

THE HIGH COURT

[2014 No. 8907 P.]

BETWEEN

JOHN PUGH AND RORY HARTE

PLAINTIFFS

AND

PGM FINANCIAL SERVICES LIMITED, PATRICK MCENTEE, WEALTH OPTIONS TRUSTEES LIMITED, ROWAN ASSET MANAGEMENT LIMITED, PETER DUNNE PRACTICING UNDER THE STYLE AND TITLE OF PETER DUNNE AND COMPANY, CANADA LIFE (IRELAND) LIMITED TRADING AS CANADA LIFE, IRISH LIFE ASSURANCE PLC. TRADING AS IRISH LIFE

DEFENDANTS

JUDGMENT of Mr. Justice McDermott delivered on the 9th day of December, 2016

1. This is an application pursuant to O. 8, r. 2 of the Rules of the Superior Courts to set aside the order of the 11th April, 2016 (Mr. Justice Moriarty) renewing the plenary summons originally issued in these proceedings on the 20th October, 2014 for a period of six months and granting the plaintiffs leave to amend the address of the fourth named defendant as originally stated thereon and an order granting leave to issue a concurrent summons.

2. In the general indorsement of claim set out on the plenary summons originally issued on the 20th October, 2014 the plaintiffs claimed an order directing the defendants to disclose documents concerning monies invested by them and others in investment funds known as Rowan UK Commercial Property Funds 3 and 4, all income and expenditure received or paid by the Fund and any sums lodged to bank accounts together with monies retained or not invested by the Fund since its inception. Damages are sought for misrepresentation, breach of contract, negligence and breach of duty, negligent misstatement, breach of fiduciary duty, breach of trust, fraudulent misrepresentation and deceit.

3. The fourth named defendant, Rowan Asset Management Ltd. is described in the plenary summons as a limited liability company having its registered office at First Floor, Marine House, Clanwilliam Court, Dublin 2. However it is clear from the pleadings and correspondence and it is accepted by both sides that the fourth named defendant is a United Kingdom domiciled company having its registered offices at 25 Bruton Street, Mayfair, London W1J 6QH, England.

4. The plaintiffs claim arises out of a pension investment product that is said to have lost 50% of its value within six years. It is claimed that the first and second named defendants were investment advisors to the plaintiffs and that the third named defendant was the investment fund trustee. The fourth named defendant is described as the asset manager of the Fund and the fifth named defendant was the auditor thereof. The sixth and seventh named defendants are the insurance providers for the investment fund. Proceedings have been discontinued against the fifth defendant.

5. On the 16th October, 2015 an attempt was made to serve the plenary summons on "The Secretary, Rowan Asset Management Ltd., First Floor, Marine House, Clanwilliam Court, Dublin 2". A subsidiary of the fourth named defendant known as Rowan Europe Asset Management Ltd. having its registered offices in place of business at the same address replied to the letter enclosing the plenary summons by letter dated 16th November. The letter stated:

"Rowan Asset Management Ltd. (of which Rowan Europe Asset Management Ltd. is a subsidiary) is domiciled in England and contrary to the information in the Plenary Summons it has its registered office at 25 Bruton Street, London W1J 6QH. Rowan Asset Management Ltd. does not have a registered address, nor does it carry on any business, at Clanwilliam Court, Dublin 2 where the Plenary Summons was sent.

Rowan Europe Asset Management Ltd. had no involvement in the matters referred to in the Plenary Summons and in the circumstances we cannot be regarded as having any role or involvement in the service of the Plenary Summons on Rowan Asset Management Ltd."

This letter is signed on behalf of Rowan Europe Asset Management Ltd. by a Mr. Nick Jacobs who is described as a UK director of Rowan Europe Asset Management Ltd. Mr. Jacobs has also sworn an affidavit as chief executive officer of the fourth named defendant in these proceedings. The plaintiffs' solicitor deposes that the letter sent by Rowan Europe Asset Management Ltd. on the 16th November, 2015 was misfiled within the solicitor's office and "did not come to the writer's attention".

6. On the 11th March, 2016 the plaintiffs' solicitor sent a twenty-one day warning letter to the fourth named defendant calling on it to enter an appearance at the Dublin address contained in the plenary summons. A further letter was sent by Rowan Europe Asset Management Ltd. on 22nd March furnishing a copy of its prior letter and confirming that it was a subsidiary of the fourth named defendant and did not wish to have any involvement in the action. It restated the fact that Rowan Asset Management Ltd. was domiciled in England with registered offices as described. It emphasised that the fourth defendant did not have a registered office nor did it carry on any business whatsoever at Marine House, Clanwilliam Court, Dublin 2. It stated that there was no point in the plaintiffs' solicitors writing to the fourth defendant at that address and that Rowan Europe Asset Management Ltd. could not be regarded as having any role or involvement whatsoever in the proceedings initiated by the plaintiffs.

7. Thereafter on the 11th April, 2016 an ex parte application was made to the High Court grounded on the affidavit of Mr. John Carroll solicitor sworn on the 4th April, 2016 whereby the plaintiffs sought and obtained orders extending the time for the renewal of the plenary summons dated 20th October, 2015 to the 11th April, 2016 and renewing the said summons for a period of six months from that date with liberty to issue a Concurrent Summons against the fourth named defendant and amending its address to read 25 Bruton Street, Mayfair, London W1J 6QH, England.

8. Mr. Carroll deposed that he believed that the plenary summons had already been forwarded to the fourth named defendant by the wholly owned subsidiary upon which service had been affected. He also stated that the fourth named defendant was well aware of the plaintiffs' claim from the detailed correspondence that had been exchanged and which was set out in the affidavit. He therefore claimed that reasonable efforts at service had been made within the initial twelve month period after the summons was issued and "that in any event there is a good and sufficient reason for the court to make an order renewing the summons". The court made the order of the 11th April, 2016 pursuant to Order 8, rule 1 of the Rules of the Superior Courts.

9. The fourth named defendant seeks to set aside this order pursuant to Order 8, rule 2.

10. Order 8 of the Rules of the Superior Courts provides:

"1. No original summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may apply before the expiration of twelve months to the Master for leave to renew the summons. After the expiration of twelve months, an application to extend time for leave to renew the summons shall be made to the Court. 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. The summons shall in such case be renewed by being stamped with the date of the day, month and year of such renewal; such stamp to be provided and kept for that purpose in the Central Office and to be impressed upon the summons by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in the Form No. 4 in Appendix A, Part I; and a summons so renewed shall remain in force and be available to prevent the operation of any statute whereby a time for the commencement of the action may be limited and for all other purposes from the date of the issuing of the original summons.

2. In any case where a summons has been renewed on an ex parte application, any defendant shall be at liberty before entering an appearance to serve notice of motion to set aside such order. ..."

11. The fourth named defendants submit that from an early stage the plaintiffs knew that the fourth named defendant was a company registered in the United Kingdom and had corresponded with it at its registered address. The fourth named defendant in correspondence during the twelve month period made clear its intention to rely upon its United Kingdom status and its objections to the jurisdiction of the Irish Courts over the cause of action upon which the proceedings were based. Therefore, it is submitted that the plaintiffs had a full twelve month period within which to apply to the High Court to seek an amendment of the proceedings and liberty to serve a concurrent summons outside the jurisdiction. It is submitted that no explanation has been offered for the failure to serve the fourth named defendant at its appropriate address or to seek the liberty of the court to serve a concurrent summons. The fourth named defendants therefore claim that no reasonable efforts have been made to serve the summons nor has any "other good reason" been offered as to why such service has not taken place. It is also submitted that it would not be in the interests of justice to allow the renewal order to stand.

12. Under Order 8, rule 2 it is open to the fourth named defendant on the basis of evidence adduced upon the motion or upon the basis of the facts grounding the original ex parte application to submit that the court should not have exercised its discretion to renew the summons and that it should be set aside. The applicable principles were summarised by Finlay Geoghegan J. in *Chambers v. Kenefick* [2007] 3 I.R. 526 at para. 8:-

"... the proper approach of this Court to determining whether or not it should exercise its discretion under O. 8, r. 1, where the application is based upon what is referred to therein as "other good reason", is the following. Firstly, the court should consider is there a good reason to renew the summons. That good reason need not be referable to the service of the summons. Secondly, if the court is satisfied that there are facts and circumstances which either do or potentially constitute a good reason to renew the summons then the court should move to what is sometimes referred to as the second limb of considering whether, because of the good reason, it is in the interests of justice between the parties to make an order for the renewal of the summons. Thirdly, in considering the question of whether it is in the interests of justice as between the parties to renew the summons because of the identified good reason, the court will consider the balance of hardship for each of the parties if the order for renewal is or is not made."

13. This approach was approved and applied by the Court of Appeal in *Monaghan v. Byrne and others* [2016] IECA 10 at paras. 13 and 14:-

"13. It is clear from the decision in *Chambers* that the court should first assess whether there was 'good reason' within the meaning of Ord. 8, r.1 to order renewal of the summons. As Finlay Geoghegan J. made clear in her judgment in *Chambers*, the 'good reason' in question is not necessarily referable to the service of the summons. If it finds the existence of such good reason, the court should then consider whether it is in the interests of justice that it should so order. In doing this the court should consider the balance of hardship for each of the parties.

14. The question as to how the court should assess whether the plaintiff had established 'some other good reason' was examined by Peart J. in *Moynahan v. Dairygold Cooperative Society Ltd.* [2006] IEHC 318 where he stated:

'It is important to note the reference in Ord.8, r.1 is to "other good reason" (my emphasis). It does not state simply "any reason". The court must therefore consider whether there is a reason offered as to why the summons ought to be renewed, and whether that is a good reason. That task requires the court in the present case to form a view as to whether the reason offered is one which justifies the inaction which occurred, especially in circumstances where it is now alleged that the delay has caused prejudice to the defendant's ability to defend, and, in effect extend the limitation period under the Statute of Limitations from three years to over six years ... 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.' ..."

14. The plaintiffs' solicitors knew that the fourth named defendant was a company domiciled in the United Kingdom and having its registered offices at 25 Bruton Street, Mayfair, London W1J 6QH, England from an early stage and certainly on the day that the plenary summons was issued, the 20th October, 2014. No initiating letter was sent to the fourth defendant prior to the issuing of the summons. The plaintiffs' solicitors wrote a detailed letter on the 21st October to the fourth defendant at their London address sending it by post and email. The letter is very detailed and informs the defendants that the plaintiffs have issued proceedings claiming damages for *inter alia* breach of contract, negligence and misrepresentation against them and others. It calls upon them to admit liability and indicates the necessary consequences which will follow if they fail to do so. The final sentence indicates that if the plaintiffs' solicitors do not hear from the fourth defendant within fourteen days they had "instructions to progress our clients High Court proceedings".

15. The fourth named defendant replied on the 5th December, 2014 to the plaintiffs' solicitors denying any allegation set out in the letter and also stating that they were a company domiciled in England which "performed its duty pursuant to an engagement subject

to English law and jurisdiction". The company reserved its rights in respect of the plaintiffs' claim "including in relation to jurisdiction and nothing in this letter should be taken as a submission to the jurisdiction of the Irish court or any waiver of Rowan's rights in that regard".

16. The plaintiffs' solicitors state that it was necessary for them to consider matters carefully with the plaintiffs in light of all the responses received from the other defendants and in order to respond to a letter from the fourth defendant's letter of 5th December 2014. By letter dated 13th May 2015 the Plaintiffs' solicitors raised a number of queries concerning the fourth defendant's handling of the investment fund in suit. However, the letter also notes that the plaintiffs' solicitors are fully satisfied "that the courts of Ireland have jurisdiction to hear the claim against you". This letter was also sent to the registered office of the fourth defendant in London.

17. There is nothing in the evidence to suggest that the fourth defendant ever operated or conducted business from a Dublin office. However, Rowan Europe Asset Management Ltd. is a company registered in Ireland having its registered office at First Floor, Marine House, Clanwilliam Court, Dublin 2. The plaintiffs' solicitors state that a search was carried out with the Companies Registration Office to confirm the correct registered office of the fourth named defendant when the plenary summons was being finalised for issuing out of the Central Office. This search was carried out by an apprentice in the office for which Mr. John Carroll, solicitor took full responsibility. It resulted in the incorrect insertion in the summons of the registered address of Rowan Europe Asset Management Ltd. A mistake was made and Rowan Asset Management Ltd., the correct defendant was nominated in the plenary summons but with the incorrect registered office address and without any advertence to the fact that it was domiciled and had its registered address in England.

18. This clerical error was not identified by Mr. Carroll. The solicitors purported to serve the fourth defendant at the Dublin address under cover of certified post on the 16th October, 2015, four days before the expiration of the twelve month period within which the summons had to be served.

19. On the 16th November, 2015 Rowan Europe Asset Management Ltd. by letter informed the plaintiffs' solicitors that the fourth defendant of which Rowan Europe Asset Management Ltd. was a subsidiary was domiciled in England and contrary to the information on the plenary summons had a registered office in London which was furnished and that it did not have a registered office nor did it carry on any business in Dublin at the address to which the plenary summons was sent. The letter added that the company Rowan Europe Asset Management Ltd. had no involvement in the matters referred to in the plenary summons and could not be regarded as having any role or involvement in the service of the plenary summons on the fourth defendant.

20. At para. 10 of Mr. Carroll's first affidavit it is said that this letter was misfiled and did not come to his attention. Therefore, no action was taken in response to it. The next step taken was that by letter dated 11th March, 2016 a twenty-one day warning issued to the fourth defendant at the Dublin address calling upon it to enter an appearance in default of which an application for judgment in default would be made to the High Court. In a further response from Rowan Europe Asset Management Ltd. dated 22nd March, 2016 it reiterated the fact that the fourth defendant was domiciled in England and once again furnished its registered office address. It restated that the fourth defendant did not have a registered office in Dublin nor did it carry on any business whatsoever at the address of Marine House, Clanwilliam Court, Dublin 2. It emphasised that there was no point in writing to the fourth defendant at that address and that the company Rowan Europe regarded itself as having no role or involvement whatsoever in the proceedings.

21. In the meantime on July 14th, 2015 the fourth defendant replied to the letter of the 13th May, 2015 from the plaintiffs' solicitors from its London office. It noted that the plaintiffs had already decided to pursue legal proceedings irrespective of its response to the letter. Furthermore, it reiterated that it reserved all rights in respect of the claim including those concerning jurisdiction and nothing in the letter was to be taken as a submission to the jurisdiction of the Irish court or any waiver of the company's rights in that regard.

22. Correspondence also took place between the plaintiffs' solicitors and the fourth defendant at their London address concerning access requests made by each of the plaintiffs authorising the disclosure of information and documents to the firm on their behalf pursuant to the Data Protection Acts. These requests were sent on the 15th December, 2015. A reply declining the request was furnished from the London office by the fourth defendant on the 23rd December. Notwithstanding this correspondence the plaintiffs' solicitors issued the twenty-one day letter in respect of the default of appearance on the 11th March, 2016 addressed to the fourth defendant at the Dublin address of Rowan Europe Asset Management Ltd.

23. It is not clear from Mr. Carroll's affidavit when the underlying error in respect of the incorrect Dublin address contained in the plenary summons and at which service was attempted, was discovered. At para. 8 of his second affidavit Mr. Carroll states that the letter of 16th November, 2015 was never received by him personally but was misfiled within the office. He states that had he received this letter an application to renew the summons, amend the address and seek leave to issue a concurrent summons would have been brought at that time. He also noted that it is well known that companies often have a different address for their registered office and business premises, particularly foreign companies such as the fourth defendant who have a subsidiary within the State. Clearly, steps were taken following the receipt of the letter of the 22nd March to initiate a process whereby an application was made to the High Court for the renewal of the summons and liberty to serve a concurrent summons on the 11th April, 2016 grounded on an affidavit sworn on the 4th April, 2016. I am satisfied that as soon as the error was realised by Mr. Carroll he took immediate steps to ensure that the appropriate application was made. I am also satisfied that from the detailed correspondence between the plaintiffs' solicitors and the fourth defendant at their registered London office between the 21st October, 2014 and the 14th July, 2015, the fourth defendant was informed and well aware of the intention of the plaintiffs to pursue legal proceedings against them and was also aware that High Court proceedings had issued in Dublin. It is an interesting but not a decisive fact that Mr. Jacobs, a director based in the United Kingdom of Rowan Europe corresponded with the plaintiffs' solicitors in relation to the attempted service of the plenary summons at the Dublin address and also swore the affidavit in support of this application on behalf of the fourth defendant as it's Chief Executive Officer.

24. The fourth named defendant fairly accepts that the plaintiffs' solicitors' explanation that the failure to serve the plenary summons at the appropriate address was due to error or inadvertence notwithstanding some suggestion to the contrary in the replying affidavit. The plaintiffs' solicitors in correspondence with the fourth defendant at all times manifested a belief that the proceedings had been served properly, a fact indicated by the correspondence, the twenty-one day letter threatening a motion in default of appearance and the letter containing the copy plenary summons sent on the 16th October, 2015.

25. I am satisfied applying the principles set out above that there was good reason identified for the renewal of this summons. The summons was issued on the 20th October, 2014 and a copy of plenary summons was delivered to the defendant's subsidiary's address in Dublin on the 16th October, 2015. It is also clear that three other defendants were served and entered appearances and a statement of claim had been served upon them and the first and second named defendants were being pressed for their appearances at the time of the application to the High Court under Order 8, rule 1. It is clear that the failure to properly serve the summons was due to inadvertence on the part of the plaintiffs' solicitor in relation to the address at which the defendant ought to be served. As in

the *Chambers* case, I am not satisfied that this of itself constitutes a good reason as to why the summons ought to have been renewed but rather that inadvertence and the circumstances in which it occurred, provides the explanation as to why the copy of the summons which had been furnished to the incorrect address, was not properly or formally served at the London address. There is no suggestion or evidence that the plaintiffs' solicitors withheld service of the summons deliberately. However, the copy summons was delivered to the subsidiary of the fourth defendant. Its officers were fully informed of the nature and extent of the plaintiffs' claim in the correspondence exhibited and of the fact that High Court proceedings had been initiated against the fourth defendant in Dublin. Once the plaintiffs' solicitors' mistake was realised, it is clear that steps were taken immediately to rectify the matter. I am therefore satisfied that a reasonable effort at service was made which was unsuccessful due to the error described and that at all material times the Plaintiffs' solicitors sought albeit unsuccessfully to effect service. Though this failure is not in any way attributable to the defendant and it drew attention to the mistake when made, I am satisfied that this is not a case of inactivity or indifference by the Plaintiffs' solicitors of such a nature as to require the setting aside of the order.

26. These factors also have a bearing on the court's approach as to whether it was in the overall interests of justice to permit the renewal.

27. In *Bingham and Bingham v. Crowley and others* [2008] IEHC 453, Feeney J. in applying the principles in *Chambers* stated:

"22. This Court is satisfied that a correct reading of O. 8, r. 1 is that the making of reasonable efforts to serve a defendant is within the category of a good reason. The use of the word "other" within the rule has the effect of identifying reasonable efforts to serve as being a potential good reason subject to the interests of justice between the parties. The approach identified in *Chambers v Kenefick*, and expressly approved of earlier in this judgment, is that the court should firstly consider whether there is a good reason to renew the summons but a good reason must be considered in the context of the overall justice between the parties. There is therefore an overlap between the first and second steps identified in *Chambers v, Kenefick*.

23. A correct reading of O. 8, r. 1 is that a reasonable effort to serve is one of a number of potential good reasons. However, good reason need not be referable to the service of the summons. If the Court is satisfied that there are facts and circumstances which constitute a potential good reason, including reasonable efforts to serve such summons, the court must consider whether it is in the interests of justice between the parties to make an order for the renewal of the summons."

28. Mr. Jacobs at para. 25 of his affidavit sets out the only matter concerning the prejudice which is claimed to arise for the fourth defendant from the renewal of the summons. He notes that the letter of the 21st October, 2014 refers to investments which were made in 2007 and 2008. He notes that the summons was issued on 20th October, 2014 and that the proceedings were "clearly statute barred as of the time they were issued". He adds that the renewal of the plenary summons therefore deprives the fourth defendant of a valid defence to the statute of limitations. A submission is therefore made that this is not the correct purpose for the procedure by which the plaintiffs are allowed to apply for an order to renew the plenary summons. It is therefore submitted that it was not in the interests of justice to renew the summons and that the court in considering the "balance of a hardship" for each of the parties should decline to confirm the renewal.

29. The pleadings in the case are at an early stage and there is nothing in the plenary summons to indicate clearly the date of accrual of the cause of action in these proceedings. Damages are sought for misrepresentation, breach of contract, negligence and breach of duty, negligent misstatement, breach of fiduciary duty, breach of trust, fraudulent misrepresentation and deceit.

30. The primary evidence available and in respect of the date of accrual is contained in the correspondence exhibited in the affidavits of Mr. Carroll and Mr. Harte.

31. The initiating letter of the 21st October, 2014 sent the day after the issuing of the plenary summons, states that following a presentation delivered to the plaintiffs in 2007 they invested sums of money in "Rowan UK Commercial Property Fund 4" in 2008. In a more detailed description of events relied upon by the plaintiffs, Mr. Harte in his affidavit states by reference to a statement of claim which was delivered to other parties (but not exhibited in these proceedings) that he had a defined benefit pension scheme with a value of €440,858.00. In September 2007 he was advised to transfer it into the "Rowan 4 Fund". This was a fund allegedly managed by the fourth named defendant and Mr. Harte deposes that he transferred €380,581.00 into the Rowan Fund but received back only €188,588.00 on 3rd June, 2014 following the Funds closure. He therefore states that he had a loss which crystallised at just under €200,000.00. He states that the fourth defendant was sued as the asset manager responsible for decisions which it made concerning the Fund's assets over its lifetime.

32. Mr. Harte also states that from in or about January 2014, prior to the closure of the Fund) he wrote to the second defendant about problems with the Fund and sent emails to the first, second, third, sixth and seventh defendants. This led to the letter sent to the fourth defendants on the 21st October, 2014 set out in the affidavit of Mr. Carroll. Thus the facts underpinning the plaintiffs' claim in these proceedings cover events between April 2008 and 3rd June, 2014 – the period between the transfer of assets into the "Rowan 4 Fund" and its closure. The plaintiffs claim orders directing the defendants to disclose to the plaintiffs what became of monies invested by them in Rowan UK Commercial Property Funds and all the income and expenditure received or paid by the Fund. The relief claimed includes an order that the defendants furnish copies of all documents evidencing the use of monies invested by the plaintiffs and any monies borrowed on behalf of the Fund together with the income and expenses of the Fund.

33. If the date of accrual of the action is said to be a date in September 2008, the defence under the statute of limitation may be available to the fourth defendant given that on its face the plenary summons issued outside the period of limitation (and the case is framed in a manner similar to that made in *Gallagher v ACC Bank* [2012] 2 I.R. 620) Different considerations may apply if the plaintiffs' claim, as it appears to be, concerns how the relevant property fund was administered between September 2008 and its closure of on 3rd June, 2014. The extent to which any such claim may be the subject of a defence under the statute of limitations is not clear from the evidence as it presently stands. The basis of the claimed prejudice under the statute is based in Mr. Jacob's affidavit on a claim that the case is statute barred by reason of the events upon which it is based occurring in 2007 and 2008. If the further case is made based on what happened during the course of the administration of the Fund during the subsequent years, there may be further prejudice arising in relation to the potential defence under the statute relating to some of those subsequent events but that does not emerge from Mr. Jacob's affidavit. It seems to me that the defence under the statute in relation to the initial investment in the Fund in 2008 is still open notwithstanding the renewal of the summons. The evidence is not clearly established that any such prejudice arises in relation to some or all of the subsequent events concerning the Funds administration. In addition, there may be issues which will be defined more clearly by the documentation in relation to the administration of the Fund which is sought in these proceedings and which may crystallise the basis for such a defence or alternatively, indicate some concealment by the fourth defendant which may possibly be relevant to the maintenance of such a defence. However, for the purpose of this application no such cogent

evidence has been adduced by either party and the court confines its decision to the evidence set out in the affidavits and exhibits contained therein.

34. On the basis of the evidence adduced, the court is not satisfied that such prejudice exists as to warrant the conclusion that it is in the interests of justice that the order should be set aside because of the hardship which will accrue to the fourth defendant if the renewal is allowed to stand.

35. I am therefore satisfied having considered all of the evidence in the case and in particular bearing in mind the dicta of Feeney J. quoted above that this application should be refused. I take into account the respective states of knowledge of the plaintiffs and the fourth defendant in relation to the existence of these proceedings following the issuing of the plenary summons, the existence of an error that only became apparent to the principal in the plaintiffs' solicitors office at a late stage, and the prompt efforts made thereafter to rectify the situation and the fact that I am not satisfied that sufficient prejudice will accrue to the fourth defendant by reason of the renewal of the summons to justify the refusal of a renewal.

36. I consider that this case is entirely distinguishable from the facts considered by Peart J. in *O'Keefe v G & T Crampton* [2009] IEHC 366 and Feeney J. in *Bingham and Bingham v Crowley & Others* [2008] IEHC 453 which involved periods of inactivity of many years which gave rise to the lapsing of the summonses in the two cases and very delayed applications for renewal in circumstances in which no effort was made to effect service.

37. The application is refused.