THE HIGH COURT

[2023] IEHC 646

RECORD NO. 2018/5221/P

BETWEEN

NEIL REIDY

PLAINTIFF

AND

SWISS KRONO

DEFENDANT

Ex tempore judgment of Mr. Justice Mark Heslin delivered on 14 November 2023

1. I propose now to give a decision in relation to what is an application by the plaintiff to adjourn his proceedings and I want to forewarn everyone that it is going to take a very long time to deliver. That is as it should be because the court's reasons for its decision should be entirely clear and it is a decision which I am giving against the backdrop of constitutionally-protected rights of access to the courts.

The plaintiff's claim

2. The present proceedings were instituted by the plaintiff, who represents himself, by means of a Plenary Summons, which issued on the 8th June, 2018.

3. In essence, the plaintiff alleges misrepresentation on the part of the defendant, being a company registered in Germany, with respect to certain laminate flooring which the plaintiff claims he purchased from a vendor in Wexford in 2016.

Procedural history

4. In terms of procedural history, a Statement of Claim was delivered on the 4th July, 2018. The defendant raised a Notice for Particulars, which is dated the 28th September, 2018. Following Replies to Particulars by the plaintiff, a Defence and Counterclaim was delivered, which is dated the 31st January, 2019. The plaintiff's Notice of Trial is dated 2020 and the first certificate of readiness, as issued by the plaintiff, appears to have been received by the defendant in March 2021.

3-day hearing listed to start today at 11am

5. In the manner I will presently return to, this is a case which was allocated three days for hearing, commencing this morning, Tuesday the 14th November, at 11am, and in the manner I will presently return to, the plaintiff was not present in court.

Plaintiff is in Poland

6. I am delivering this *ex tempore* ruling at 3.25pm. The plaintiff is still not present. Rather, as will be explained, he appears to be in Poland.

Defendant's solicitors pressed for a hearing date

7. In advance of sitting this morning, I devoted the time to read the entire Book of Pleadings which comprises of some 27 items, including various affidavits in the context of interlocutory motions. I also read the entire of the book of inter-parties correspondence. The latter makes it clear that it was the defendant's solicitors who pressed for this case to be set down for a hearing.

Inter-partes communication

8. For example, over 14 months ago, by a letter dated the 1st September 2022, Messrs. JCK (or "John C Kirwan and Sons") solicitors on record for the defendant, wrote to the plaintiff in the following terms, (and I quote):-

> *"We refer to the above matter and to previous correspondence resting with your letter of the 3rd June 2022. We would be obliged if you could please furnish an update in respect of this matter as to whether you are applying to have the matter called on for hearing. We await hearing from you as soon as possible."* (emphasis added)

9. Despite two months elapsing, there was no response to that letter from the plaintiff. Coupled with the fact that the pleadings 'closed' in 2019, the fact that the plaintiff was neither taking active steps to obtain a hearing date nor responding to the defendant's enquiries in relation to obtaining a hearing date seems to me to suggest what could fairly be called something of a reluctance to obtain a hearing date for the determination of these proceedings in a timely manner.

10. Given, as I say, the absence of a response despite the passage of two months, the defendant's solicitors wrote again and in their letter of the 9th November, 2022 they stated *inter alia* - *"We refer to the above matter and to previous correspondence resting with our letter to you on the 1st September 2020 and we await hearing from you"*.

11. By letter dated the 22nd November, 2022 the plaintiff replied to state *inter alia* the following - *"I can confirm that as your client has not made any serious settlement offer this matter will go to trial. I will revert when I have a hearing date."*

12. Whilst the plaintiff appears to have lodged a further certificate of readiness, to which he made reference in his letter of the 22nd December 2022, he did not apply to set the case down for hearing and he did not obtain a trial date.

1-day estimate (by Defendant)

13. On the contrary, it was the defendant's solicitors who contacted the non-jury registrar by email on the 28th January of this year and stated *inter alia* the following:-

> *"We now wish to have the matter listed before the court so that we can apply for a hearing date. We believe the action will take one day to hear maybe slightly longer. You will note that the plaintiff has indicated it will take three days. Can you have the matter listed please so that we can apply for a hearing date."* (emphasis added)

3-day estimate (by Plaintiff)

14. Upon being notified of this by the defendant's solicitors, the plaintiff stated *inter alia* the following in an email sent by him, also on the 28th January of this year:-

> *"Your estimate of one day is not in the realms of reality. Witnesses as well as experts will be called to give evidence and cross-examined. It will not be possible to do this in one day. The evidence provided will be very damning so I can appreciate your client wanting to rush things through to not let the evidence be provided. However this in itself is not a valid reason to ask for one day to hear, maybe slightly longer. I will request that three days be provided to hear the evidence and cross-examine the witnesses."* (emphasis added)

Today's hearing date assigned in February 2023

15. This case was called on in February of this year. Counsel for the defendant appeared in person in court when the matter was 'called on'. The plaintiff participated remotely and, therefore, he has been well aware at all material times from February of this year that his case was listed for hearing commencing today the 14th November.

3-day hearing at the Plaintiff's behest

16. Indeed, it was at his behest that no less than 3 days were allocated for the hearing, even though, in the manner I have explained, the estimate given by the defendant was considerably shorter.

Court-resources dedicated to this case

17. I pause to say that, lest it not already be obvious, this has meant that an otherwise extremely busy Registrar; a courtroom; and a judge; and the facilities of the Courts Service have been dedicated, for a period of three days commencing this morning, to deal with this and no other case.

Finite resources – 'knock on' consequences – interests of justice

18. I say this in the context of the resources of the court being there for the use of the public, but not being inexhaustible by any means. Court resources of the type I have referred to are necessarily scarce, and therefore, any application to adjourn must be looked at carefully, and can only fairly be granted given the 'knock-on' consequences in terms of the waste of necessarily scarce public resources where the evidence speaks to this being necessary in the interests of justice.

24 October 2023 email to the Plaintiff

19. To continue with the relevant chronology, and moving closer in time to today, on the 24th October of this year the defendant's solicitors wrote to the plaintiff to state *inter alia* the following:-

> *"As you will be aware this case is set down for hearing commencing the 14th November commencing the 14th November 2023. Have you prepared booklets for the hearing? If so, can you share the index with me please. If not, would you like me to assist with them. The booklets need to be lodged in the List Room of the High Court one week in advance and also the case needs to be called on for hearing on the Thursday prior to the hearing date. Please advise if you would like us to attend that also."* (emphasis added)

25 October response by Plaintiff

20. By email of the 25th October, 2023 the plaintiff replied in the following terms: *"I would be obliged if you would please prepare the booklets. Regarding the call over I do not have any issues if you attend. I will take this opportunity to inform you that the conditions of the boards has considerably deteriorated. Perhaps your client will reconsider its position."* (emphasis added)

Request for settlement offer

21. I pause here to say that this is the second time the plaintiff has chosen, in 'open correspondence' to refer to the question of a settlement offer.

No mention of medical condition / being out of the jurisdiction

22. I also pause to say that there was no mention in this email of any pre-existing medical condition which might have the potential to render it impossible for the plaintiff to attend the hearing of his case. Nor was there any suggestion in that email that the plaintiff intended to be out of the jurisdiction.

Plaintiff informed on 25 October of 9 November 'call over'

23. To continue with the chronology, the defendant's solicitors responded by means of an email sent on the 25th October (at 17:41) which stated *inter alia*:-

> *"I will prepare the booklets to submit in time for the court and I will also arrange to have the matter called on for hearing on the previous Thursday the 9th of November. I trust this is in order."* (emphasis added)

5 November 2023 email to Plaintiff

24. Moving ahead in time to the 5th November, the defendant's solicitors wrote to the plaintiff, once more, stating *inter alia* the following:-

> *"Further to recent emails I will be lodging the following booklets with the court office tomorrow.*
>
> *1. A booklet of pleadings as per attached index.*
>
> *2. A booklet of reports as per attached index.*

3. *A booklet of all open correspondence exchanged between the parties regarding the matter.*

As a gesture of goodwill I will also send you a copy of the booklets in the post so that we will all be operating off the same booklets. We will be calling the case for hearing before the court on Thursday coming as agreed which is in compliance with the current practice direction of the court. Please confirm that all of the above is in order." (emphasis added)

6 November 2023 emails – German report

25. In a response sent on Monday the 6th November, 2023 the plaintiff called for the inclusion of a certain report, apparently written in the German language. The defendant's attitude was to inform the plaintiff that the application could be made by the plaintiff, at the hearing, for admission of the report, but, in circumstances where the defendant did not consider it to be an expert's report, its stance was that the report should not be included in the booklet. Several emails were exchanged between the parties on the 6th November with respect to this issue, namely the German report.

Plaintiff's position regarding the report

26. The plaintiff's position included to state the following of that report (and I am now quoting from the plaintiff's (9:12) email sent on the 6th November): *"It is in German. I speak fluent German and you can use copy/ paste into Google translate to get the English translation."*

Defendant's position regarding the report

27. The defendant's position was summarised in a 13:07 email also sent on the 6th November (and again I quote): *"I cannot agree to that document being included as it is not prepared by an independent expert for the purposes of this case. In those circumstances, I note your objection to the booklet of reports being furnished without this report being included, so, therefore I will not send in the booklet of reports as they're not agreed, and both parties will have to hand in their report to the judge during the hearing…".*

As of 6 November - no suggestion the Plaintiff was not in Ireland

28. I mention the foregoing because it evidences active engagement between the parties, as of the evening of the 6th November last, without, for example, any suggestion made by the plaintiff that he was not in the jurisdiction.

29. The plaintiff's email of Monday the 6th November took issue with the defendant's approach to the German report and in addition to suggesting - though it has to be said it is a suggestion which is not evidence based - that the defendant was selective about what information would go before the court, the plaintiff concluded by stating (and I quote): *"Perhaps your client would like to reconsider its position."*

Third reference by Plaintiff to a settlement offer

30. I pause to say that this is the third instance of the plaintiff choosing in 'open' correspondence to call, in effect, for a settlement offer which would be satisfactory to him.

31. It will be recalled that it was said by the plaintiff to be the absence of a settlement offer - and this is recorded in his 22nd November 2022 letter - that would prompt the obtaining of a trial date. Leaving aside that it was, in fact, the defendant who 'made the running' to obtain a trial date almost a year later, in his (08:24) email of the 25th October 2023 the plaintiff invited the defendant to *"reconsider its position"*; and he repeated that invitation again on the 6th November, 2023.

Defendant's 7 November 2023 letter

32. The defendant's reply of the 7th November, 2023 did *not* refer to a settlement offer. Rather, the defendant's letter confirmed the following:-

- that pleadings and inter-parties correspondence had been lodged in the list room in advance of the hearing;
- the letter itself of the 7th November enclosed a copy of both the pleadings and correspondence for the benefit of the plaintiff;
- the said letter of the 7th November confirmed that the dispute in relation to reports, the German report in particular, was to be dealt with by the trial judge; and
- it was confirmed that no book of reports had been lodged, but in ease of the plaintiff, a copy was included in that letter for the plaintiff's benefit.

Plaintiff told *again* that, on 9 November, case would be 'called on' for hearing today

33. The said letter concluded in the following terms (and I quote): *"As also promised, we will be calling this case on for hearing before the High Court on Thursday coming the 9th November, 2023 in compliance with the practice direction of the court."* And I pause to say that this was not the first time that the plaintiff was made well aware that the case would be called on for hearing on the 9th November, 2023.

34. Consistent with the foregoing, the defendant was represented at the 'call over' last Thursday, 9th November 2023. The defendant's solicitor wrote, in the wake of the 'call over' itself, to the plaintiff, by email sent late on Thursday the 9th November, 2023.

9 November 2023 email to the Plaintiff

35. That email stated the following:

> *"Further to our attached letter to you of the 7th November last and our previous emails please note we called on the case for hearing today. The case will be assigned a judge for hearing on Monday and as soon as I know the name of the judge and the courtroom where the hearing is to be held, I will email you with these details."* (emphasis added)

No contact from the Plaintiff in advance of the 9 November 'call over'

36. I pause to say that, in the manner which will presently be discussed, the plaintiff chose not to contact the defendant's solicitors in *advance* of the call over (of which the plaintiff was well aware) to raise with the defendant's solicitors even the faintest possibility that anything had occurred which rendered it difficult, or potentially impossible, for the plaintiff to attend the hearing of his own case.

Friday 10 November (09:36) email from Plaintiff

37. By email sent at 09:36 on Friday 10th November, 2023, namely, the day *after* the case had been 'called on' for hearing, the plaintiff wrote to the defendant's solicitors in the following terms (and I quote):-

> *"Dear Mr. Kirwan. Due to a medical condition I will not be able to attend on Monday 13 November. I would request an adjournment to the first week of December. I apologise for any inconvenience this may have caused."* (emphasis added)

38. Several observations are appropriate at this juncture. First, as well as noting that the plaintiff refers to his case beginning "*on Monday 13 November*" (emphasis added), this was the very first time the plaintiff suggested that there was any question of his non-attendance at the hearing (a hearing of which he has been aware since February).

39. Second, other than the use of the words "*medical condition*" no information whatsoever is provided in relation to why, if it be so, the plaintiff is unable to attend.

40. Third, there is no suggestion whatsoever in this email that the plaintiff was then out of the jurisdiction.

Friday 10 November (12:42) email from Defendant

41. The response sent by the defendant's solicitors (at 12:42) last Friday 10th November, 2023 was in the following terms:

> *"Dear Mr. Reidy,*
>
> *I note your email below. You mention that you are not available on the 13th of November however the case is due to commence on the 14th of November. By agreement this case was called on for hearing yesterday and we are surprised that you are now seeking an adjournment. We are not in a position to consent to that application and any adjournment application should be made before the Non Jury High Court Judge as soon as possible with medical evidence to back up any such application."* (emphasis added)

Objection to adjournment / Medical evidence critical to application to adjourn

42. Therefore, even if it was not entirely obvious beforehand, as of 12:42 last Friday the 10th November, the plaintiff was 'full square' on notice of two important things. First, the defendant was objecting to the adjournment application. Second, medical evidence was critical to it.

Defendant's witnesses travelling from Germany

43. The email sent last Friday the 10th November, 2023 by the defendant's solicitors concluded with the following

> *"My instructions are to object to any adjournment of the case which was set down for hearing on the 9th February 2023. Significant preparation has been made for the case and we have witnesses who are travelling from Germany for the hearing having booked flights and accommodation."* (emphasis added)

4 days – no medical evidence furnished

44. I pause to note that, as is clear from the foregoing email, the plaintiff has known for four days that medical evidence would be essential to underpin any application for an adjournment, which application the defendant's solicitors were instructed to oppose. Despite this, the plaintiff neither attended court today at 11am (when I sat to begin hearing his case) nor had the plaintiff, by that juncture, provided the defendants or this court with *any* medical evidence whatsoever.

Monday 13 November (09:18) email from Plaintiff

45. To continue with the timeline, yesterday morning (at 09:18) the plaintiff sent an email to the defendant's solicitors which stated the following (and I quote):-

> *"With regards to my previous email I made a typing mistake. It should have read 14 November and not 13. I recall that I had previously requested you to provide me details of any witnesses you wished to call and provide details of their testimony. You only indicated that you would call your expert witness to give evidence. In any case these people cannot be considered witnesses because they have not witnessed anything relating to the issues with the flooring installed. Please send me full details without any further delay. Your 'witnesses' could have attended by video link and provided evidence by affidavit, so I do not accept your argument that they have booked flights etc., this was not necessary. I will provide the court with a medical certificate. I am not currently in Ireland and cannot travel. I understand that a solicitor is considered an officer of the court and I trust you will inform the judge of my situation."* (emphasis added)

Physical hearing

46. Several observations can fairly be made in relation to this email. First, this case was called on for a *physical* hearing. The plaintiff never made any application for a hybrid hearing or for participation remotely, nor did the defendant. It is precisely in these circumstances that I sat, along with a Registrar, in Court 21 this morning, namely, for a physical hearing. On sitting I found that the defendant's side was present for a physical hearing. The plaintiff was absent.

Appropriate arrangements for a physical hearing

47. In circumstances where participation by video link was never applied for, the plaintiff's criticisms of the defendant are, with respect, entirely unjustified. It was entirely appropriate for the defendant to make such arrangements as were necessary to ensure that witnesses it regarded

as relevant were available to attend the court physically. Why? because the matter was listed for a physical hearing.

Evidence by affidavit

48. Nor is there any question of this court being able to determine matters in dispute, with reference to what the plaintiff describes as (and again I quote) *"evidence by affidavit"*. Now, in saying this I am conscious that the plaintiff is not a lawyer and he represents himself.

Defendant present / Plaintiff not

49. My point is that the court was presented this morning with a situation where one side only was ready to meet the plaintiff's claim, the plaintiff was not there to move it.

VMR

50. I also want to add that, this morning, the Registrar notified me that the plaintiff had apparently requested a VMR code. Court 21 is not a 'technology enabled 'court. This is in circumstances, of course, where no 'tech enabled' court was applied for. Therefore there was no question of the court having consented to, or expected to need to, facilitate remote participation by any party.

Access to VMR code not an excuse for not being present

51. This is relevant because, when the defendant outlined its position up to approximately 11:30am today, the fact that the plaintiff may or may not have had a VMR code is entirely irrelevant. His inability to participate, if he was attempting to participate this morning via video link, is no explanation for non-attendance, given that no application to participate remotely was ever made.

Plaintiff "not currently in Ireland"

52. Returning to that email which I have just quoted *verbatim,* another, to my mind, troubling and indeed startling revelation in this email of yesterday the 13th November, is the statement made for the first time that the plaintiff is (and I quote) *"not currently in Ireland"*. This is despite the fact that, at all material times, but in particular as of Friday the 10th November, 2023 the plaintiff understood that he needed to attend court on Monday the 13th November, 2023.

53. Why do I take this view? I do so because one can easily understand a typographical error with respect to a date, namely, a reference to the 13th as opposed to the 14th, but this is not what the communication discloses. In the plaintiff's 10th November email he specifically states (and I quote) *"I will not be able to attend on Monday 13th November"* (emphasis added).

54. For the plaintiff to have specifically referenced a supposed inability to attend court on *Monday 13th* November allows this court to safely infer that he understood he needed to *be* in court on *Monday 13th* November.

55. Despite this he was, as of the 10th November, outside the jurisdiction. He remained outside the jurisdiction, as of Monday the 13th November.

56. Before leaving his email of yesterday it's also appropriate to note that it states *inter alia*: *"I will provide the court with a medial certificate"*. No explanation whatsoever was proffered as to why medical evidence had not been furnished in advance of that point. And I say this, leaving aside the question of whether it was entirely obvious to the plaintiff that medical evidence would be needed. Even if it was not at all obvious, the plaintiff was put squarely on notice of the importance of medical evidence by the defendant's solicitors in the manner that I have explained. That, of course, was the email sent at 12:42 on Friday the 10th of November last.

Video-link adjournment application to Hyland J yesterday morning

57. To continue with the chronology, this court understands that, shortly after 11.30am yesterday, and via video link, the plaintiff applied for an adjournment to Ms. Justice Hyland.

58. The court further understands that *no* medical evidence was proffered in the context of that adjournment application and no adjournment was granted.

Opportunity to renew application up to 3:30pm yesterday

59. This court further understands that the learned judge indicated that an adjournment application could be renewed before her, up to 3.30pm yesterday, and gave the plaintiff to understand that medical evidence would be essential in that context.

60. In the manner presently explained, despite the foregoing, no further application for an adjournment was made yesterday to Ms. Justice Hyland and no medical certificate or report or evidence was proffered, either to the court or to the defendant's solicitors.

Monday 13 November (11:56) email from Defendant

61. As of 11:56 yesterday, the defendant's solicitors sent an email to the plaintiff which stated the following: *"Please send the medical certificate to me and I will pass it to Mr. McGowan."* being a reference to the defendant's counsel. I now continue to quote from the defendant's solicitor's email: "*You will also need to liaise again with the Registrar when you have the certificate to seek to have the matter mentioned again later today to make your application. Please ensure that you copy me on all communications with the Court Registrar."* And, again, no application was made yesterday.

Monday 13 November (12:48) email from Plaintiff

62. At 12:48 yesterday the 13th November, the plaintiff sent an email to the defendant's solicitors which stated the following (and I quote): *"Due to the doctor's workload he cannot have the medical certificate ready by 3pm Irish time".* That was, of course, a reference to 3pm yesterday the 13th November. I continue the quote:

"He may have it ready by this evening but cannot guarantee it. He has confirmed to have it ready by 1pm tomorrow afternoon but it still has to be translated to English. I will speak again to him later this afternoon and hope to get it as soon as possible. If you do not provide consent to adjourn I will appeal and seek any cost orders to be struck out." (emphasis added)

Monday 13 November (13:22) email from Defendant

63. The response to the aforesaid email was by means of an email sent (at 13:22) yesterday by the defendant's solicitors, who stated (and I quote):-

"You will note that Ms. Justice Hyland requires you to furnish us and the court with medical evidence before any adjournment application is entertained and that is a matter for you to arrange. The judge informed you this morning that she would be available today up to 3.30pm. We are not in a position to consent to an adjournment application at this late stage and we are ready to proceed with the case tomorrow which was set down by you for hearing in February 2020 and you applied for and obtained the hearing date of tomorrow in February of this year." (emphasis added)

Monday 13 November (13:35) email from Plaintiff

64. In an email sent yesterday (at 13:35) the plaintiff wrote to the defendant's solicitor in the following terms (and I quote):

"Let me please point out that this hearing date was obtained on your request. I was ready to proceed many months earlier and you claimed that because your client needed many months to prepare its defence please check your emails and correspondence. I consented without any hesitation and I am deeply disappointed by your stance. If this situation was the other way round I would agree to an adjournment without any hesitation." (emphasis added)

65. I pause here to say that, in circumstances where the plaintiff did not apply for a hearing date in relation to his own case, there can be no criticism of the defendant for doing so, last February, on notice to the plaintiff. Furthermore, last February, this case was listed for hearing today, with the full knowledge of the plaintiff.

Delay

66. Furthermore, as to the plaintiff's reference to the defendant needing *"many months to prepare its defence*" and what would appear to be some accusation of delay on the part of the defendant, an examination of the pleadings reveals that the defendant delivered a defence and counterclaim as long ago as January 2019, approaching four years ago, in the wake of receiving replies to particulars. This was in circumstances where the defendant was required to raise, on the 28th September 2018, a Notice for Particulars which sought information in relation to the plaintiff's claim and the nature of same.

67. Therefore, and whilst not - I stress not - determinative of this application, it seems fair to say that any reluctance to have the matter determined at trial is certainly not on the defendant's side. Insofar as obtaining the trial date, and indeed procuring the relevant trial books and engaging appropriately with the court, it is fair to say that the defendant is the party which has made 'all the running'.

Monday 13 November (13:58) email from Defendant

68. To continue with the examination of the communication, by email sent yesterday at 13:58 the defendant's solicitors stated the following:-

> *"You will need to make your application to the court and it will be a matter for the judge to decide. Please let me know in advance when you will be making any application to the court."*

Monday 13 November (14:28) email from Plaintiff

69. In an email sent yesterday at 14:28 the plaintiff stated (and again I quote):

> *"As I indicated I will make it tomorrow morning when I get the medical certificate and it is translated."* (emphasis added)

No application made / no medical evidence furnished this morning

70. No application for an adjournment was made this morning, nor was any medical certificate or report furnished by email, either to the court, this morning, or to the defendant.

Today 14 November (7:14) email from Plaintiff

71. In an email sent (at 07:14) this morning the plaintiff stated (and I quote):-*"I will not get the medical certificate until around 2pm Irish time. It will be translated and sent to you by email."*

Today 14 November (7:47) email from Plaintiff

72. In an email sent (at 07:47) this morning the plaintiff stated - *"To make the situation clear, I can only move short distances with aid of crutches and have to wait till the medical certificate is brought to me."*

Defendant's application for dismissal

73. It is against the foregoing backdrop that this court sat, at 11am this morning, to hear the plaintiff's claim. The defendant's side, as I say, was present. The plaintiff was not. Nor, at the risk of repetition, had the defendant or the court received any further email from the plaintiff offering any explanation, or providing any further details, or any medical information. It is in those circumstances that this morning counsel for the defendant quite understandably, moved an application to have the plaintiff's claim dismissed.

Defendant's application not acceded to earlier today

74. In responding to that application which, in the manner I will explain, I did not accede to at that stage, I made several observations in relation to the *status quo* as it then pertained. In particular:-

(1) the defendant had not explained even his whereabouts, other than to say that he was not currently in Ireland;
(2) the defendant had not explained the nature of what he describes simply as a medical condition;
(3) the defendant had not explained why he chose to be abroad for the hearing of the case; and
(4) there was no explanation proffered as to why the plaintiff had not obtained medical evidence at the earliest opportunity upon being informed, last Friday, that medical evidence was needed.

Least risk of injustice – to sit again at 2pm today

75. Notwithstanding what I found to be an entirely sub-optimal situation, and, indeed, a troubling situation this morning, I felt that the least risk of injustice was created by not acceding to the defendant's application to dismiss the proceedings this morning. Instead, I suggested that the court would sit again at 2pm. I did so in circumstances where this court and the attendant resources, have been assigned and dedicated to a hearing of this case over the course of three days commencing at 11am this morning. Therefore I felt that, to put it crudely, time was 'on our side', at least so as to afford the plaintiff until approximately 2pm. The 2pm reference flowed from the reference in the communication by email which I have quoted from, wherein the plaintiff referred to obtaining a medical report *"at approximately 2pm Irish time".*

Today 14 November (1:08) email from Defendant

76. To conclude an analysis of relevant communication, this morning - in the context of declining to accede to the strike-out or to the dismissal application – I asked that the instructing solicitor for the defendant communicate with the plaintiff by email, and it is appropriate that the court quote what was sent by email. I am now quoting from a 1.08pm email sent to the plaintiff by the solicitor for the defendant:-

> *"Dear Mr. Reidy.*
> *As you are aware this case was listed for hearing at 11am this morning before Mr. Justice Heslin in Court 21 in the Four Courts. You failed to appear and the recent email correspondence between us was opened to the court.*
>
> *With reluctance Mr. Justice Heslin has adjourned the matter to 2pm today to allow you time to make whatever application you are making with medical evidence to support it. I understand from the Courts Service that they have managed to make a technical court available for you to make this application and the Registrar will send you a link to access the online hearing.*
>
> *The court has asked that it be pointed out to you that at no stage, either on the 9th February 2023 when you applied for a hearing date, or last Thursday when the hearing date was confirmed, nor yesterday when you made your first adjournment application did you apply to the court seeking remote hearing facilities.*

It is for that reason that none were available this morning as there are a limited number of technical courts and all were in use this morning.

In relation to any application you intend to make at 2pm today we reiterate that we will be opposing any adjournment of the matter.

We have also been asked to point out to you by Mr. Justice Heslin that 2pm today is the deadline for any application you intend to make.
Kind regards."

Today 14 November (13:33) email from Defendant

77. The response sent by the plaintiff (at 13:33) by email was as follows:-

"Dear Mr. Kirwan.
You clearly have a very short and opportunistic memory.

1. *When your client was in default and I applied for judgment in default you untruthfully claimed that you had not been served papers. An Post confirmed that papers were delivered to your address. You still claimed that you did not get them. At that point in time I could have dug in my heels and asked for an unless order, however I allowed your late application.*

2. *You later requested me to agree to a VERY long delay, nearly one year, to enable your client to prepare its defence. At that stage I could have refused and only consented to time limits allowed by statute. Once again I showed decency and consented.*

3. *Your behaviour is outrageous, is absolutely outrageous. Even if you got an order I would moist* - spelled "moist" but it obviously means "most"- *certainly appeal and am 100% sure it would be heard again and you would be exposed for being opportunistic. I am convinced that your client has many things to hide and will do its best to prevent justice from taking place."*

***Ad hominem* attacks**

78. I pause to observe that, on any objective analysis, this email contains *ad hominem* attacks which have no place in correspondence, and are not - insofar as this court is aware of the relevant facts in chronological order, including procedural history - at all merited.

79. It is however - although not determinative of this application - not unfair to suggest that references to "*unless orders*" and time limits allowed by statute, which are made by the plaintiff, disclose a certain familiarity with court procedures and process. In that context, it would be surprising, to say the least, that the plaintiff would not be aware (even without it having been pointed out to him by the defendant's solicitor) that *medical evidence* would need to underpin, or that *some* evidence would need to underpin, any adjournment application.

2pm today

80. Moving, then, to the position which pertained shortly after 2pm when I sat. The only change in the evidential landscape, and I use the term *evidential* loosely, is that the court was handed two A4 pages of copying.

The paragraph comprising medical 'evidence'

81. The first contains simply a paragraph running to three sentences (and I quote):

> *"Patient Mr. Neil Reidy who is living of Glasganny, County Wexford, Castlebridge in Irlandia has damage to bottom right leg inflammation of vein and thrombosis. He must not using this leg for time. Doctor says until 15/12/2023."*

82. The second A4 page is dated 14 November 2023. It is certainly in a foreign language. The court is given to understand, by the plaintiff, that it is the Polish language. That is the sum total of the "evidence", and again I say evidence loosely, before the court.

What is / is not addressed

83. Certain very obvious observations can fairly be made. This translation, if translation it be, of a medical report does not identify, at least in translation, the *doctor* said to have produced it.

84. It does not say *when* it was produced.

85. It makes no reference to any underlying or pre-existing *condition*, nor does it refer to any *accident* said to have been occurred.

86. Still less does it say *when* such an accident - if an accident occurred - is said to have transpired.

87. The height of what it says is that the plaintiff must not use his leg for a period of time.

88. It certainly does *not* constitute an opinion by any doctor that it is impossible for the plaintiff to travel, whether by air, rail, road, boat or otherwise. It says nothing in relation to any inability to travel.

89. It says nothing about when, if any, *examination* was carried out.

90. It says nothing about what was *found* on examination.

91. No mention is made of any *prognosis*.

92. No mention is made of any *prescription* or *treatment.*

The plaintiff's 'remote' application for an adjournment

93. I will return to the contents of that document but it is appropriate, now, to turn to the application which was made by the plaintiff remotely. I say remotely because the court had only the benefit of a disembodied voice of the plaintiff who 'dialled in'.

94. This is in circumstances where this court, upon learning that a 'tech enabled; court, namely, Court 12 was available, facilitated the plaintiff by moving from Court 21 to Court 12, where I am continuing to give this *ex tempore* ruling.

95. It is fair to summarise the plaintiff's application as follows. He indicated that the report or certificate which I have quoted is something which was prepared in Poland and prepared in the Polish language.

96. His submission was, in essence, to say *"I cannot travel because I have been told not to use my leg. I cannot fly or walk."*

Flying

97. I pause to say that his submission that he cannot fly is not at all underpinned by the medical 'evidence', which makes no reference whatsoever to flying.

Ferry

98. Nor, in the manner I will come to, was there ever any question of the plaintiff flying. This is in circumstances where, in the manner I will presently come to, his affirmed or sworn testimony to the court is that he travelled to Poland via ferry.

Plaintiff *cannot* be here

99. The plaintiff submits that he wants to be here, but he cannot be here. Again, the medical evidence before the court does not provide a solid basis for the proposition that the plaintiff *cannot* be here. It certainly suggests that he must not use his leg for a time, but in the manner I will explain, he appears to be using crutches.

Crutches

100. It is not at all unusual for this court to be asked to accommodate plaintiffs who have some physical impairment, be it temporary or permanent. On the contrary, and in the context of the Court Service regularly dealing with personal injuries claims by persons unfortunate enough to suffer physical injury, some of which can be extremely debilitating, the fact that, if it be a fact, the plaintiff cannot use his leg, simply does not explain an impossibility to attend this jurisdiction or attend this court.

101. It is a statement of the obvious that the medical 'evidence', insofar as it is evidence, does not at all underpin the proposition that there is any, for example, mental health aspect, or emotional

aspect, or stress which would be caused by the case proceeding. The very 'height' of what emerges is that the plaintiff, it appears, is confined to using crutches.

102. As counsel for the defendant noted, not at all unreasonably, there would appear to be a difference in the number of words in the untranslated report as opposed to in the translated version. There is also (it appears, in the Polish language) a paragraph (and I'll call it a 'certificate' on the assumption that it is a certificate) with respect to the translation from Polish to English, but it is a 'bare' assumption. There is a reference in that certificate to the dates 9th November, 2023 to 15th December, 2023. And, in submissions made by counsel for the defendant, this was pointed out, suggestive that an issue may have arisen as far back as the 9th November. In the manner I will presently come to, that is indeed the position, even on the plaintiff's case.

Evidential vacuum

103. In circumstances where the court was faced with that adjournment application on the basis of that 'evidence' which I have referred to, I took the view that such was the 'evidential vacuum', and such were the basic questions which no answers had been proffered to by the plaintiff, that the better course, in furtherance of fundamental and constitutional justice, was for the plaintiff, albeit in these sub-par circumstances, to take the oath or make an affirmation, so that he could give *evidence* to the court. And I took that view, having explained to the plaintiff the fundamentally important distinction between a *submission*, which is what he made, and *evidence* said to underpin it.

The plaintiff's oral testimony

104. The plaintiff then affirmed and Mr. McGowan put questions to him, as a result of which the following testimony have emerged.

Eastern Poland

105. The plaintiff is in Poland. He is in the eastern part of Poland, some 180km from the city of Krakow.

No specific date given for the Plaintiff's *outward* travel from Ireland

106. When asked when he travelled there his evidence was to say *"about two or three weeks ago"*. It is somewhat surprising that the plaintiff was not immediately definitive about *when* he travelled so far away, given the proximity of that travel to a trial in this jurisdiction, of which he has been aware since February. Leaving that aside, he went on to say that he had previously been with a friend of his in Germany and it appears that he went to Poland to look at a house.

107. When asked when he was due to return, the plaintiff's testimony was *"over the weekend"*. Again, this lack of clarity in relation to a return date, given the close proximity to his own trial is surprising, to say the least. When questioned further in relation to this his evidence was to say, *"I would have left Poland in time to be in Ireland on the Sunday"* or words to that effect.

No arrangements made for the Plaintiff's *return* to Ireland

108. When asked about travel arrangements specifically - and the obvious question which was troubling the court, or one of them, was the date on his return ticket - the plaintiff's evidence was that he had *no* return ticket and that he *always* travels 'one way'. His evidence included to say that *"I buy a ferry ticket when I get to the Port"*. So that was, according to the plaintiff, his approach to his travel arrangements with respect to getting back to make his own case, in the case listed for hearing today, but which, I am entitled to infer, the plaintiff understood was to begin yesterday Monday 13th, being the reference in his email.

One way ticket

109. The plaintiff confirmed that (and this speaks to the mode of travel) he travelled to Poland from Ireland via ferry. He gave evidence that his car was with him. His evidence was that *"I always buy a one way ticket"*.

110. I pause here to say that the evidence therefore discloses that, and this speaks to the question of "*thrombosis*" there was never a question of the plaintiff flying out of, or back to, Ireland. He travelled by ferry. And the evidence discloses no reason why he could not have returned in the same mode, even with the difficulties created by having to have a friend drive; or operate as a foot passenger using crutches. But, there is certainly no question of it being medically inadvisable, due to leg inflammation or vein thrombosis, to fly. That was never his intention.

No arrangements made at *any* stage to return to Ireland

111. It is also a matter of fact that this is a plaintiff who has made *no* arrangements whatsoever, at *any* stage, to return to this country.

112. In relation to the contents of the albeit scant, medical certificate or report, the plaintiff was asked whether he spoke Polish, plainly with a view to seeing whether he could assist in terms of translation. His evidence was to say that "no", other than to get him in or perhaps out of trouble, and that he speaks German, Spanish and Dutch, but not Polish.

First sought medical attention on 9 November

113. He was asked when he first sought medical attention. His evidence was that this was on the 9th November.

Pain

114. He was asked why, and his response was, in effect, to say *"pain"*, with the plaintiff also referring to inflammation.

Leg

115. As to *where* the pain was, his evidence was that it was in his thigh and indeed in the whole of his leg.

116. He was asked if he had any pre-existing medical condition, and he said no. When asked which thigh, he said it was his right thigh.

4pm or 5pm on 9 November

117. When asked when it first began to trouble him, his evidence was *"the 9th November",* consistent with first seeing the doctor on the 9th. When asked about the exact time he saw the doctor the plaintiff's testimony was that this was at 4pm or 5pm, although he couldn't say precisely.

The *cause* of his pain

118. When question as to the *cause*, and bearing in mind his evidence that he had no underlying medical condition, the plaintiff revealed in his sworn testimony that he "*fell down a flight of stairs*" and that this occurred on the 8th November. When asked what time, he indicated that it was the afternoon or early afternoon.

Fell down a flight of stairs - early afternoon Wednesday 8 November

119. Despite this, namely, his testimony that he fell down the stairs on the 8th November, it is surprising, to say the very least, that the plaintiff on his testimony did not attend his doctor, or a doctor, until circa 4pm or 5pm the next day.

Doctor 3km away

120. When asked about where the doctor was located geographically, his evidence was to say that the doctor was approximately 3km away.

Friend drove him

121. When asked how he got there, the plaintiff's testimony was that his friend drove him to the doctor. He was asked about whether this was a private or public hospital or otherwise, the evidence of the plaintiff, who suggested that the system was a "*strange*" one in Poland, was to say that he attended a private doctor working in a hospital or care centre. The plaintiff's evidence was to say that he attended the doctor in the doctor's office within that setting.

Plaintiff told doctor that he fell down the stairs

122. When asked if he told the doctor that he fell down the stairs, he confirmed "yes", he did. I pause to say that, on that basis, it is something approaching incredible that the doctor made no reference, in the translated medical report, to any such fall occurring, or to the date of same.

Physical examination

123. When the plaintiff was asked if the doctor referred him for any X-Rays or similar, the plaintiff's testimony was to say that the doctor conducted a physical examination and, in the doctor's view, he didn't find anything broken. Again, I pause to say that it is approaching incredible that the doctor makes no reference to examining the plaintiff, and makes no reference to the results of that examination in the medical report tendered.

Painkillers "*every 4 hours*" prescribed

124. According to the plaintiff, the doctor prescribed (and I quote) *"paracetamol every four hours"*. Again, I pause to say that the medical report, again extremely surprisingly, makes no reference to that medication being prescribed. It makes no reference to *any* care, medication, or treatment being prescribed.

Pharmacy

125. When asked if the plaintiff had to go to a pharmacy to obtain the paracetamol medication, his evidence was to say that "no", he did not, because his friend had access to paracetamol.

Rented crutches

126. When asked if he could walk, the plaintiff's evidence was to say *"no, not really"*. The plaintiff went on to say that he now avails of crutches. When asked where he obtained them, his testimony was to say that his friend got them. He went on to say that *"you can rent them over here"*. He went on to give evidence to the effect that one does not really pay rent, rather one pays a deposit for the crutches, which deposit is returned when the crutches are given back. Later the plaintiff went on to say that - or agree with the proposition that - it was the doctor who procured the crutches for him by phoning the place where the crutches are available.

127. I pause to say that it is, again, approaching the incredible that the medical report proffered makes no reference whatsoever to crutches being necessary.

Wednesday to Tuesday

128. It is also appropriate, given the evidence that I have touched on so far, to note that on the plaintiff's account he had his accident last *Wednesday* and he saw his doctor last *Thursday*. Despite this, it is only today, the following *Tuesday,* that the plaintiff has tendered what is said to be medical evidence and, in the manner I have looked at, it simply does not underpin the proposition that it was, or is, impossible for the plaintiff to have travelled.

Did not think medical evidence would be needed

129. When questioned as to whether the plaintiff did not understand the essential need for medical evidence, his testimony was to say that he "*honestly didn't think that it would be needed"*. His evidence was to say that he, in effect, believed that the defendant's solicitor would consent to an adjournment, and that of course speaks to - leaving aside the *ad hominem* attacks - the stance taken by the plaintiff in today's email, which I have quoted from *verbatim.* But it is also appropriate for this court to say that, with regard to the plaintiff's evidence that he honestly did not think that medical evidence would be needed, there was absolutely no basis for the plaintiff adopting this stance.

130. On the contrary, the defendant's solicitor made 'crystal clear' that medical evidence was *essential.* Furthermore, the defendant's solicitor made crystal clear from the earliest opportunity,

namely, just as soon as an application to adjourn was 'flagged', that such an adjournment application would be *objected* to by the defendant.

Defendant ready willing and able to meet Plaintiff's case

131. This is, of course, in the context of the evidence establishing that the defendant is ready, willing and able to meet the plaintiff's case. The defendant is also present in court, and remains so, as we now approach 4.30pm on the first day of the hearing, and the evidence does *not* provide a basis for the court to hold that there was an impediment to the plaintiff travelling.

Previous request to adjourn other proceedings as Plaintiff was out of the jurisdiction

132. The plaintiff was asked if he had ever previously sought to adjourn proceedings on the basis that he was out of the jurisdiction. He agreed that he had. This was a reference to previous District Court proceedings which were brought by a third party against the plaintiff in respect of a sum owing.

Austria / Germany

133. It was put to the plaintiff that when the case came on for hearing he was not present, and his wife, who attended court, indicated that the plaintiff was in *Austria*. In the context of seeking an adjournment, he took issue with this, suggesting, although he was not present in court, that his wife had said that the plaintiff was in *Germany*.

Prior reliance on medical evidence to seek adjournment

134. In any event the, what emerges is that in previous proceedings the plaintiff *did* seek an adjournment on the basis that he was out of the jurisdiction and medical grounds *were* canvassed in those other proceedings.

135. He was asked directly by counsel today what medical condition prevented him from appearing in those prior, as I say, District Court proceedings. It is fair to say that the plaintiff's response was to give the following testimony: *"Let's just say I was advised not to get in a situation where I could get upset"* and, as well as using those words, or words to that effect, the plaintiff went on to say that he was prescribed medication.

Medical certificate

136. It was then put to him that, in the context of the adjournment sought in the District Court proceedings, a medical certificate had been produced by him and that the address on that medical certificate was that of a hotel. It was put to the plaintiff today that the judge who examined the medical certificate in question was not satisfied that it was genuine. And, whilst the case was adjourned, it was plain that the plaintiff, today, in his testimony took issue with the views expressed by the learned District Court Judge in question.

137. It was also put to the plaintiff today that the relevant judge described him as mischievous and untruthful. The plaintiff agreed that this was so, but as I say, took serious issue with that description.

Judicial Review

138. It was put to the plaintiff today that in consequence of the foregoing he brought judicial review proceedings against the judge in question and he agreed that he had. Counsel referred the plaintiff to his judicial review proceedings having come before this court on the 8th February, 2019 before Mr. Justice Meenan and counsel referred the plaintiff to the relevant judgment in which the plaintiff's complaint in those proceedings was summarised.

139. The plaintiff agreed that the outcome of his judicial review proceedings was that they were entirely unsuccessful but, again, he took issue with the District Court Judge, nonetheless, saying in his evidence today that (and I quote) *"We must also appreciate that judges are not spotless"*.

Supreme Court

140. The plaintiff agreed that he sought to appeal the matter to the Supreme Court. The Supreme Court's ruling was put to him, with reference being made *inter alia* to: no bias on the part of the learned District Judge having been found; no defamation having been established; and judicial immunity for comments made during the course of a trial.

Familiarity with the need for medical evidence to underpin an adjournment application

141. It was agreed by the plaintiff that this was the outcome. The purpose, it is clear, of that line of cross-examination of the plaintiff today was because it speaks to the familiarity, on the part of the plaintiff, with medical evidence being necessary to underpin any adjournment application.

Plaintiff denied that he knew medical evidence was required

142. Indeed, counsel for the defendant specifically put to the plaintiff today that, in light of his involvement in those previous and resulting proceedings, a feature of which was his adjournment application based on medical evidence tendered by him when out of the jurisdiction, he knew that he needed medical evidence. Despite this, the plaintiff *denied* that he knew medical evidence was required to underpin an adjournment application. Although it is not determinative of the outcome of today's application to adjourn, I find that testimony to lack credibility.

143. The court therefore - and to draw this really into a conclusion - is met with a situation where it does not have medical evidence before it which allows for a finding that the plaintiff cannot travel.

144. The evidence, even taking it at its very 'height' does not allow this court to hold that it was ever impossible for the plaintiff not to attend today's trial.

145. It also beggars belief that, if the plaintiff fell down the stairs last Wednesday, he would not have so informed the defendant's solicitors at the earliest conceivable opportunity last Wednesday by email.

146. And it beggars belief that he would not have, in such communication, told the defendant's solicitors: first, that he was in the Eastern part of Poland; second, that he had driven there; third, as I say, that he had fallen down the stairs and was in pain; and, fourth, that there was at least the possibility that he might have some difficulties driving back to Ireland in time for the hearing, of which he has been aware since last February.

147. Even if I am entirely wrong in that view, it seems to me to beggar belief that, as of Thursday at 4pm or 5pm when, according to the plaintiff, he was in such pain that he attended a doctor and, as a consequence, began (i) taking painkillers in the form of paracetamol, and (ii) using crutches, that he would not immediately have so informed the defendant's solicitors, and indeed this court, but he did not do so.

148. It was not until the next day, Friday the 10th November, 2023 that, in an email of 09:36 the plaintiff for the very first time emails the defendant's solicitor and states: *"Due to a medical condition I will not be able to attend on Monday 13 November. I would request an adjournment to the first week of December."*

149. It beggars belief that if the plaintiff had fallen down a stairs the Wednesday before, and if the plaintiff was in such pain that he was required to attend before a doctor the previous evening at 4pm or 5pm, and if such was his condition that soft tissue injuries had been diagnosed, painkillers had been prescribed, and he needed to avail of crutches, that he wouldn't have not have made at least some mention, in that 09:36 email of Friday 10th November, of *any* of the foregoing. But he simply did not.

150. To draw the ruling to a conclusion and at the risk of repetition, but turning to the evidence in the form of the medical report or certificate, and taken at its height, it beggars belief that the medical certificate makes no mention of the plaintiff falling down the stairs. It beggars belief that it makes no mention of the plaintiff having been physically examined on the Thursday in question, the 9th. It beggars belief that it makes no mention of soft tissue injuries having been found. It beggars belief that it makes no mention of X-Rays or otherwise being ruled in, or ruled out. It beggars belief that it makes no mention of any prescription of treatment, including painkillers. It beggars belief that it makes no mention of the plaintiff requiring crutches.

151. But, even if I am entirely wrong in all of those views, taken at its height, this medical report or certificate simply does *not* say that the plaintiff cannot *travel*.

After the '11th hour'

152. It is for these reasons that I am acceding to the application to dismiss as a corollary of refusing this 11th hour - indeed after, and well after, the 11th hour - application to adjourn.

Public interest

153. I am doing so in the context of something I mentioned earlier in this *ex tempore* ruling. Earlier, I referred to the public interest in the proper administration of justice in the context of finite court resources.

154. There is also, plainly, a jurisdiction on the part of the court to organise the business of the court with a view to, in the public interest, facilitating access to justice *per* constitutionally protected rights.

Constitutional right of access to justice

155. However, constitutionally protected rights of access to justice do not licence the type of behaviour which the plaintiff has engaged in – a plaintiff who made a 'one way' trip to Poland without ever making arrangements to return, despite knowing that this was a case set down for hearing and, at his behest, set down to demand three days of finite court resources, beginning at 11am this morning.

156. And though I approached the matter entirely with an 'open mind' and was willing, as of 11.30 this morning to defer making any such decision, because I had felt that would involve the least risk of injustice, matters have not materially changed insofar as the evidential position is concerned.

Plaintiff's adjournment application refused

157. On the contrary, they seem, for the reasons given, to have gotten worse from the plaintiff's perspective. Therefore, I am refusing the adjournment application.

Defendant's dismissal application granted

158. That leaves us in a situation where the defendant is ready, willing and able and present in court to meet a case. The plaintiff is not and, therefore, I am dismissing the plaintiff's action.