudice is alleged, to consider matters such as the length of the delay, the conduct of the proceedings generally to date, whether this defendant was alerted in any timely manner or at all by the plaintiff that a claim might be made, and whether in all the circumstances the prejudice to the defendant in having to defend the proceedings after the length of time involved is such as to outweigh the undoubted prejudice to the plaintiff in being, in effect, debarred from proceeding with the claim at all, or whether, on the other hand, the prejudice to the plaintiff is in all the circumstances such as to justify depriving the defendant of his/her right to avail of the Statute of Limitations. In a general sense the court is engaged in determining where the interests of justice between the parties lies."

Later in the judgment he said:-

"Increasingly it is becoming recognised that delays in the pursuit of litigation rests not alone on the parties to the litigation, but on the courts themselves. The courts have an obligation to ensure that proceedings through the courts are progressed in a manner consistent with the parties' entitlement to a hearing within a reasonable time. A failure on the part of the courts in this regard can result in a finding against the State by the European Court of Human Rights in Strasbourg, with a resulting award of damages to the party whose rights have been infringed. Too indulgent an approach by the court to delay by either party in the pursuit or defence of litigation has the capacity to offend against Article 6 of the European Convention on Human Rights and Fundamental Freedoms, and the increasing attention rightly given nowadays to delay must result in the court taking a firmer and more robust approach when dealing with applications which are brought arising from delay, be it delay on the part of the plaintiff in the pursuit of the claim, or by the defendant in its defence of the claim. The discretion vested in the court by the Rules of Court to extend the time for doing certain acts by either party must now be interpreted in the light of the emerging jurisprudence both from the European Court of Human Rights, as well as from the courts here."

46. This topic was again canvassed in the Court of Appeal decision in *Crowe & Ors. v. Kiltara Ltd. & Ors.* [2016] IECA 62. Mahon J. delivering the judgment which was concurred in by Ryan P. and Edwards J. said:-

"58. Order 8, rule 1 provides in very specific terms the time periods in which a court may renew a summons. Compliance with that rule is clearly in the interests of the administration of justice and the efficient processing of claims through the court. It is also undoubtedly designed to ensure that parties against whom proceedings had been instituted, and who may know little or nothing of that fact, are protected from the prospect of such proceedings being resurrected long after their institution, and (as in this case) at a point outside the limitation period. This is especially so in cases where the subject matter of the proceedings is professional negligence.

59. In my view the provisions of Order 8, rule 1 clearly and unequivocally set down time limits for the renewal of summonses (subject to certain criteria being satisfied). Such time limits, and the provision that the renewal of a summons should only be permitted in circumstances where the summons is current and subsisting, are eminently reasonable and fair, and well capable of compliance, particularly by litigants who have the benefit of legal representation.

60. However, Order 122, rule 7 cannot be ignored. In its ordinary meaning it provides the jurisdiction 'to enlarge or abridge the time appointed by these rules, or fix by any order enlarging time … and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed'. It seems to me quite clear that the power to enlarge time appointed by the rules is provided and provided without limitation. It appears to me that the judgment of Clarke J. in Kavanagh is also authority for this position.

61. Having so stated, I am, however, firmly of the view that the power to extend time provided for by Order 122, rule 7, particularly insofar as it relates to the renewal of summonses ***is a power which should only be utilised in very limited circumstances and where there are compelling reasons for so doing****. In his judgment, Moriarty J. referred to the application of Order 122, rule 7 in a manner which was, in effect, in conflict with Order 8, rule 1 being applied in the event of limited technical defects or the like. Possibly such an approach might be unduly limited, but if it is, it is not far off the mark." (my emphasis)*

Decision

47. In the light of the approach to be taken having regard to the authorities cited I conclude as follows.

48. The statutory limitation period in respect of this plaintiff's claim expired in the early part of 2014. A Consultant Urologist's medical report was received in March 2013. The Personal Injury summons was issued on 16th October, 2013. That summons had to be served by 15th October, 2014 and was not. No effort was made to do so. The application to renew the summons was made on 21st December, 2015, fourteen months after the expiry of the summons with no explicit application made or granted by reference to Order 122. The reason which was propounded on oath before the court for the renewal of the summons was not the real or indeed a valid one. The mere fact that the plaintiff's claim against the defendants would be statute-barred is not a good reason *per se* for renewing a summons. The matters which are propounded as constituting "other good reason" are vague and unspecific and entirely lacking in detail. The averments that it was "*unclear whether it would be necessary to obtain a further report prior to serving the proceedings*"; that the expense of a further report "*was an issue for the plaintiff and due consideration needed to be given in order to ascertain whether the plaintiffs claim would progress … advice and clarification was sought in relation to the action herein and this took some time*" are all vague and nebulous assertions. The fact that "*no further step therefore was taken in the proceedings until this situation was clarified*" does not constitute "other good reason" for renewing this summons. Indecision or tardiness individually or in combination do not amount to "other good reason" for renewing a summons. They were both present here in substantial measure.

49. In my view no "good reason" as that term is understood has been identified in the evidence which would justify the renewal of the summons.

50. I am conscious of the fact that the defendant has not alleged specific prejudice to it were the order of O'Connor J. to be allowed to stand. That, of itself, would not justify acceding to this application. The onus on the plaintiff on an application of this sort has not been discharged.

Disposal
51. This application succeeds. The order of O'Connor J. is set aside.