[2019] IEHC 316

THE HIGH COURT

2018 No. 3489 P

Between:

Abigail Barnett Hunt

Plaintiff

– and –

Peter Gormley, Bon Secours Health Systems Limited

and Bon Secours Hospital Galway

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 16th May, 2019.

1. This is an application for judgment in default of defence against the second and third-named defendants only. The plaintiff alleges negligence and breach of duty (including breach of contractual duty) on the part of the defendants and each of them their respective servants and/or agents. So, for example, the indorsement of claim states as follows:

> *"(14) In the premises, the Defendants and each of them their respective servants and/or agents were and remain guilty of negligence, breach of contract and breach of duty (including breach of statutory duty) in and about the investigation, diagnosis, management, treatment and care of the vocal condition with which she [the plaintiff] presented and in and about the consent for and implementation of the microlaryngeal surgery of 9 May 2016."*

2. It is abundantly clear since the decision of Barr J. in *Reidy v. The National Maternity Hospital* [1997] IEHC 143, as now repeatedly affirmed by the Superior Courts, that:

> *"[I]t is irresponsible and an abuse of the process of the court to lodge a professional medical negligence action against institutions such as hospitals…without first ascertaining that there are reasonable grounds for so doing. Initiation and prosecution of an action in negligence on behalf of the plaintiff against the hospital necessarily requires appropriate expert evidence to support it."*

3. Here, the plaintiff's claim comes squarely within that contemplated by Barr J. So the within proceedings should not have been lodged against the second and third-named defendants without the plaintiff having first ascertained that there were reasonable grounds for so doing, *i.e.* there needs to be an independent expert report which specifically criticises treatment provided by the second-/third-named defendant as opposed to the first-named defendant. Yet since the defendants' solicitors wrote on 15 January last to enquire whether there is such a report in respect of the second-/third-named defendant, they have not received any meaningful response to what is the clearest and simplest of questions and to which the answer is a straightforward 'yes' or 'no'. Nor does it appear from the hearing that there is in fact such a report in respect of the second-/third-named defendant. Thus when counsel for the defendants stated himself at hearing to have understood counsel for the plaintiff to indicate that there is such a report in respect of the second-/third-named defendant, it was denied that this was what counsel for the plaintiff had asserted.

4. The court cannot condone or become party to what appears to be an ongoing abuse of process (in the form contemplated in the above-quoted extract from *Reidy*) by now ordering judgment in default of defence. Moreover, the court does not see that a defence can be entered by the second and third-named defendants where it is relevant to the substance of that defence whether there is a report which specifically criticises treatment provided by the second-/third-named defendant as opposed to the first-named defendant; the solution to this impasse is firmly in the plaintiff's hands.

5. For the reasons stated, the court will dismiss the application.