

Woodrow PACKAGING

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1983 No.5029 D

THE HIGH COURT

IN THE MATTER OF THE LOCAL GOVERNMENT (IRELAND) ACT, 1898 AND

IN THE MATTER OF DAMAGE TO PROPERTY (COMPENSATION) ACT, 1923

BETWEEN:-

WOODROW PACKAGING LIMITED

Respondents/(Applicants)

-and-

DUBLIN CORPORATION

Appellants/(Respondents)

Judgment of Mr. Justice McMahon delivered the 26th day of July 1983.

This is an appeal from an Order of the Dublin Circuit Court (His Honour Judge Ryan) on a preliminary issue raised in an application for compensation for a criminal injury. The preliminary issue was raised by Notice of Motion brought by the Applicant for compensation and no objection has been taken to this method of procedure.

The issue is whether the powers of the Circuit Court under Section 21(2) of the Damage to Property (Compensation) Act, 1923 and Order 52 Rule 10 of the Rules of the Circuit Court, 1950 can be exercised so as to override the statutory period of six years prescribed by the Statute



of Limitations, 1957, Section 11(1)(e). The Applicants' claim is one of a number of claims for goods destroyed when a warehouse at North Wall Quay, Dublin was destroyed by fire on the 21st May, 1974. The British and Irish Steampacket Company Limited who owned the warehouse brought proceedings for compensation for the destruction of the building under the Criminal Injury code and a preliminary notice of intention to apply to the Court and an application to the Court were served in accordance with the requirements of Order 52 of the Rules of the Circuit Court, 1950. This claim was proceeded with in the ordinary course and the owners of the building obtained a decree for compensation from His Honour Judge Ryan in the Dublin Circuit Court on the 5th of December 1980. The present Applicants and other owners of goods destroyed in the fire had decided to await the outcome of the building owners claim before proceeding with their claims. The present Applicants having served a preliminary Notice of Intention to apply to the Circuit Court for compensation within seven days from the date of the fire in accordance with Order 52 Rule 3 of the Circuit Court Rules did not serve the Notice of Application to the Court for compensation required by Order 52 Rule 4 until the 12th of November 1980. On the 31st day of January 1982 the Applicants applied to the Dublin Circuit Court by

way of Notice of Motion claiming:-

(a) An Order pursuant to Section 21(2) of the Damage to Property (Compensation) Act, 1923 and pursuant to Order 59 Rule 10 of the Rules of the Circuit Court extending the time within which the Applicant can apply to the Circuit Court for compensation for criminal injuries committed on the 21st day of May, 1974.

(b) An Order for the costs of this Motion.

His Honour Judge Noel Ryan extended the time as sought in the Notice of Motion to the 31st of January, 1983 and this appeal is taken against that Order. Provided a preliminary notice was served within seven days from the commission of a criminal injury Order 52 of the Circuit Court Rules did not apply any time limit for bringing an application to the Court for compensation for the criminal injury since Rule 4 of Order 52 merely provided that Notice of the Application for Compensation should be served at least 15 clear days before the day upon which such application is intended to be made in the case of applications to the Dublin Circuit Court. The time limit at which the application to enlarge time was aimed is that contained in Section 11(1)(e) Statute of Limitations, 1957 which imposes a limit of 6 years

from the date on which the cause of action accrued to actions to recover any sum recoverable by virtue of any enactment (with exceptions not relevant here). Under Section 2(1) of the Act "action" includes any proceeding (other than a criminal proceeding) in a Court established by law. It is clear that Section 11 barred an application for compensation for a criminal injury after 6 years unless that time could be extended by the Circuit Court. Section 5(7) of the Local Government (Ireland) Act, 1898 provided:-

"Rules of Court may regulate the practice and procedure under this Section, including costs, and the service of all preliminary notices, and the time within which any proceedings are to be had or taken; and in particular such rules shall provide that noncompliance with any of the rules shall not render any proceedings void unless the Court or Judge of assize so direct but the time may be extended and the proceedings may be set aside either wholly or in part, or be amended or otherwise dealt with, in such manner and upon such terms as the Court or Judge may think just."

The power to extend time in Rules of Court to regulate practice and procedure under the Local Government (Ireland) Act, 1898 was

limited to time fixed by rules and did not extend to time fixed by a statute. Section 137 Grand Jury Act, 1836 required an information to be sworn within 3 days in the case of claims under that Section. In Smith and the Dublin County Council 35 I.L.T.R. 110 the Court of Appeal held that the power of extension of time given by Section 5(7) of the Local Government (Ireland) Act 1898 can only apply to cases where the time is fixed by the rules made thereunder and such rules could not provide for altering the three days time limit prescribed by Section 137 of the Grand Jury Act 1836. The power relied on by the Applicants is that contained in Section 21 Damage to Property (Compensation) Act, 1923. Sub-section 1 of that Section repealed Section 137 Grand Jury (Ireland) Act, 1836 as from the 23rd December, 1920.

Sub-section 2 provides:-

"The powers of the court or judge under any rules of Court made whether before or after the passing of this Act in pursuance of sub-section (7) of Section 5 of the Local Government (Ireland) Act 1898 (61 and 62 Vict. Ch. 37) shall include and be deemed to have included as from the 23rd day of December 1920 power to extend or vary the time prescribed by any Statute or Statutory Rules for making an application for compensation for criminal

"injuries or for serving any notice or for doing any other act, or taking any proceedings in relation to the application in any case where it appears to the Court or Judge that such extension or variation is just and reasonable for any cause whatsoever."

The power conferred by this sub-section is imported into the Circuit Court Rules by Order 52 Rule 10. Section 21 is contained in Part 3 of the Damage to Property (Compensation) Act, 1923 which contained general provisions and is still in force. It is a re-enactment of the provisions of sub-sections 1 and 2 of Section 6 of the Criminal Injuries Act, 1920 which was repealed by the Act of 1923. It was suggested in argument that the provisions of the Act of 1920 were intended to avoid the decision of the Court of Appeal in Smith .v. Dublin County Council (35 I.L.T.R. 110). This seems not unlikely in view of the reference to Section 137 of the Grand Jury Act 1836 in sub-section 1.

The applicants contend that under Section 21 sub-section (2) of the Act of 1923 and Order 52 Rule 10 of the Rules of the Circuit Court 1950 the time limit of six years under Section 11 of the Statute of Limitations 1957 could be extended by the Circuit Court if the Judge

considered it just and reasonable for any cause whatsoever to do so. This contention can succeed only if Section 21 sub-section (2) of the 1923 Act and Order 52 Rule 10 of the Circuit Court Rules are construed as giving power to extend the time prescribed by statutes subsequent in date to that Act or those rules. In my view the Act of 1923 cannot be read as extending to statutes which might be enacted in the future. I cannot conceive any reason why the Legislature in 1923 should have concerned itself with powers to extend time limits which might be contained in future statutes. I am satisfied that the power in the Act of 1923 applies only to extend the time prescribed in statutes existing at the date of that Act. Power in Order 52 Rule 10 to extend the time limited by a statute is similarly confined to time limited by statutes pre-dating the Act of 1923 since that is the only Act enabling the rule making committee to make a rule under which a time fixed by a statute can be extended by the Court. For these reasons I am satisfied that the applicants' right to claim compensation for criminal injury became statute barred under the Statute of Limitations, 1957 after the expiration of six years from the date of the criminal injury. The application to the Circuit Court to extend time was made outside that time limit and it was not within the powers of the Court to extend the

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time for bringing an application for compensation so as to defeat the
statutory bar under the Statute of Limitations 1957.

Approved

J. M. C. M.

16/9/53.