

THE HIGH COURT

[2023] IEHC 604

[Record No. 2016/2597P]

BETWEEN

THOMAS PADDEN

PLAINTIFF

AND

**MICHAEL McDARBY, SEAN ACTON AND CATHERINE McDARBY PRACTISING UNDER
THE STYLE AND TITLE OF MICHAEL McDARBY AND COMPANY SOLICITORS**

DEFENDANTS

JUDGMENT of Ms. Justice Bolger delivered on the 3rd day of November 2023

1. This is the defendants' application to dismiss the plaintiff's proceedings for delay. The background overlaps with that in *John Padden v. McDarby & ors* [2023] IEHC 596 but the timeline and current status of the proceedings are quite different. The plaintiff's substantive claim against the defendants arises from his engagement of the defendants in 2003 to act on his behalf in relation to a road traffic accident in which the plaintiff had been involved earlier that year. The defendants issued a Plenary Summons in July 2004 which expired and no application was made to renew it. The negligence proceedings were issued in 2016 and served the following year. A Notice of Intention to Proceed was filed in November 2019 which the defendants claim was defective. A Statement of Claim was filed in February 2020. The defendants filed the within motion to dismiss on grounds of delay in October 2022, coinciding with a similar application to dismiss proceedings brought in *John Padden*.

2. The plaintiff's solicitor averred that the plaintiff was unaware that the defendants' handling of his case relating to the 2003 accident gave rise to a possible claim for negligence until 2013. No further explanation is provided for the plaintiff's delay in not issuing these proceedings until 2016. The plaintiff's solicitor said they took the view that the discovery they were seeking in *John Padden* would "*also benefit this case and so delivery of the Statement of Claim herein was held off to abide the outcome of that issue in the other case.*" Alternatively, they say that discovery in *John Padden* "*may have turned that process in this*

matter into a consent issue between the parties." Their views about the benefits of holding off on delivering the Statement of Claim was not communicated to the defendants at that time.

3. The plaintiff clearly failed in his obligation to progress already late proceedings expeditiously (*Manning v. Benson & Hedges* [2004] 3 IR 556) and there was no engagement or agreement with the defendants about putting his proceedings on hold pending the outcome of the discovery process in *John Padden*. In *Rodenhuis and Verloop B.V. v. HDS Energy Ltd.* [2010] IEHC 465, the plaintiff's delay in progressing proceedings was not excused by parallel proceedings in the absence of any agreement with the defendant. Clarke J. (as he was then) said at para. 3.4:-

"While there was undoubtedly a connection between the matters, it does not appear to me that the existence of those parallel proceedings provided any legitimate basis for Rodenhuis in not progressing these proceedings or, at least at a minimum, in not raising the question of whether it might be appropriate to stay these proceedings pending a resolution of either or both of the parallel cases. It does not seem to me that it is open to a party to take the unilateral action of allowing one set of proceedings to go asleep because of the existence of another set of proceedings and then use the connection between the two sets of proceedings as an excuse for having allowed the proceedings concerned to go to sleep. If it is truly felt that it is inappropriate for some reason not to progress a set of proceedings because of the existence of other proceedings, then it is at a minimum incumbent on the party who holds that view to raise the issue in correspondence and seek to reach agreement. If agreement cannot be reached, then it is incumbent upon the party either to progress the proceedings or make some appropriate application to the court for directions. In those circumstances, I was not satisfied that the existence of the parallel proceedings provided any significant excuse for the delay."

4. The delay in the within case has been inordinate. Unlike in *John Padden*, the defendants bear no responsibility for the delay and the case is very far from being ready for hearing. The delay is inexcusable.

5. In his decision in *Cave Projects Ltd v. Gilhooley & ors* [2022] IECA 245, Collins J. observed that there must be a causal connection between the delay and the prejudice that the defendant says tips the balance of justice in favour of dismissing the proceedings:-

"Where inordinate and inexcusable delay is demonstrated, there has to be a causal connection between that delay and the matters relied on for the purpose of establishing that the balance of justice warrants the dismissal of the claim" (p. 28).

6. The defendants will suffer general prejudice in having to defend themselves from allegations of negligence in relation to their actions in 2003/2004 where they were not made aware of the claim against them until 2016 and where, in spite of the Statement of Claim served in February 2020, much of the claim against them remains vague. The lack of clarity around the claim makes it difficult for them to take steps at this stage in preparing their defence. The case is far from ready to be set down for hearing.

7. There is a causal connection between the delay and the prejudice that the defendants will suffer in having to defend these proceedings whenever the case might be ready to be set down for hearing. The prejudice established by the defendants is moderate but in all the circumstances, including the current status of the proceedings and the lack of any agreement before the plaintiff decided to hold off on progressing his proceedings, I am satisfied that it is at the level of prejudice that Irvine J. confirmed in *Millerick v. Minister for Finance* [2016] IECA 206 and Collins J. endorsed in *Cave Projects Ltd* could justify the dismissal of proceedings.

Conclusion

8. There has been inordinate and inexcusable delay of very many years in this case which causes a general prejudice for the defendants in defending a claim of which they were first alerted some thirteen years after they were instructed by the plaintiff. The proceedings are far from being ready for hearing. The plaintiff put the proceedings on hold pending the outcome of protracted discovery in a related case, without any engagement or agreement with the defendants. In all the circumstances, I am satisfied that the balance of justice lies in favour of dismissing these proceedings.

Indicative view on costs

9. As the defendants have succeeded in having the proceedings dismissed on grounds of the plaintiff's inordinate and inexcusable delay, my indicative view on costs in accordance with s. 169 of the Legal Services Regulation Act 2015 is that the defendants are entitled to their costs to be adjudicated upon in default of agreement. I will put the matter in before

me at 10.30am on 29 November 2023 for whatever submissions the parties wish to make in relation to the final orders to be made.

Counsel for the plaintiff: David McGrath SC, Niall Mooney BL.

Counsel for the defendants: Barney Quirke SC, Francis McGagh BL.