

## THE HIGH COURT

2019 No. 4 CA

## IN THE MATTER OF SECTION 28 OF THE EQUAL STATUS ACTS, 2000-2015

Between:

ROBERTO ALAMAZANI

PLAINTIFF

- AND -

CITIZENS INFORMATION CENTRE

DEFENDANT

**JUDGMENT of Mr Justice Max Barrett delivered on 3rd April, 2019.**

1. This is an application for an extension of time within which to appeal an order of the Circuit Court of 14.06.2018 striking out Mr Alamazani's proceedings.

2. On 11.11.2016, Mr Alamazani lodged a claim with the Workplace Relations Commission (WRC) against the Citizens Information Centre (CIC) under the Equal Status Acts 2000-2015, claiming that on 06.07.2016 (a Wednesday) he was, *inter alia*, harassed/victimised contrary to those Acts while attending a Free Legal Aid Centre (FLAC) clinic at CIC's premises in Rathmines. Although CIC allows FLAC to hold an out-of-hours clinic at CIC's premises at Rathmines on Wednesday evenings, the claim against it is odd in a number of ways: (i) CIC does not run or operate FLAC clinics; so (ii) no CIC staff have cause to attend same, and (iii) Mr Alamazani himself in his complaint to the WRC states that "*Two guys... working for FLAC... bullied and harassed me*", i.e. his claim, in his own terms, is against FLAC, not CIC.

3. Mr Alamazani's claim was struck out by the WRC for want of prosecution. An appeal to the Circuit Court was also struck out. On 20.06.2018, an attested copy of the Circuit Court order was received by CIC's solicitor. On 21.06.2018 she forwarded a copy of same to Mr Alamazani. Exhibited before the court is a copy of the letter that accompanied the copy order, as well as an extract from the 'post out' book maintained by CIC's solicitor, which book records all correspondence mailed out by her each working-day and refers to the mailing of the letter of 21.06.2018 to Mr Alamazani. Despite this, Mr Alamazani claims he has "*no record of receiving any communication from the Defendant in June 2018*". Yet by coincidence, on 22.06.2018, he visited CIC's Rathmines offices and served a notice of appeal. Thereafter, no attempt was made to lodge same until the motion to extend time for appeal issued on 04.01.2019. Given that Mr Alamazani is party to a remarkable 12 other Circuit Court appeals at this time, he is clearly aware of the practice/procedure applicable when lodging a High Court appeal. Moreover, even if the court accepted Mr Alamazani's account of events, he received, according to himself, a copy of the Circuit Court order on 02.11.2018, yet still took no formal action to progress his appeal until the following January.

4. CIC has had the cost of preparing for and attending with its legal representatives on three occasions for the hearing of Mr Alamazani's claim, with Mr Alamazani failing to attend on each occasion. In this regard, CIC's solicitor avers as follows:

*"This has been a significant cost to the Citizens Information Service [which is] funded so as to provide its services to the public by way of grant from the Citizens Information Board...a statutory body....[T]o allow the Plaintiff...to appeal the decision of the Circuit Court would be prejudicial to the Citizens Information Service and would result in more time and expense. I say and believe that the Plaintiff has no case as against the Citizens Information Service nor has he a bona fide ground of appeal."*

5. The two principal cases which require to be brought to bear in deciding this application are *Éire Continental Trading Co Ltd v. Clonmel Foods Ltd* [1955] IR 170 and *Brewer v. Commissioners of Public Works in Ireland* [2003] 3 IR 539. As to the *Éire Continental* criteria: (i) it appears that Mr Alamazani had a *bona fide* intention to appeal formed within the relevant time; however (ii) he has failed to show the existence of something like mistake as to why he did not appeal (he has pointed to the upset of the death of his father at the start of August 2018 as a factor in his delay but a death in the family does not justify the entirety of the delay that has arisen here; and notably, on his own account, Mr Alamazani was again working away at this case in October 2018, i.e. a month before – on his version of events – he received a copy of the Circuit Court order); (iii) Mr Alamazani has not established that an arguable ground of appeal exists. (Taking his case, as expressed by himself, at its height, he is patently suing the wrong party).

6. The court is mindful of Geoghegan J.'s observation in *Brewer*, 548 that when it comes to the *Éire Continental* criteria it does not "*necessarily follow... that a court would either grant the extension if all these conditions were fulfilled or refuse the extension if they were not*", i.e. as Greene MR observed in *Gatti v. Shoosmith* [1939] 1 Ch. 841, his observation in this regard being relied upon by Lavery J. in *Éire Continental*, 173, "*The discretion of the court being...a perfectly free one, the only question is whether, upon the facts of this particular case, that discretion should be exercised*". Given all the circumstances presenting, this Court does not see that it could properly exercise its discretion in any way except to refuse the extension of time now sought.

7. One final point: the named defendant is incorrectly named and ought, apparently, to be Dublin South Citizens Information Centre CLG. Had this been the sole difficulty presenting, it seems to the court that it would have been capable of remedy under O.28, r.12 RSC. However, given the conclusion reached in the preceding paragraph this issue falls away.