THE HIGH COURT

[2021] IEHC 431

[2020 No. 228 CA.]

BETWEEN

TESLEEM OJEWALE

PLAINTIFF/APPELLANT

AND

CAROLINE KEARNS AND FRANK KEARNS

DEFENDANTS/RESPONDENTS

JUDGMENT of Ms. Justice Butler delivered on the 16th day of June, 2021

Introduction

1. This is the plaintiff's appeal from the decision of the Circuit Court striking out her proceedings as being statute barred on foot of an application brought by the defendants. The factual background to the proceedings is relatively straightforward, the legal issue arising considerably less so. It concerns the running of time against two defendants to personal injury proceedings where the initial application to the Personal Injuries Assessment Board ("PIAB") did not include both defendants and a supplemental application to include the other under s. 46(3) of the Personal Injuries Assessment Board Act, 2003 was made after the expiration of the basic two-year period for bringing personal injuries proceedings under s. 3(1) of the Statute of Limitations (Amendment) Act, 1991, as amended by s. 7 of the Civil Liability and Courts Act, 2004.

2. The governing statutory provision, s. 50 of the PIAB Act, 2003 has been amended since the events giving rise to these proceedings by s. 7 of the Personal Injuries Assessment Board (Amendment) Act, 2019. The intention of the amendment appears to have been to remove a perceived anomaly in the statutory scheme identified in the Supreme Court decision of *Renehan v. T & S Taverns Ltd [*2015] 3 IR 149. The key question on this appeal is whether in the circumstances of the case this plaintiff can also avail of this anomaly.

Factual and Legal Background

3. The proceedings arise out of a road traffic accident which occurred on the 12th February, 2014. The plaintiff's vehicle was stationary when it was struck by a vehicle owned by the second defendant and driven by the first defendant. The first defendant spoke with the plaintiff at the scene and gave him her name and insurance details. The plaintiff subsequently began to experience a soft tissue injury to his neck and back and decided to take proceedings. As is now well understood, a plaintiff intending to bring personal injury proceedings must firstly make an application to PIAB for an assessment of damages under s. 11 of the 2003 Act. The plaintiff made such an application which, for the purposes of this appeal, was accepted by PIAB on 28th April, 2015. That application named only the second defendant and AXA Insurance Ltd as respondents. Under the heading "Accident Details", the plaintiff identified that the motor vehicle owned by the second defendant was driven by the first defendant. On 21st October, 2015, PIAB issued an authorisation pursuant to s. 14 of the 2003 Act, authorising the plaintiff to bring proceedings against the second defendant and AXA Insurance Ltd. Although AXA is the relevant insurer, there is of course no basis for suing AXA directly in a claim of this nature.

4. Through his solicitor, the plaintiff made a supplemental application to PIAB under s. 46(3) of the 2003 Act on 20th September, 2016 seeking to have the first defendant, the driver of the vehicle at the time of the collision, named as a respondent. This request was based on her omission having been due to a genuine oversight rather than being due to ignorance of all or any relevant facts. On 25th October, 2016, a further authorisation, this time under s. 46 of the 2003 Act, was issued by PIAB in which the first defendant was named as a respondent. This authorisation bears the same claim number as that issued on 21st October, 2015. The plaintiff then issued proceedings against both defendants before the Dublin Circuit Court on 29th March, 2017.

5. The initial defence filed on behalf of both defendants on 12th October, 2017 included a plea to the effect that the case was statute barred against the first defendant only. This is presumably because the application to PIAB seeking to name her as a respondent was not made until more than two years after the date of the accident. No substantive step seems to have been taken by either side for some time after the filing of the defence until on 17th September 2019 the defendants issued a motion seeking a series of reliefs. These reliefs were, firstly, to amend the defence to plead the Statute of Limitations 1957 as regards the claim against both defendants; secondly, to have the issue as to whether the plaintiff's claim was statute barred tried as a preliminary issue; and, thirdly, to have the plaintiff's proceedings struck out on the basis that they are statute barred. Ms. Justice Linnane made the first of these orders permitting the defendants to amend their defence on 14th February, 2020. She adjourned the consideration of the other relief and directed the plaintiff's solicitor to set out on affidavit the basis on which it was contended that the plaintiff's claim was not statute barred.

6. This was done in an affidavit of Mary Trayers dated 5th March, 2020. For understandable reasons due to the manner in which the affidavit was directed, it contains primarily legal arguments. The key averment is contained at para. 5 of the affidavit where, after having referred to the authorisation under s. 46 issued on 25th October, 2016, Ms. Trayers continues:-

> *"For the avoidance of doubt there was no separate application to the Injuries Board under section 11 of the Act in respect of Caroline Kearns. There was therefore only one application pursuant to section 11 in this claim."*

She then proceeds to exhibit the correspondence relevant to the application under s. 46(3). Reference is then made to the decision of the Supreme Court in Renehan v. T & S Taverns Ltd (above) and, at para. 8, Ms. Trayers submits that:-

> *"… the effect of the second authorisation is such as to reinvigorate the first authorisation which it amends and to put time on hold in respect of Frank Kearns for a period of six months from 25th October, 2016 which is the date of the second authorisation."*

7. On 15th December, 2020, Judge Linnane struck out the plaintiff's claim as against both defendants on the ground that it was statute barred pursuant to the Statute of

Limitations, 1957-1991 and s. 7 of the Civil Liability and Courts Act, 2004. The plaintiff then appealed that order to the High Court on 18th December, 2020.

Legislative Framework

8. The introduction of a requirement that an intending plaintiff in a personal injury action make an application to PIAB for an assessment of damage in their claim and, in the event that such assessment is not accepted by both sides, receive an authorisation from PIAB to sue the proposed defendants had the consequent effect of requiring an amendment to the statutory limitation periods applicable to such claims. This was to ensure that the process envisaged in the 2003 Act could take place without the parties being placed under pressure due to the simultaneous running of a statutory time limit. Further a prospective plaintiff would not lose the benefit of the full limitation period in circumstances where the application to PIAB would necessarily take some time to process. . Consequently, as it was put by O'Donnell J. in *Renehan v. T & S Taverns Ltd (*above) *"provision is made in the Act for a standstill period while an application is considered by the Board and for some time thereafter, which is not reckoned for the purposes of the Statute of Limitations".*

9. The basic limitation period within which a personal injuries action must be brought is 2 years. This is extended to take account of the PIAB process by s.50 of the 2003 Act which at the time of this application provided:-

> *"In reckoning any period of time for the purpose of any applicable limitation period in relation to a relevant claim (including any limitation period under the Statute of Limitations, 1957, section 9(2) of the Civil Liability Act 1961, the Statute of Limitations (Amendment) Act, 1991 and an international agreement or convention by which the State is bound), 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."*

10. In effect, not only does the clock stop running whilst the matter is before PIAB, the plaintiff has an additional six months' grace after the authorisation has issued before the running of the limitation period resumes. In the context of the plaintiff's claim against the second defendant, the effect of this, in normal course, would be as follows. The accident occurred on 12th February, 2014 and the plaintiff had two years from that date to submit an application to PIAB. This was done on 28th April, 2015, some fourteen months and sixteen days after the accident. Once the application to PIAB was submitted, the running of the limitation period was frozen until the authorisation in respect of the second defendant issued on 21st October, 2015 and for an additional period of six months (i.e. to 20th April, 2016). Time began to run again on 21st April, 2016. The unexpired portion of the original two-year limitation period was approximately nine months and fifteen days and, consequently, in normal course, the statute would have expired against the second defendant around 5th February, 2017. The proceedings were not issued until 29th March, 2017. It is not disputed that if there were no issue concerning adding the first defendant to the claim and the impact this might have on the running of time, then the proceedings

against the second defendant would be statute barred. The defendants contend that in any event that is the effect as the subsequent issuing of an authorisation in respect of the first defendant cannot serve to revive an expired limitation period as against the second defendant. The plaintiff disputes this, saying that the combined effect of s. 46(3) and 50 means that the statute is suspended as against all defendants whilst the application as regards the first defendant was pending before PIAB.

11. In order to tease out this argument, it is necessary to look closely at the text of at s.50 as it stood at the material time. :

The disregarding of the period specified in s.50 has the practical effect of extending the relevant limitation period by that length of time. The precise legal mechanism is important because if the normal limitation period is regarded as being suspended during the disregarded period, then there is arguably a difference – and the defendants argue that there is a material difference - between the time when the statute is suspended and the time when it is running, albeit after an interval during which it was suspended. However, the main practical problem thrown up by s.50 is that it identifies a period to be disregarded starting when the application is made under s.11 and ending on the issuing of an authorisation, even though in the case of s. 46(3) the application giving rise to that authorisation is not, or at least not directly, the application under s.11.

12. Next the provisions of s. 46 must be considered, the relevant parts of which provide as follows:-

> *"Section 46(3) Rules under this section shall enable the Board (subject to rules under subsection (4)) 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—*
>
> *…*
>
> *(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*
>
> *(5) An authorisation referred to in subsection (3) shall state that the claimant is authorised to, and operate to authorise the claimant to, bring proceedings in respect of his or her relevant claim against the person or persons concerned and such an authorisation shall be in addition to any authorisation issued under another provision of this Act to the claimant."*

13. Rules were made under s. 46 by SI 219/2004, the Personal Injuries Assessment Board Rules, 2004. Article 7(1) of those Rules provides:-

> *"In a case where 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 of the Act as being a person or persons liable to him or her in respect of that claim, the Board may, subject to sub rule (2), issue to a claimant an authorisation to bring proceedings in respect of his or her relevant claim against the person or persons concerned."*

As can be seen, this provision is little more than a re-enactment of s. 46(3)(b) in the form of a rule thereby enabling the PIAB to exercise the power implicitly conferred by s. 46(3) itself. No further guidelines are laid down as to whether such an application is to be treated as part of the original application under s. 11 or as a separate and discrete application nor do the rules provide any guidance as to the relationship between an authorisation granted under s. 11 and a subsequent authorisation granted pursuant to s. 46(3). [Note that the 2004 Rules have since been replaced by SI 140/2019, but the new rules do not materially alter this position.]

14. Finally, it might be noted that the 2003 Act uses the single term "*authorisation*" to cover the document issued by PIAB to an intending plaintiff in a number of different contexts and under a number of different sections. Thus, an authorisation is issued under s. 14 if in response to an application under s. 11, a respondent declines to consent to an assessment of the claimant's claim. An authorisation may be issued under s. 17 where, notwithstanding the respondents' consent to the claim being assessed, PIAB is of the view it would not be appropriate to do so. An authorisation is issued under s. 32 where a claimant does not accept the assessment of PIAB and an authorisation may issue under s. 46(3) in respect of an additional person in the circumstances already discussed. The 2003 Act as originally drafted did not expand upon the relationship between an authorisation issued under s. 11 and a subsequent authorisation issued under s. 46(3) in respect of a different proposed defendant to the same original claim. The consequential effects of a subsequent authorisation under s. 46(3) on the running of time for the purposes of bringing the intended claim are now dealt with in a new version of s. 50 substituted by s. 7(1) of the Personal Injuries Assessment Board (Amendment) Act, 2019. The new text of s. 50 now segregates out an authorisation issued pursuant to s. 14, 17, 32, 36 or 49 and the respondents named at the time of the application made under s. 11 and an authorisation under s. 46(3)(b) and any further respondents. The amended text is not applicable to this case as the initial application under s. 11 had been made before the 2019 Act came into operation. Nonetheless, it is noteworthy that the legislature has now seen fit to specifically make provision for potentially different time limits being applicable to the defendants in personal injury proceedings depending on whether they were named in an original application to PIAB under s. 11 or added in a subsequent application under s. 46(3).

Decided Case Law

15. Much of the argument in this case has concerned the effect on the reckoning of time under s. 50 of a supplemental application made and authorisation granted under s. 46(3).

The defendant relied on s. 46(5) to argue that the second authorisation is in addition to and not in substitution for the first. Consequently, the issuing of a second authorisation does not "*reinvigorate*" the first so as to allow proceedings to be issued in respect of the second named defendant within the period of time to be disregarded for the purposes of the second authorisation. The plaintiff, on the other hand, focused on the text of s. 50 and the reference to an end point being six months from the date of issue of an authorisation under s. 46(3). The plaintiff's arguments are premised to a very large extent on the decided case law.

16. Two authorities were open to the court, the decision of the Supreme Court in *Renehan v. T & S Taverns Ltd* (above) and the application of that decision by Meenan J. in *Du Plooy v. Sport Ireland* [2020] IEHC 669. In both cases, the courts applied the statutory provisions so as to uphold the validity of proceedings issued within the "*disregard*" period following a second authorisation under s. 46(3) but outside of the statutory time limit including the time added by virtue of the first authorisation.

17. In *Renehan v. T & S Taverns Ltd*, the injured party in personal injury proceedings had attempted to ascertain the owner of a nightclub which operated under a tradename. An application was made to PIAB in respect of the person identified as the registered owner of the business name under which the nightclub was trading. That person disputed liability and declined the assessment but did not otherwise contest his identity as the proposed defendant. The plaintiff did not become aware of the identity of the correct defendant until after the two-year statutory time limit had expired. A second application was made to PIAB in respect of the correct defendant during the six-month disregarded period after the issuing of the first authorisation. Although the second authorisation was issued by PIAB within this same period, the proceedings were not issued until after that initial six months had expired and were only issued against the correct defendant. As counsel for the plaintiff in this case has fairly acknowledged, the tone of the Supreme Court judgment is undoubtedly influenced by the fact that the person named in the first authorisation and his professional advisors did not inform the plaintiff or his solicitor of their error nor identify the correct defendant until after the two-year period had expired.

18. At para. 17 of his judgment, O'Donnell J. describes s. 50 as creating "*a very wide standstill period*", the justification for which is the compulsory nature of the procedure introduced by the 2003 Act and the fact that it might involve the limitation of constitutional rights. The key passages in the judgment on which the debate in this case centred are found in paras. 18 and 19 which, for ease of reference, are set out here insofar as relevant:-

> "*18. … 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 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 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.

19. It may be argued that as so interpreted this is an unnecessarily broad provision and permits a very extensive disapplication of a limitation period which may save an otherwise statute barred claim, and that such a result was not intended. But the Act of 2003 is a very elaborate and complex mechanism and it is not clear that there is any statutory policy as to what should happen in claims in which there is a significant doubt as to the identity of the correct defendant. It is not in any event implausible that given the general posture of the Act, it would seek to provide for a generous period of disapplication of the Statute of Limitations. In any event, it is not necessary to speculate further in this regard as to what may or may not have been intended. The words of s. 50 are, in this context, unambiguous. 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 or for amendment or substitution under rules pursuant to s. 46(3) as appropriate as the starting point, nor does it deem an application under rules made under s. 46(3) as a separate application under s. 11 for the purposes of s. 50. Indeed the very words of s. 46(3) refer to omission from his or her application under s. 11, which can only refer to the original application of the 1st of July 2009, from which T & S Taverns Limited was indeed omitted. The interpretation that is arrived at on the words of the section is neither absurd nor incapable of operation…"

19. Based on these passages, the defendants argue that the issues in this case have expressly not been determined by the Supreme Court. The first issue is that identified at the end of para. 18, namely whether the effect of s. 50 is to extend the disapplication period in respect of the second defendant so as to allow the service on him of proceedings outside the limitation period calculated by reference to the first authorisation in which he is named but inside the disregarded period subsequent to the second authorisation. The defendants argue that the period of disapplication of the Statute of Limitations as against the second defendant is set out clearly and definitively in s. 50. Consequently, as s. 50 does not provide that an initial authorisation is "reinvigorated" by a subsequent application or authorisation, the period for issuing proceedings against the second defendant had expired before those proceedings were actually issued.

20. The second issue is whether the application under s. 46(3) in respect of the first defendant can be made after the expiration of the six-month period disregarded following the issuing of the first authorisation but while the residual portion of the original limitation period is still running. There are two factual elements which the defendant contends are materially different as between the two cases such that *Renehan v. T & S Taverns Ltd* should not be regarded as governing this one. One of these is inherent in the second issue, i.e. the fact that the plaintiff made an application under s. 46(3) at a point in time during which the Statute of Limitations was running against the plaintiff as regards the claim against the second defendant rather than being disregarded under s. 50. The defendants characterise this as the first authorisation in *Renehan v T & S Taverns Ltd* as being still "*live*" both when the second application (under s. 46(3)) was made and when the second authorisation issued, which it is contended was not the case here. The other factual difference is that the plaintiff in this case was aware at all times of the identity of the first named defendant and of her involvement in the accident. Thus, the case is not one, to paraphrase O'Donnell J., in which there was a significant doubt regarding the identity of the correct defendant.

21. In contrast, the plaintiff focuses on para. 19 of the judgment and the finding that the period of disapplication under s. 50 requires a start point and an end point which are fixed by s. 50 as being the date on which the application under s. 11 is made and the date on which any authorisation under s. 46(3) might issue. The plaintiff suggests that although the Supreme Court formally left open the question of whether s. 50 extends the disapplication period in respect of the original defendant when a subsequent application is made under s. 46(3)(b), the effect of the analysis in para. 19 is to answer that question positively. The application under s. 46(3) is referable to an omission in the application under s. 11 and, consequently, the scheme envisages a single application in respect of an intended claim but one in respect of which a supplemental application can be made if a relevant respondent has been omitted.

22. The second case, *Du Plooy v. Sports Ireland* (above) has a particularly complex procedural history. The plaintiff was injured in an accident which occurred at a swimming pool and an application was made under s. 11 and an authorisation issued referring to the title by which that pool was generally known. That name did not in fact apply to any corporate entity and was not a registered tradename. The solicitor then identified the presumed occupier and obtained a second or amended authorisation (so described in the judgment). However, that entity had ceased to exist before the proceedings could be served on it. It was replaced, by statute, by the first defendant. A further amended authorisation was applied for and issued naming the first defendant and an operations company. The operations company subsequently changed its name and yet another application made and authorisation issued referring to the operations company, the second defendant, under its new name. As a result of all of this, proceedings were not served on the defendants until more than six years after the date of the accident.

23. In considering whether the plaintiff's claim was statute barred, Meenan J. regarded two factual matters as important, namely the fact that the correspondence from PIAB in

respect of later authorisations referred to the initial application made by the plaintiff under s. 11 and the fact that the same claim number appeared on all of the authorisations. Ultimately, Meenan J. took the view that once PIAB had treated all the subsequent applications as ones made under s. 46(3) in respect of persons omitted from the original s. 11 application, then the effect of the 2003 Act was to disapply the limitation period until six months after the last authorisation in the sequence. He noted:-

> *"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.*

Discussion

24. There are a number of strands to the defendants' argument which need to be addressed before I focus on the fundamental question of whether proceedings have been issued against the first and second defendants respectively within time. It is correct to observe that in both *Renehan* and *Du Plooy*, the plaintiff had not been aware of the identity of the correct defendant until after the initial two-year limitation period had expired, although, in both cases, it was argued that the plaintiff should or could have been able to ascertain the identity of the otherwise unknown defendant. It is also correct that, in this case, the plaintiff knew of the first defendant's identity from the outset. However, I do not think that this has any bearing on the outcome of this application. Section 46(3)(b) does not distinguish between cases in which the plaintiff was unaware of all the material facts including the identity of a defendant and cases in which the omission of a defendant occurred through mere oversight on the part of the plaintiff or his solicitor. In fact, s. 46(3) is entirely silent as to whether the envisaged rules should confer upon PIAB a discretion to issue an authorisation or should simply require PIAB to issue an authorisation once an application is properly made under that section. The 2004 Rules themselves do not add anything to the statutory scheme. Therefore, there is no statutory basis for saying that the issuing of a s. 46(3) authorisation is or should be a merits-based exercise in which the genuinely ignorant plaintiff should succeed but the merely inadvertent plaintiff should not. Whilst the factual background in *Renehan* may well have influenced the tone of the judgment (and notably that background included an element of non-disclosure on the defendant's part), this is not reflected in O'Donnell J.'s legal analysis of the statutory provisions. Consequently, although the plaintiff in *Du Plooy* was responsible for significant delay in progressing matters and much of the information of which the plaintiff was unaware might have been obtained from properly researched public sources, this did not have any impact on Meenan J.'s application of *Renehan* to the facts. Counsel for the plaintiff is correct in saying that Renehan was not decided on the basis of the date of discoverability, although that issue was potentially present in the facts.

25. Further, I think that the observation of Meenan J. quoted above is also apposite here. If the defendant wished to challenge the legality of the issuing of the second authorisation by PIAB, then the correct course of action would be to bring judicial review proceedings

against PIAB in which the validity of the authorisation could be determined. Having chosen not to do that, the defendant cannot impugn the validity of the second authorisation, whether by reference to the plaintiff's state of knowledge or otherwise, in order to contend that the plaintiff's proceedings were out of time. The relevant time limits must be determined by reference to the applicable statutory provisions on the assumption that the decision of PIAB to issue a second authorisation under s. 46(3) was valid. The second authorisation so issued must also be presumed to be valid.

26. Insofar as the defendant contends for some limitation on the entitlement of the plaintiff to make an application under s. 46(3) by reference to the expiration of the disregarded six-month period following the issuing of the first authorisation, I cannot find any basis for this in either s. 50 or s. 46(3). The defendant put the argument in terms of the first authorisation being "*still live*" when the second application is made and the second authorisation issued. I have found this terminology unhelpful as an authorisation under any of the provisions of the 2003 Act is not itself subject to any time limit beyond which it expires. Rather, the purpose of the authorisation is to document that the plaintiff is entitled to bring proceedings before the courts having been through the statutory process under the 2003 Act. The statutory time limits which apply to any proceedings a plaintiff might wish to bring apply independently of the timing of the authorisation, subject to the modifications made by s. 50. As an application may be made under s. 11 at any time during the basic two-year statutory period for bringing a personal injuries action, and the unexpired portion of the limitation period left to run following the issuing of an authorisation will consequently vary from case to case. I acknowledge that there is a difference in principle between a period that is disregarded in the sense that it does not count at all for the purposes of the relevant limitation period and a period during which the statutory time limit continues to run. However, neither s. 46(3) nor the rules made thereunder impose any requirement as regards the timing of an application under that section. The statutory scheme could have limited the entitlement of an intending plaintiff to seek to add additional respondents to an application already made to the period during which the Statute of Limitations was to be disregarded as a result of the application under s. 11. However logical, that course of action was not adopted by the Legislature and I cannot now read such a limitation into the existing statutory provisions.

27. It may be the case that a plaintiff could not make an application under s. 46(3) after the entire of the applicable time limit as extended by s. 50 had expired against all of the defendants named in the first authorisation. By definition, the original two-year time limit would also have expired against any additional defendant and there would be no extant process in which time was still running unto which an application under s. 46(3) could be grafted. However, once the time for issuing proceedings is still running – whether by virtue of the s. 50 disregarding of time or the actual running of time – an application under s. 46(3) can be validly made. I cannot see any statutory basis for drawing a distinction in this context between periods that are to be disregarded and periods during which the unexpired limitation period is still running.

28. The issue facing the court is twofold and is presented by the defendants in a circular manner. Can proceedings be issued against the second defendant after the expiration of the extended limitation period deriving from the first authorisation in which he is named? If not, what effect does the fact that the proceedings against the second defendant are statute barred have on the proceedings against the first defendant? The defendants contend that it follows automatically from the fact that proceedings against the second defendant are statute barred that the proceedings against the first defendant in respect of which the s. 46(3) application was grafted onto the then-existing s. 11 application, should also fall as the first defendant cannot then rely on any of the steps taken in connection with the second defendant.

29. In light of the existing authorities, I think it is more logical to address whether the proceedings have been validly issued against the first defendant first rather than treating this as being dependent on the answer to the question as to whether proceedings were validly issued against the second defendant. In both of the decided cases, the application to PIAB under s. 46(3) in respect of the defendants ultimately sued was made after the expiration of the basic two-year time period applicable to them. In neither case did the court regard this as a basis for treating the limitation period as having expired against those defendants. The only argument advanced to distinguish this case is the fact that the application was made more than six months after the first authorisation was issued – i.e. while the statute was running rather than while it was suspended. Indeed, it is not clear from the judgment in *Du Plooy* that all of the many applications under s. 46(3) were made during the suspended period rather than when time was actually running. In any event, for the reasons set out above, I do not think that this distinction has any relevance to the application of the relevant statutory provisions. As O'Donnell J. put it, there must be a start point and an end point, and the end point, certainly as regards the first defendant, cannot have been reached before the end of the six-month period following the issuing of the authorisation in which she is named. As I reject the proposition that the s.46(3) application could only be made in the suspended or disregarded period, in my view it follows that the proceedings against the first named are not statute barred.

30. In this regard, I note that the Supreme Court in *Renehan* expressly did not decide whether, in circumstances where an application was made under s. 46(3), the effect of s. 50 would be to extend the applicable time limit as regards the defendant originally named. This was because the plaintiff in *Renehan* did not issue any proceedings against the person named in the first authorisation. However, the very fact that this question was left open while the court proceeded to decide that proceeding had been instituted within time in respect of the defendant actually sued, meant that the validity of the proceedings against that defendant did not depend on proceedings having been issued in time in respect of any other party. In other words, the issue as to whether proceedings had been validly served within time on the first defendant is not dependent on the answer to the question of whether proceedings had been validly served and within time on the second defendant.

31. The issue as regards the second defendant is left unanswered by the Supreme Court in *Renehan*. Nonetheless, I think there is considerable force in the argument made by the plaintiff that the logic of the legal analysis in para. 19 of the *Renehan* judgment is that proceedings can be validly served on the second defendant during the period whilst the Statute of Limitations is suspended following the issuing of a second authorisation under s. 46(3). As in both *Renehan* and *Du Plooy*, the plaintiff in this case did not make a separate application under s. 11 of the 2003 Act in respect of the additional defendant. The application made on 20th September, 2016 was expressly made under s. 46 of the 2003 Act and was made by reference to the existing claim and existing claim number referable to the original application made under s. 11. The second authorisation issued on 25th October, 2016 bears the same claim number. Consequently, the application made under s. 46(3) is not a separate application but is one made in respect of an omission from the original application. Insofar as it is necessary to identify a start point and an end point for the purposes of s. 50, the start point is the date of the original application under s. 11, 28th April, 2015, and the end point is six months after the issuing of the authorisation under s. 46(3) on 25th October, 2016 (i.e. 24th April 2017). As that is the period to be disregarded, and as the proceedings against the second defendant were issued on 29th March 2017 , I find also that those proceedings were issued within time as regards the second defendant.

32. I acknowledge the defendants' submission that this interpretation of the 2003 Act is necessarily unsatisfactory as it leaves a period in between the making of an application under s. 11 and the issuing of a certificate under s. 46(3) on foot of a supplemental application during which the status of the limitation period is, at best, ill-defined and can depend at any given point in time on actions which have not, at that stage, yet been taken. However, the statutory provisions have already received an authoritative interpretation from the Supreme Court which has been applied by the High Court in subsequent cases. This undoubted anomaly has been addressed by a legislative amendment in 2019 which now makes it clear that the disregard of the Statute of Limitations provided for under s. 50 operates separately as regards persons named in an authorisation issued pursuant to s. 11 and as regards persons named in any authorisation subsequently issued under s. 46(3)(b).

33. For the reasons set out above, I allow the plaintiff's appeal from the decision of the Circuit Court and set aside the order made on 15th December, 2020.