

THE HIGH COURT

[2019 No. 3749 P]

BETWEEN

PRISCILLA DU PLOOY

PLAINTIFF

AND

SPORT IRELAND AND SPORT IRELAND FACILITIES DAC

DEFENDANTS

JUDGMENT of Mr. Justice Meenan delivered on the 10th day of September, 2020

Background

1. On 8 March 2013, the plaintiff was at a swimming pool and water activity centre at the premises known as the "*National Aquatic Centre*" situate at Snugborough Road, Blanchardstown, Dublin 15. As she descended the waterslide, the plaintiff alleges she suffered an impact injury to her coccyx, caused by what she described as being "a dangerous item or protrusion". As a result, the plaintiff alleges that she sustained personal injury, loss and damage. The proceedings were initiated by personal injuries summons issued 13 May 2019.
2. Under the provisions of the Personal Injuries Assessment Board Act 2003 (the Act of 2003), before initiating certain personal injury proceedings an application must be made to the Personal Injuries Assessment Board (PIAB). If the matter is not concluded by PIAB, an authorisation is given to commence proceedings. In this case, the authorisation stated as follows: -

"The plaintiff is authorised to bring these proceedings against the defendants having received an authorisation(s) dated the 18th February 2019 (and the 11th April 2019) from the Personal Injuries Assessment Board pursuant to section 46 of the Personal Injuries Assessment Board Acts 2003 and 2007, and bearing authorisation number..."

(The wording in brackets appears to have been added to the authorisation).

3. The provisions of the Act of 2003 introduce a number of mandatory steps that must be taken in certain personal injuries actions before court proceedings are issued. These provisions had to have regard to the provisions of the Statutes of Limitation Acts. These Acts provide for certain strict time limits within which proceedings must be issued. In the Act of 2003 provision had to be made to prevent personal injury proceedings becoming statute barred whilst being dealt with in PIAB. With this in mind, s. 50 of the Act of 2003 provides: -

"(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."

(This provision was subsequently amended post these proceedings).

What this means is, in effect, that for the period commencing on the application to PIAB and ending six months after the date of issue of an authorisation, the time period allowed by the Statute of Limitations Acts does not apply. At the end of the said six-month period time commences to run again.

4. On 11 April 2013, the plaintiff's then Solicitors sent a letter of claim addressed to "*National Aquatic Centre*" at Snugborough Road, Blanchardstown, Dublin 15. This letter was not replied to. It does not appear to have been followed up.
5. The next step taken was an application to PIAB, making a claim. This application was "*deemed complete*" on 6 March 2015. It will be noted that this was within hours of the expiry of the time allowed by the Statute of Limitations for bringing such a claim. PIAB wrote to the "*National Aquatic Centre*" but also does not appear to have received any reply. Having considered the application pursuant to s. 17 of the Act of 2003, PIAB decided that it would not be appropriate to make an assessment and gave an Authorisation to permit the plaintiff to commence legal proceedings to resolve her claim. This Authorisation was dated 30 June 2016. On 21 December 2016, High Court proceedings were initiated by the plaintiff naming "*National Aquatic Centre*" as the defendant.

"National Aquatic Centre"

6. Although the name "*National Aquatic Centre*" is used extensively in the marketing of the swimming facility at the National Sports Campus at Snugborough Road in Blanchardstown, a search of the Companies Registration Office revealed that, in fact, there was no such corporate entity under that name nor, at the time, was it an active registered business name. There had been a registered business name for "*National Aquatic Centre*" which was registered in January, 2003, but this lapsed in 2005. This business name had been registered by a company named Dublin Waterworld Limited. This was the subject of a judgment given by Gilligan J. in March, 2006 in proceedings entitled *Campus and Stadium Ireland Development Limited v. Dublin Waterworld Limited* [2006] IEHC 200. In the course of this judgment, it was clear that, in fact, Dublin Waterworld Limited had no involvement with the National Aquatic Centre.
7. Subsequently, the plaintiff's then Solicitors discovered that "*National Aquatic Centre*" came under the remit of the "*National Sports Campus Development Authority*". With this information, a letter was sent to PIAB seeking to amend the Authorisation to name "*National Sports Campus Development Authority*" as the defendant. On 21 December 2016, PIAB replied with an amended Authorisation. However, this was not the end of the matter.
8. The plaintiff's then Solicitors did not issue proceedings naming the National Sports Campus Development Authority as defendant and no application was made to amend the personal injuries summons that had been issued on 21 December 2016. In fact, by the time the amended Authorisation had been received from PIAB, the National Sports

Campus Development Authority was no longer in existence, it having been dissolved on 13 May 2015 when the Sport Ireland Act 2015 was commenced. Under this Act (s. 34), Sport Ireland took on the liabilities of the National Sports Campus Development Authority.

Further steps

9. In January, 2018, the plaintiff instructed her present Solicitors to take over carriage of her claim in relation to the incident that had allegedly occurred nearly five years earlier on 8 March 2013. These Solicitors were of the view that the appropriate defendants in respect of the claim were Sport Ireland and NSCDA (Operations) DAC. On 23 January 2019, these Solicitors wrote to PIAB and requested the issue of an amended Authorisation pursuant to s. 46(3) of the Act of 2003. PIAB replied to this request on 18 February 2019 and enclosed an amended Authorisation allowing proceedings to be brought against Sport Ireland and NSCDA (Operations) DAC. Once again, this was not the end of the matter.
10. On further investigation, prior to the issue of proceedings on foot of this amended Authorisation, it turned out that NSCDA (Operations) DAC had changed its name to Sport Ireland (Operations) DAC by way of a special resolution effective from 5 February 2019. This required a further amended Authorisation from PIAB. This Authorisation was forthcoming on 11 April 2019. These proceedings were issued on 13 May 2019.
11. The letter that accompanied the Authorisation of 11 April 2019 states, *inter alia*: -

“We refer to the application of Ms. Priscilla Du Plooy, made pursuant to section 11 of the Personal Injuries Assessment Board Act, 2003, as amended, (the “Act”) on 06/03/2015.

We have considered your request to amend the respondent title(s) in the context of section 46 of the (Act of 2003). Please find attached Authorisation which authorises the claimant to bring proceedings in respect of the relevant claim...”
12. The defendants have issued a notice of motion seeking an order dismissing the plaintiff’s claim on the basis that it is statute barred. This is the issue being considered by the Court.

Act of 2003

13. Section 46(3) of the Act of 2003 provides: -

“(3) Rules under this section shall enable the Board... to issue to a claimant a document (in this Act also referred to as an ‘authorisation’), in circumstances where the claimant is not otherwise authorised under a provision of this Act to bring proceedings in respect of his or her relevant claim, in either or both of the following cases, namely—

- (a) ...
- (b) the claimant wishes to bring proceedings in respect of his or her relevant claim against one or more persons whom he or she omitted, through a genuine oversight or ignorance of all of the facts relating to the matter, to

specify in his or her application under section 11 as being a person or persons liable to him or her in respect of that claim.”

Consideration of issue

14. Clearly, the within proceedings were issued on 13 May 2019 in excess of six years following the date of the alleged accident. It is clear that in order to defeat the defendants’ claim that the proceedings are statute barred that the plaintiff will have to establish that the relevant Authorisation from PIAB was that of 11 April 2019 or, possibly, that of 18 February 2019. There are two factual matters which support this. Firstly, the letter from PIAB in respect of both Authorisations refers specifically to an application by the plaintiff made pursuant to s. 11 of the Act of 2003 on 6 March 2015 and, secondly, the claim number on both Authorisations is the same and is the same number on the first Authorisation of 30 June 2016. The next matter that has to be addressed is whether there is a legal basis for these Authorisations.
15. Mr. James Devlin SC, on behalf of the plaintiff, relies upon the Supreme Court decision in *Reghan v. T & S Taverns Limited* [2015] 3 I.R. 149. The judgment of the court was given by O’Donnell J. In the course of his judgment, O’Donnell J. considered the provisions of s. 46(3) of the Act of 2003. O’Donnell J. stated: -

“(18) There is no doubt that proceedings here were commenced within six months from the date of the issuance of the second authorisation, and that is the only relevant authorisation in respect of this defendant. The question is however, when the period of disapplication of the Statute of Limitations in respect of this began. In that regard, the section is very clear. It provides for the disapplication to commence on the ‘making of an application under section 11 in relation to the claim’. In this case only one application was made under s. 11 in respect of this accident, and that was the claim lodged on the 30th of June, 2009. It should be noted that s. 11(2) requires the application to be in the form specified by the rules under s. 46. The only such application was made on the 30th June, 2009. Accordingly it seems clear that where an application is made in respect of a claim for personal injuries against one defendant, and it becomes clear that there is a further potential defendant either in addition to or in substitution for the original defendant, then s. 46(3) comes into play, and if that jurisdiction is properly exercised, then an authorisation under the rules made pursuant to s. 46(3) fixes the end point of the period during which the statute is disapplied, at least vis-à-vis the respondent named in the authorisation. It is not necessary here to consider whether the effect of s. 50 is to extend a disapplication period in relation to an original defendant since that issue does not arise here.”

and: -

(19) ... There is a period of disapplication of the statute. It requires a commencement point and an end point. The end point here is an authorisation issued under rules pursuant to s. 46(3) and the only starting point is the making of an application

under s. 11. The Act does not, as it might, provide for the making of an application under s. 11..."

16. It is clear that the "start point" was 6 March 2015, the date of the plaintiff's first application to PIAB. As PIAB were relying upon the provisions of s. 46 of the Act of 2003, the end point was six months after the Authorisation of 11 April 2019.
17. It is clear that PIAB were of the view that the plaintiff wished to bring proceedings against one or more persons "*whom he or she omitted, through a genuine oversight or ignorance of all the facts relating to the matter...*". The matters set out at paras. 6 - 8 above would support such a view. However, if the defendant wished to contend that in the circumstances of this claim PIAB were not entitled to rely upon the provisions of s. 46(3) of the Act of 2003, then the appropriate way to have proceeded would have been to challenge PIAB in proceedings. This, probably for good reasons, did not occur.

Conclusion

18. By reason of the foregoing, I am satisfied that given the provisions of the Act of 2003 which I have referred to, which disapply the limitation periods provided for in the Statute of Limitations, these proceedings are not statute barred. I, therefore, dismiss the defendants' application. The parties may make submissions on costs within 14 days.