

## THE HIGH COURT

Record No: 2014/7369P

BETWEEN:

KAREN STAPLETON

Plaintiff

-AND-

ST COLMAN'S (CLAREMORRIS) CREDIT UNION LIMITED

Defendant

JUDGMENT of Mr Justice Max Barrett delivered on 31st July, 2015.

## PART I

## KEY ISSUE ARISING

1. Should the within personal injuries proceedings be struck-out as statute-barred under the statute of limitations legislation?

## PART II

## BACKGROUND FACTS

2. On or about 19th June, 2011, Ms Stapleton was out at a social occasion when she was advised that an allegation, it seems of workplace bullying, had been made against her by a co-worker at the defendant credit union. Thereafter Ms Stapleton appears to have been considerably unhappy at work due to what she perceived to be an ongoing and unresolved vilification of her good name. In the end, Ms Stapleton's worries seem to have got the better of her, with the result that between February and September 2012, she was absent from work on stress-related sick leave for a considerable portion of time. She was eventually dismissed from her employment on 18th September, 2012.

3. A claim brought by Ms Stapleton under the unfair dismissals legislation in respect of her dismissal met with success in January of this year before the Employment Appeals Tribunal and Ms Stapleton's reinstatement to work was ordered.

4. Separately, in March 2014, Ms Stapleton had set about the process of seeking relief for personal injuries that she claims to have suffered at the hands of the credit union, its officers, servants or agents. She made application to the Personal Injuries Assessment Board (PIAB); this application was received on 24th March, 2014, and an authorisation to bring the within proceedings issued from that Board on 26th March, 2014. Notably, this was 2 years and 8 months after Ms Stapleton first attended with her medical doctor for treatment of alleged work-related stress, and 2 years and 1 month after she was diagnosed with a significant related ailment.

## PART III

## PRINCIPAL CONTENTIONS OF RESPECTIVE PARTIES

5. The credit union comes to court complaining that Ms Stapleton's proceedings were commenced out of time. It points to the fact that Ms Stapleton has pleaded in her personal injury summons, the contents of which have been verified on affidavit, that the alleged workplace vilification commenced against her in or about June 2011, and that she was caused to attend with her medical doctor for treatment of work-related stress on or about 22nd August, 2011. She was certified as unfit to work due to stress-related illness on 1st February 2012, returned to work for March 2012, and thereafter was absent until September 2012, at all times due to work-related stress. This being so, the credit union contends that there is no doubt that Ms Stapleton knew, at the latest by 1st February, 2012, that she had been injured, that the injury in question was significant, that the injury was attributable in whole or in part to the impugned acts or omissions of her employer, its officers, servants or agents, whether in conducting or allowing the purported campaign of vilification. Consequently the credit union claims that, consistent with s.2 of the Statute of Limitations (Amendment) Act, 1991, Ms Stapleton ought to have commenced her personal injuries action within two years of 1st February, 2012, given the two-year time limitation on personal injuries actions. (The text of s.2 is set out in Appendix A hereto which forms a part of this judgment).

6. Counsel for Ms Stapleton points to the fact that in the body of the application form submitted to PIAB in March 2014, Ms Stapleton was asked to identify the date of injury, or the date of accident, and identified it as 18th September, 2012. Moreover, within the body of that form Ms Stapleton asserts that on 18th September, 2012, she was dismissed from her employment and, as a result thereof, she suffered stress-related injuries. Later in the form she is asked to identify the nature of the injuries that she suffered; she indicates that her injury is related to work-related stress and (curiously) indicates that she first sought medical attention for work-related stress on 18th September, 2012.

7. The strange centrality in the PIAB application form of 18th September, 2012 as a date on, or as a result of which, Ms Stapleton suffered personal injury, is not apparent from a consideration of Ms Stapleton's pleadings in the within proceedings. The date of 18th September, 2012, is the date on which Ms Stapleton was dismissed from her employment. By then she had suffered the alleged personal injuries on which the indorsement of claim in the within proceedings is patently focused. There is reference in that indorsement of claim, it is true, to the fact that Ms Stapleton attended work on 18th September and was dismissed on that day; however, any fair reading of the indorsement of claim is that the injuries for which recompense is being sought are those allegedly suffered by Ms Stapleton in the previous year, with some emphasis on the summer of 2011. The truth is that, apart from its being the date of Ms Stapleton's dismissal from employment, a date that would be painful for anyone to endure, the 18th September, 2012, is accorded no especial significance in Ms Stapleton's pleadings, which are focused on her previous history.

## PART IV

## SOME CASE-LAW

8. Counsel for Ms Stapleton has drawn the court's attention to the relatively recent judgment of Barr J. in *Brandley and anor. v. Deane t/a Hubert Deane and Associates & anor.* [2014] IEHC 610. That was a case in which the statute of limitations was pleaded but in which there was a factual dispute between the parties as to when the damage at issue in the proceedings in fact occurred. This being so, Barr J. concluded as follows, at paras.20–21 of his judgment:

*"20. I am of opinion that where there is a factual dispute between the parties, such as to when the actual damage occurred to the property, such dispute cannot be determined on affidavit evidence. It will be necessary for the court to hear oral evidence from the parties and from their expert witnesses prior to reaching any conclusion on the Statute of Limitations point.*

*21. Accordingly, I refuse the first named defendant's application to have the plaintiffs' action dismissed as being statute*

*barred against the first named defendant. This is due to the fact that such issue cannot be determined on the basis of the affidavits currently before the court. However, the plea can remain as a live issue in the defence of the first named defendant. It can be determined as part of the defence at the trial of the action."*

9. The difficulty for Ms Stapleton is that, on her own account of the facts, so taking her case at its height, she falls to be endowed, pursuant to s.2 of the Act of 1991, with the knowledge necessary to commence the within proceedings, at the latest, on 1st February, 2012. The sudden and fortuitous significance of 18th September, 2012, a date allegedly so central to Ms Stapleton's claim that it gets the scantest of references in her indorsement of claim, which is clearly focused on her previous bout of stress-related ill-health, does not alter the determinative significance, for the purposes of the within application, of 1st February, 2012, if not some earlier date.

## **PART V**

### **CONCLUSION**

10. The court is not without sympathy for Ms Stapleton. She appears not to have had an easy time of it in the last few years. However, the Oireachtas has decided, doubtless for good reason, that it is preferable for society as a whole that personal injuries proceedings be commenced within a relatively short time of such injuries occurring. Here the injuries in issue, having regards to the papers and pleadings before the court, are patently those of which Ms Stapleton stood possessed of the statutorily required knowledge, at the latest, on 1st February, 2012. Yet application for authorisation to proceed with the within proceedings was not made of PIAB until end-March 2014. The court therefore accedes to the application of the defendant credit union that these proceedings be struck out as statute-barred, having being commenced outside the applicable two-year timeframe.

### **APPENDIX A**

11. Section 2 of the Statute of Limitations (Amendment) Act, 1991, provides as follows:

*"(1) For the purposes of any provision of this Act whereby the time within which an action in respect of an injury may be brought depends on a person's date of knowledge (whether he is the person injured or a personal representative or dependant of the person injured) references to that person's date of knowledge are references to the date on which he first had knowledge of the following facts:*

*(a) that the person alleged to have been injured had been injured,*

*(b) that the injury in question was significant,*

*(c) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty,*

*(d) the identity of the defendant, and*

*(e) it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;*

*and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.*

*(2) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire—*

*(a) from facts observable or ascertainable by him, or*

*(b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek.*

*(3) [This sub-section is not relevant to the within application]."*