

McGOWAN

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THE HIGH COURT

1975 No. 3261P

BETWEEN:

ANNIE MCGOWAN

PLAINTIFF

AND

BRENDAN DOHERTY

DEFENDANT

Judgment of Mr. Justice Egan delivered the 21st day of
July, 1986.

This is a Motion by the Defendant to have the Plaintiff's claim dismissed for want of prosecution.

A Plenary Summons was issued on behalf of the Plaintiff on the 13th August 1975 claiming damages for personal injuries alleged to have been sustained by the Plaintiff due to the negligence and breach of statutory duty of the Defendant his servants or agents, on the 21st day of August 1972. It will be noted that it was just within the statutory limitation period of three years.

An appearance was entered on behalf of the Defendant on the 3rd October 1975 requiring delivery of a Statement of Claim. No further procedural step was taken by either party until the 18th July 1984 when the Plaintiff served a Notice of Intention to proceed. It will be seen, therefore, that there was a gap of close on nine years during which no procedural step was taken.

On the 11th February 1985 the Solicitor for the Plaintiff wrote to the Defendant's Solicitor requesting consent to the late filing of a Statement of Claim but no reply was received to this letter. A further letter was written on the 11th November 1985 by the Plaintiff's present Solicitor in which he enclosed:-

- (a) an undated report from an Engineer
- (b) a medical report dated the 1st September 1975
- (c) a medical report dated 30th June 1982

and he stated that he would appreciate hearing from the Defendant's Solicitor as to the general attitude of the Insurance Company in the case. The same request was repeated in a letter dated the 14th January 1986 on which date a further Notice of Intention to Proceed was also served. On the 30th April 1986 the Defendant's Solicitor wrote a letter to the Plaintiff's Solicitor stating that consent would not be forthcoming in regard to the late filing of a Statement of Claim and that this application would be made to dismiss the claim for want of prosecution.

The Plaintiff's claim is that on the 21st day of August 1972 she fell down steps in the dining room of Hotel premises then owned by the Defendant. The Defendant in his Affidavit states that this dining room was subsequently leased to two different persons and that it has undergone major reconstruction. His staff changed over the years and he has failed to trace any member who recollects the details of any accident to the Plaintiff.

The law in respect of applications of this nature has become very strict in recent years. Even claims by infants have been dismissed for want of prosecution. This appears to

be in contrast to the law in England which is referred to in the Judgment of McCarthy, J. in:-

O'Domhnaill .v. Merrick 1984 I.R. P. 151

wherein he refers to the Judgment of Lord Diplock in:-

Tolley .v. Morris (1979) 1 W.L.R. 205, 592

who pointed out that where there has been inordinate delay by a Plaintiff in proceeding with an action a remedy lies in the hands of the Defendant. Under Rules of Court he can take steps to compel the Plaintiff to comply with procedural requirements. The Judgment of McCarthy, J., however, is a dissenting Judgment but I am compelled to follow the majority Judgment which was delivered by Henchy, J.

In Sheehan .v. Amond 1982 I.R. P. 235 the Judgment of the Supreme Court was delivered by Henchy, J. Again this was an infant's case but the Court held that procedural delays on the part of the Plaintiff should result in a dismissal for want of prosecution.

No considerations of infancy affect the present case. We are concerned in the main with a procedural delay of almost nine years. Even allowing for the fact that the Plaintiff's Solicitor and his wife had health problems in 1984 and 1985, this did not reduce the relevant period and we are left with the averment that he had problems arising from the fact that two girls employed in his office got married in rapid succession in 1982 and 1983.

I have had regard to the guidelines laid down by the present Chief Justice (then President of the High Court) in Rainsford .v. Corporation of Limerick but I am compelled to hold that there was inordinate and inexcusable delay on the part of the Plaintiff and that there is no ingredient which

would justify me in exercising a discretion in her favour. I am also influenced, of course, by the Defendant's averment that he would be prejudiced in his ability to defend the case adequately for the reasons stated in his affidavit. The Plaintiff's case, therefore, must be dismissed for want of prosecution.

S.F. EGAN
21st July 1986.

*Approved.
S.F. Egan.*