

THE HIGH COURT

2007 No. 9078P

BETWEEN

ISIS FIGUEREDO

PLAINTIFF

AND
EAMON McKIERNAN

DEFENDANT

Judgment delivered by Ms. Justice Dunne on the 26th day of November 2008

1. The plaintiff herein issued a personal injuries summons on 5th December, 2007, in relation to a claim for personal injuries alleged to have been suffered by the plaintiff when crossing a road on 10th November, 2004.

2. A notice of motion dated 4th April, 2008, was issued on behalf of the defendant seeking the following:-

a) an order dismissing the plaintiff's claim on the grounds that the plaintiff's claim is, and remains, statute barred under the provisions of the Statute of Limitations, as amended, and the Civil Liability and Courts Act of 2004.

3. There is in the grounding affidavit some dispute as to the date on which the accident is alleged to have occurred, but for the purpose of this application, nothing turns on that particular issue. The matters relied on by the defendant in relation to the application are contained in paras. 6 and 7 of the affidavit of Jan Hayes, Solicitor. It is therein deposed to as follows:-

"6. I say that the plaintiff's application to the Personal Injuries Assessment Board was confirmed as having been received by P.I.A.B. on 2nd April, 2007, authorisation to proceed was then duly issued on 4th July, 2007, and thereafter the personal injuries summons issued on 5th December, 2007. In this regard, I beg to refer to a copy of the said documents upon which, pinned together and marked with a letter "A", I have endorsed my name prior to the swearing hereof.

7. I say that the Civil Liability and Courts Act of 2004, amended the issue regarding the Statute of Limitations and it is clear that where the relevant date, being the date of accrual of the cause of action falls before 31st March, 2005, being the commencement date of the Civil Liability and Courts Act of 2004, section 7 thereof, limitation period prescribed is two years from the date of the commencement, i.e., on or before 30th March, 2007, or three years from the relevant date, whichever occurs first."

4. Section 7 of the Civil Liability and Courts Act 2004 amends the Statute of Limitations (Amendment) Act 1991. Section 7 (d) inserts the following section into the Statute of Limitations (Amendment) Act 1991:-

"5A.(1) Where the relevant date in respect of a cause of action falls before the commencement of section 7 of the Civil Liability and Courts Act 2004, an action (being an action to which section 3(1), 4(1), 5(1) or 6(1) of this Act applies) in respect of that cause of action shall not be brought after the expiration of -

(a) 2 years from the said commencement, or

(b) 3 years from the relevant date,

whichever occurs first.

(2) In this section 'relevant date' means the date of accrual of the cause of action or the date of knowledge of the person concerned as respects that cause of action whichever occurs later."

5. It is also necessary, in this context, to have regard to the provisions of s. 11 of the Personal Injuries Assessment Board Act 2003, which provides as follows:-

"11. (1) A claimant shall make an application under this section to the Board for an assessment to be made under section 20 of his or her relevant claim.

(2) That application shall be in the form specified by rules under section 46 and be accompanied by such documents as may be so specified..."

6. Section 12 of that Act goes on to provide that there is a bar on bringing proceedings unless and until an application is made to the Board under s. 11 in relation to the relevant claim. Certain other provisions apply which are not relevant to the present application.

7. In addition, it is necessary to consider the provisions of Personal Injuries Assessment Board Rules 2004, S.I. No. 219 of 2004. Rule 3 provides as follows:-

"(1) An application under section 11 of the Act shall -

(a) be made in writing or by electronic mail,

(b) contain such information as may from time to time be specified by the Board, and

(c) be accompanied by the following documents:

(i) ...

(2) An application under section 11 of the Act shall be accompanied by such charge in relation to an application as may be imposed on the claimant by the Board pursuant to Regulations made by the Minister under section 22 of the Act.

(3) In relation to a relevant claim, the date of:

(a) the receipt by the Board of an application under section 11 of the Act for the purposes of section 13 of that Act, and

(b) the making of an application under section 11 of the Act, for the purposes of section 50 of that Act,

shall be the date on which the application in a form specified in sub-rule 1(a), containing the information where it is specified in sub-rule 1(b) is acknowledged in writing as having been received by the Board."

8. It will be noted that in rule 3, sub-rule 3, reference is made to section 13 of the 2003 Act and also to s. 50 of the Act. The provisions of s. 13 are not relevant in the present context but s. 50 of the Act is relevant and it provides as follows:-

"50. In reckoning any period of time for the purposes of any limitation period in relation to a relevant claim specified by the Statute of Limitations 1957 or the Statute of Limitations (Amendment) Act 1991, the period beginning on the making of an application under section 11 in relation to the claim and ending 6 months from the date of issue of an authorisation under, as appropriate, section 14, 17, 32 or 36, rules under section 46 (3) or section 49 shall be disregarded."

9. The date of the accident contended for in this case is 4th December, 2004. That date pre-dates the commencement of the Civil Liability and Courts Act 2004 and as such, the limitation period provided for and set out above is two years from the date of commencement of the Act, namely 30th March, 2007. In those circumstances it is contended on behalf of the defendant that the plaintiff's case is statute barred on the basis that the plaintiff's application was confirmed as having been received by the Personal Injuries Assessment Board on 2nd April, 2007, and the authorisation to proceed having issued on 4th July, 2007. As noted previously, the personal injury summons issued on 5th December, 2007.

10. There is no dispute between the parties that in order to avoid the statute barring the proceedings in respect of an action which accrued prior to the commencement of the Civil Liability and Courts Act 2004, a claimant has to make an application under s. 11 of the Personal Injuries Assessment Board Act 2003 by 30th March, 2007. The plaintiff contends that having complied with the requirements of the Personal Injuries Assessment Board Rules 2004, in relation to the manner of making an application under s. 11 of the Act, by posting the application by pre-paid registered post to the Board on 29th March, 2007, that the same would have been received in the ordinary course of post by the Board on 29th March, 2007, that is, within the limitation period. The defendant however, contends that having regard to the provisions of Rule 3, sub-rule 3 of the Personal Injuries Assessment Board Rules 2004, the date of making of the application under s. 11 is 2nd April, 2007 being the date on which the application was acknowledged in writing as having been received by the Board.

11. If the contention on behalf of the defendant is correct, it would appear that the effect of Rule 3(3) of S.I. No. 219 of 2004 is that a plaintiff could be statute barred in circumstances entirely outside their control. Clearly, such a consideration could result in significant hardship for a plaintiff. Whilst one might be critical of a plaintiff for leaving the issue of proceedings or, in the case of personal injuries applications the making of an application under s. 11 until the last moment, nonetheless the Statute of Limitations 1957 has fixed a specific period within which to commence one's proceedings and it seems somewhat harsh, to say the least, that having taken every step that one can take in order to commence proceedings, that one could become statute barred by the actions of a third party over whom one has no control, in this case, the Personal Injuries Assessment Board.

12. In the course of submissions, counsel on behalf of the plaintiff, referred to a number of decisions in which the issue as to when the plaintiff became statute barred was considered. Reference was made to the decision in the case of *Poole v. O'Sullivan* [1993] I.L.R.M. 55, which considered the question as to whether a court had power to enlarge a period of time laid down by statute. It was ruled that the court had no power to enlarge the period of time but could and should define the period at issue. It was also held that while as a general rule, a statutory period of time, whether general or special, would, in the absence of any contrary provision, normally be construed as ending at the expiration of the last day of the period there was a limited but important exception or qualification to that general rule, in that if the act to be done by the person concerned was one for which some action by the court was required, such as issuing a summons and it was impossible to do that act because the offices of the court were closed for the whole of that day, the period would *prima facie* be construed as ending not on that day but at the expiration of the next day on which the offices of the court were open and it became possible to do the act. In that case the plaintiff allegedly sustained personal injuries on 8th July, 1987. The plaintiff's solicitor's agents attempted to issue a plenary summons on 4th July, 1990 but the Central Office of the High Court refused to accept it on the grounds that it required amendment. The 7th July, 1990, fell on a Saturday, when the Central Office was closed all day. The Central Office re-opened on Monday, 9th July, 1990, on which date the duly amended summons was issued. It was in those circumstances that the summons was held to have been issued within the statutory limitation period. Morris J. made the following comment in the course of his judgment:-

"Accordingly, in my view, the fact that the Central Office was closed on 7th July, 1990, and on 8th July, 1990, they being Saturday and Sunday, respectively, and since the plaintiff was unable to 'set the court in motion' on those days, it appears to me that in the circumstances of this case the period envisaged by the Statute of Limitations should be construed as ending on the next day upon which the offices of the court are open and it becomes possible to do the act required."

13. In that case, Morris J. as he then was, accepted the reasoning of the Court of Appeal in the case of *Pritam Kaur v. S. Russell & Sons Ltd.* [1973] Q.B. 336, where it was held *inter alia* that where an Act of Parliament prescribed a period for doing an Act which could only be completed if the court offices were open, the court could construe the period, in a case where it expired on a day when the court offices were not open as being extended to the next day on which they were open. And therefore, the three year period for issuing the writ expired on a *dies non juridicus*, September 5, the plaintiff's writ, issued on the next available day when the offices were open to complete the Act, September 7, was issued in time and her action was not statute barred.

14. In this case, there is no dispute between the parties, that s. 7 of the Civil Liability and Courts Act 2004, which amended the Statute of Limitations (Amendment) Act 1991, and which was commenced pursuant to S.I. No. 544 of 2004 came into operation on 31st March, 2005. There is no dispute between the parties that having regard to the terms of the statutory provisions amending the period of limitation, the limitation period in this case expired on 30th March, 2005. The plaintiff had done all that could be done to commence proceedings by 29th March, 2007. There is no dispute that in the ordinary course of posting, the application under s. 11 would have been received by the Personal Injuries Assessment Board on 30th March, 2007. In this regard, counsel for the plaintiff referred also to the provisions of s. 25 of the Interpretation Act 2005, which provides as follows:-

"25. Where an enactment authorises or requires a document to be served by post, by using the word 'serve', 'give',

'deliver', 'send' or any other word or expression, the service of a document may be effected by properly addressing, pre-paying (where required) and posting a letter containing the document, and in that case the service of the document is deemed, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

15. There is nothing in the papers before me to indicate that the application under s. 11 in this case was not delivered in the ordinary course of post. The defendant relies on the date stamp affixed to the application by P.I.A.B. on 2nd April, 2007. It is clearly the case that the plaintiff would have been one of a number of parties to have been affected by the provisions of the change in respect of the limitation period brought about by s. 7 of the Civil Liability and Courts Act 2004. It is also relevant to note that 30th March, 2007, was a Friday and 31st March and 1st April, 2007, were Saturday and Sunday respectively. The application under s. 11 was acknowledged as having been received on 2nd April, 2007, a Monday.

16. I find it difficult to accept the argument of the defendant herein, that the plaintiff in these proceedings is statute barred by reason of the provisions of Rule 3, sub-rule 3 of S.I. No. 219 of 2004, in circumstances where the Oireachtas has fixed by statute the limitation period at 30th March, 2007. Having regard to the provisions of s. 7 of the Civil Liability and Courts Act 2004 and s. 26 of the Interpretation Act 2005, I cannot see how a plaintiff could find themselves statute barred in circumstances where they have made the necessary application to P.I.A.B. under s. 11 of the Personal Injuries Assessment Board Act 2003, within time, by post, in circumstances where in the ordinary course of post, the application would have been in time. There is nothing before me to indicate that the application under s. 11 was not in fact delivered in the ordinary course of post. I do not see how the administrative act of affixing a date stamp on the application by P.I.A.B. can oust the statutory provisions in relation to the limitation period.

17. In the circumstances, I am not satisfied that the plaintiff herein is statute barred.