

Between:

BIN SUN

Plaintiff

– and –

JASON PRICE and JOHN PRICE

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 19th April, 2018.

1. The claim at the heart of the within proceedings concerns an alleged road traffic accident which is alleged to have occurred on or about 5th February, 2016, at or near the Dublin Road in the City of Limerick. It is claimed that Mr Sun was travelling as a passenger in a motor vehicle being driven by a Mr Woodland which was allegedly collided into from the rear by a vehicle owned by Mr Jason Price and allegedly being driven by Mr John Price.

2. At the time of the alleged accident, Mr Jason Price was the holder of a policy of insurance with Bump Insurance; Mr John Price was a named driver on that policy. Bump has apparently conducted an investigation into the accident and has a number of concerns in relation to the alleged accidental nature of the incident from which the claim arises. Based on that investigation, Bump has decided to refuse the provision of an indemnity to the defendants in respect of the alleged accident.

3. Bump wishes to bring various matters to the attention of the court of trial in the within proceedings which, it considers, may be of assistance to the court in reaching a determination in respect of the events at the heart of the within proceedings. For example, Bump alleges that (a) some of the occupants in each of the vehicles are known to each other; and (b) Mr John Price is a lifelong friend of Mr Woodland, the driver of the vehicle in which Mr Sun was travelling.

4. Bump is concerned that if Mr Sun is successful in his action, he will then invoke the provisions of s.76 of the Road Traffic Act 1961 against Bump so as to seek of it any amount that is awarded against the existing defendants. Bump therefore seeks to be joined to the within proceedings, having previously made a failed application in this regard before the Master, which failed application has prompted the within appeal. More particularly, Bump seeks the following reliefs by way of notice of motion: (i) if necessary, an order extending time for the bringing of an appeal against the decision of the Master of 1st December, 2017; (ii) an order setting aside the decision of the Master of said date; (iii) an order that Bump be joined as a co-defendant in the within proceedings; (iv) an order granting leave to Bump to file a defence or such other documents as to the court seem meet; (v) if necessary, an order directing such consequential amendments to the pleadings as to the court seem meet; and (vi) certain ancillary reliefs.

5. If the trial court finds that what occurred was a *bona fide* accident and that Mr Sun suffered consequential personal injury, loss and/or damage, Bump has offered to undertake that, subject to any right of appeal, it will (i) meet any award for damages and costs made in favour of Mr Sun, and (ii) discharge any reasonable costs incurred by Messrs Jason and John Price in defending this claim in their own right (as that is how they have proceeded thus far), in each case when ascertained/taxed if necessary, and (iii) it will meet its own costs (which is not much of an offer as it is unlikely, albeit not impossible, that as the losing party anyone else would be ordered to pick up Bump's costs).

6. Mr Sun objects to the joinder of Bump as a defendant, effectively on the basis that the requisite exceptional circumstances necessary for joinder in the face of his objection do not present and/or that the issue of fraud is not adequately pleaded or averred to.

7. The joinder of a defendant is treated with generally in O.15, r.13 of the Rules of the Superior Courts 1986, as amended. The issue as to when a defendant may be joined to private *inter partes* proceedings where (as here) a plaintiff objects to same has usefully been considered in previous case law. Such joinder is only permissible when:

(I) there are exceptional circumstances, which circumstances appear, thus far, to have manifested in four alternative forms, viz. where

(1) the would-be defendant is a person who ought to have been joined as defendant by the plaintiff in the first instance (*Fincoriz SAS v. Ansbacher and Co Ltd* (Unreported, High Court, Lynch J., 20th March, 1987)),

(2) it is shown at the time of the joinder application that the would-be defendant's presence before the court of trial will as a matter of probability be necessary to enable the court effectually and completely to adjudicate upon and settle all questions in the cause or matter (*Fincoriz*),

(3) the would-be defendant's proprietary or pecuniary rights are or may be directly, as opposed to merely 'precedentially', affected by the proceedings either legally or financially, by any order which may be made in the action (*Barlow v. Fanning* [2002] 2 I.R. 593; the distinction between direct and precedential interest is pointed to in *Fitzpatrick v. FK* [2006] IEHC 392), and

(4) the would-be defendant may be rendered liable to satisfy any judgment either directly or indirectly (*Barlow*),

provided that

(II) in all instances

(A) the interests of justice are served by adding the would-be defendant (it is perhaps in this context that any potential prejudice resulting from the joinder falls most heavily to be weighed), and

(B) joining the would-be added defendant serves the court's interest in seeing that (a) litigation is properly conducted, and (b) its processes are operated in such a way that is just and fair and in the interest of the would-

be added party (*Personal Digital Telephony Ltd v. Minister for Public Enterprise* [2014] IEHC 78).

Fraud is not necessary to establish exceptional circumstances, though, if alleged, it may be an additional factor which enables a court to conclude that exceptional circumstances present. (*McDonagh v. Ward* [2017] IEHC 513).

8. The effect of s.76 of the Act of 1961 has the effect that Bump will almost certainly be called upon to satisfy any (if any) award in favour of the plaintiffs. That being so, it seems to the court that exceptional circumstances in the form of each of ground (3) and (4) present. Moreover, the court is satisfied on the facts presenting that each of limbs (A) and (B) of the proviso is satisfied. As to any (if any) deficiency in the manner in which the alleged fraud is pleaded or averred to, fraud, as stated, is not necessary to establish exceptional circumstances. The court does not see that any prejudice presents for the plaintiffs or defendants. If what occurred was a *bona fide* road traffic accident, as contended for by Mr Sun, then an award of damages will follow, and in this regard the tailored undertaking offered by Bump is notable. Additionally, if Bump had not declined cover, it would, in the normal course of events, have taken over the defence. Furthermore, by joining Bump, it will be open to the defendants to claim indemnity of Bump. Joining Bump has too the additional attraction (in terms of time and money saved) that all issues arising between all of the parties can be heard at the same time (an additional factor of relevance to the satisfaction of limbs (A) and (B) of the proviso).

9. It does not appear to the court that, when it comes to the within appeal, Bump is in fact in breach of the time limit identified in O.63, r.9 of the Rules of the Superior Courts 1986, as amended, and thus there is no need for the first relief sought in the notice of motion. For the reasons aforesaid, the court will grant orders (2)-(4) as sought in the notice of motion. It will discuss with the parties the ongoing management of the proceedings.