

THE HIGH COURT

[2023] IEHC 82
[Record No. 2015/10030P]

BETWEEN

ANNE MARIE CORRIGAN

PLAINTIFF

AND

**ARAMARK IRELAND, DUBLIN CITY COUNCIL AND CAMPBELL CATERING LIMITED,
T/A ARAMARK IRELAND**

DEFENDANTS

JUDGMENT of Mr. Justice Mr. Justice Barr delivered on the 23rd day of February, 2023.

Introduction.

1. By a personal injury summons issued on 1st December, 2015, the plaintiff sought damages for personal injuries which she alleged had been caused to her while acting in the course of her employment with the first and/or third defendants, at a premises owned by the second defendant.

2. In brief terms, the plaintiff's case is that while acting in the course of her employment as a kitchen operative employed by the first and/or third defendant, at two different premises owned by the second defendant, she was caused to suffer injury, in the nature of a repetitive strain injury, to the muscles and ligaments in her left arm, trapezius area and neck. The plaintiff alleges that these injuries arose due to the defective condition and/or incorrect placement of dishwashers at the two locations. In respect of the first location, she alleges that the dishwasher did not function properly, whereby large and heavy trays became stuck in the dishwasher and as a result, she was required to stretch in and pull them through, as the conveyor belt had become jammed. In respect of the second premises, she alleged that the dishwasher had been placed at an incorrect height and there was no adequately placed handle on it to enable the cover, or opening, to be lifted safely. All of these allegations are denied in the defence filed on behalf of the defendants.

3. In this application, the defendants seek an order striking out the plaintiff's proceedings against them, as being an abuse of process, or in the alternative, as being bound to fail. The entitlement to that relief is based on two grounds: first, that the plaintiff entered into a settlement agreement with the defendants on 21st March, 2016, whereby she agreed to compromise her action against the defendants, in return for payment by the

defendants of €15,000; which was transferred by the defendants to the plaintiff by cheque dated 22nd March, 2016; which cheque was lodged by the plaintiff to her bank account.

4. Secondly, it is submitted that insofar as the plaintiff's action purports to encompass injuries allegedly suffered by her, either prior to August 2012, or subsequent thereto, such cause of action is not maintainable in these proceedings, as the authorisation obtained by the plaintiff in advance of the issue of these proceedings, only relates to injuries sustained by the plaintiff in August 2012.

5. The plaintiff accepts that she signed the settlement agreement dated 21st March, 2016. She accepts that she received payment of €15,000 from the defendants. While it is difficult to deduce from her affidavits exactly what her complaint is in relation to the alleged settlement agreement, at the hearing of the defendants' application, she stated that she had felt compelled to accept the sum offered by the defendants, because they had not engaged with the process in any meaningful way when it was before PIAB.

6. In relation to the injuries covered by the authorisation issued by PIAB, the plaintiff submitted that it was clear from the terms of her application forms, which had been submitted to PIAB; and from the terms of the medical report submitted by her GP in support of those applications; and from the terms of the authorisation itself, that she was authorised to issue proceedings in respect of injuries that she alleged had arisen on "*various dates from in or about the month of August 2012*". It was submitted that having regard to the wording of the authorisation, it was not limited to injuries suffered by her in the month of August 2012.

7. Thus, the issues that arise for determination on this application are: (a) has the plaintiff compromised her proceedings by virtue of an agreement entered into by her on 21st March, 2016; and (b) if not, does the authorisation that she obtained from PIAB, cover injuries suffered by her before, or after, August 2012.

The Evidence.

8. The defendant's application was grounded upon the affidavit sworn on 16th December, 2020 by Ms. Kerrie Dunne, the defendant's solicitor. She outlined how the plaintiff had made two applications to PIAB, in respect of the same injuries. In her application form dated 24th February, 2014, which only named Campbell Catering Limited t/a Aramark Food Services as the respondent, the plaintiff stated that her injuries arose "*on various dates from*

in or about the month of August 2012". She stated in the form that she had first sought medical attention from her GP on 3rd August, 2012.

9. A second application form was submitted to PIAB by the plaintiff on 4th March, 2015. In that form she named the respondents as Aramark Ireland and Dublin City Council. She stated in the form that details of how the accident occurred had already been submitted on her previous form. She gave the same information as to when the injuries occurred and when she first attended with her GP. In support of her applications, the plaintiff had also submitted a medical report from her GP, Dr. Thomas Maher dated 31st January, 2014. In that report it was stated under the heading "Brief details of the accident/incident", that due to the position of the dishwasher and its handle at work, the plaintiff was obliged to reach across awkwardly to open it with her left hand. Pain began in the third and fourth fingers, then involved the wrist and then the trapezial muscle in the left shoulder and neck area. The diagnosis was of a muscular injury to the left trapezius.

10. It appears that the plaintiff obtained two authorisations from PIAB. The first issued on 9th October, 2014, wherein the respondent was named as Campbell Catering Limited t/a Aramark Food Services. The date of relevant claim was stated: "on various dates from in or about the month of August 2012". The claim number was EL0303201443371.

11. On 10th June, 2015, a further authorisation was issued by PIAB naming Aramark Ireland, Dublin City Council and Campbell Catering t/a Aramark Ireland as respondents. Again, the date of the relevant claim was "*various dates from in or about the month of August 2012*". The authorisation bore the same claim reference number as in the previous authorisation. It is clear that the second authorisation superseded the previous authorisation and merely added additional respondents.

12. The plaintiff's personal injury summons issued on 1st December, 2015. It pleaded that the proceedings had been authorised by virtue of the authorisation issued by PIAB on 10th June, 2015, bearing the reference number stated therein.

13. Ms. Dunne dealt with the settlement of the plaintiff's action at paras. 5-9 of her affidavit, sworn on 16th December, 2020. She stated that she had been informed by Ms. Martina Donohoe, the Quality and Safety Director of Aramark, that in September 2015, the plaintiff had contacted the HR department of Aramark in order to discuss the company's response to her PIAB claim. Ms. Donohoe telephoned the plaintiff on 25th September, 2015 and arranged to meet the plaintiff on 30th September, 2015. At that meeting, the plaintiff

wished to discuss other issues that had arisen in relation to her employment by the first and third defendants. Ms. Donohoe advised her that she was only in a position to discuss the personal injuries aspect of her claim.

14. Having taken instructions from her superiors, Ms. Donohoe telephoned the plaintiff on 6th October, 2015 and offered her the sum of €15,000 in full and final settlement of her claim in respect of her personal injuries alleged to have been suffered in the course of her employment with Aramark. By email dated 20th October, 2015, the plaintiff informed Ms. Donohoe that she was not willing to accept the offer that had been made by the company. She indicated that she would be prepared to settle her claim for the sum of €60,000. Ms. Donohoe stated that the plaintiff's counter offer was not one which the company was willing to accept.

15. Those negotiations had occurred prior to issuance of the plaintiff's personal injury summons on 1st December, 2015.

16. Ms Donohoe went on to state that by letter dated 3rd March, 2016, the plaintiff wrote to the legal department of Aramark, enclosing a copy of her email of 20th October, 2015.

17. On 10th March, 2016, the plaintiff telephoned the HR department of Aramark and indicated that she had reconsidered the offer which had been made by the company and further indicated that she was willing to accept the sum of €15,000. She stated that she wished to speak to Ms. Donohoe.

18. On 11th March, 2016, Ms. Donohoe spoke with the plaintiff and confirmed that Aramark were willing to make an offer of €15,000 to her in full and final settlement of her claim for personal injuries and to compromise the claim that had been threatened by her. The plaintiff was advised that she should consider seeking her own legal advice in relation to the matter. It was agreed that Ms. Donohoe would forward a settlement agreement to be signed by the plaintiff, if she was satisfied with its content. That was done by means of an email sent by Ms. Donohoe to the plaintiff at 10.42 hours on 11th March, 2016. That email was in the following terms: -

"Dear Anne Marie,

Further to our telephone conversation this morning, I attach the document discussed for your review.

As mentioned in our call, it is advisable that you see [sic] legal advice prior to signing.

Following same, if you are satisfied to proceed, please return signed document to me.

Upon receipt of the signed document, I will arrange for a cheque.

If you have any questions, please let me know.

Thank you and kind regards,

Martina."

19. The plaintiff responded by email dated 12th March, 2016 indicating that the agreement that had been forwarded to her was incorrect, in that her name had been incorrectly spelt by omission of the letter "e" from her Christian name. In addition, she pointed out that she had not been able to print off the draft agreement satisfactorily, as the heading on the document was missing the last letter in the name of the company. She concluded the email stating "As soon as I receive the new document I will return it signed to you".

20. By email dated 14th March, 2016, Ms. Donohoe sent a corrected version of the settlement agreement to the plaintiff. The plaintiff responded by email at 16.19 hours on 16th March, 2016, stating that she was still having problems printing off the document. She requested that the original document should be left at the front desk of the company's head office for her attention. She stated that she would return it signed to the company.

21. Ms. Donohoe stated that a copy of the signed agreement was left at the reception desk in the Aramark offices. She stated that the plaintiff attended at the offices on 21st March, 2016, at which time she signed the agreement and left it for collection. By email dated 22nd March, 2016 Ms. Donohoe confirmed that she had received the envelope which the plaintiff had left for her on the previous day. She thanked her for so doing and stated that she would arrange for a cheque to issue. She stated that she would be in touch with the plaintiff to inform her when the cheque would be available for collection.

22. The settlement agreement, which had been signed by the plaintiff on 21st March, 2016, was on Aramark headed notepaper and was in the following terms: -

"I, Anne Marie Corrigan, 26 McKelvey Avenue, Finglas East, Dublin 11, hereby accept the sum of €15,000 in full and final settlement of all claims arising out of an alleged incident which occurred in August 2012.

I acknowledge that this payment does not constitute an admission of liability on the part of Aramark. I also confirm that I have been fully apprised on my legal rights

to pursue a claim through the Injuries Board and that I have had the benefit of consulting with a solicitor (or being made aware of my right to consult a solicitor). I further acknowledge that the payment is made on the strict understanding that details of the settlement will remain confidential and will not be disclosed to any third party."

23. Ms. Donohoe stated that a cheque in the agreed sum made out in favour of the plaintiff, was provided by Aramark. It was dated 22nd March, 2016. It was left at the reception of their offices for collection by the plaintiff. She stated that on 30th March, 2016, the cheque had been cashed. She exhibited a copy of the cheque, together with proof of encashment.

24. On 28th November, 2016, the plaintiff served the personal injury summons that had issued on 1st December, 2015, on the defendants. A joint defence was delivered on behalf of all the defendants on 18th October, 2017, which pleaded, *inter alia*, that the plaintiff's action had been compromised by virtue of the settlement agreement dated 21st March, 2016.

25. The defendant's motion seeking to strike out the plaintiff's action issued on 16th December, 2020. It appears that when the matter was mentioned before Meenan J. on 24th February, 2022, the plaintiff was given until 31st March, 2022 to file her replying affidavit. Somewhat unusually, the defendant's solicitor elected to write directly to the plaintiff by letter dated 1st March, 2022. The purpose of that letter was to indicate in clear terms the basis on which the defendants were maintaining that the plaintiff's action should be struck out. In that letter, they reiterated that the action had been settled by virtue of the agreement signed on 21st March, 2016 and also made the point that the authorisation did not permit the plaintiff to claim for injuries that had occurred after August 2012. The plaintiff responded to that letter by letters dated 11th March, 2022 and 16th March, 2022. However, that correspondence did not make it clear why the plaintiff was maintaining that she was not bound by the settlement agreement.

26. On 23rd March, 2022, the plaintiff swore her replying affidavit in this application. She referred to the two applications that she had made to PIAB. She complained about the fact that the defendants had not cooperated with PIAB. This had resulted in the issuance of the two authorisations on 9th October, 2014 and 10th June, 2015. She went on to describe how relations had deteriorated with her previous solicitor, culminating in him indicating that

he no longer wished to act for her in the matter. It was subsequent to his departure, that she had put in her second application to PIAB, in which she had named additional respondents.

27. She went on to refer to an affidavit of verification that had been sworn in respect of the defence by Mr. Frank Gleeson. She referred to a number of documents that she had exhibited to the affidavit, including the draft agreements which had been sent to her for her signature and a copy of the cheque that had ultimately issued from Aramark. The plaintiff then went on to refer to an affidavit of service that had been sworn by Ms. Sandra Dreenan. She also referred to various correspondence and emails, which do not appear relevant to the issues that are before the court. She concluded by referring to the letter that she had received from the defendant's solicitor dated 1st March, 2022, and the responses that she had given thereto on 11th and 16th March, 2022.

28. It is fair to say that the plaintiff's replying affidavit did not address the two central issues that had been raised by the defendants on this application; being the existence of the settlement agreement and the alleged limitation on the authorisation that had issued from PIAB.

29. For some unknown reason, the defendant's solicitor wrote again to the plaintiff by letter dated 31st March, 2022, pointing out that the plaintiff's replying affidavit did not set out her position in relation to the legality of the monies that she had received under the settlement agreement. They concluded the letter by stating: "*For clarity we confirm that we are not inviting you to deliver another affidavit but merely pointing out the omission.*"

30. On 5th April, 2022, Ms. Dunne swore a further affidavit. In that, she stated that she was "somewhat unclear" as to what position was being taken by the plaintiff in relation to the defendant's application. She referred to the correspondence that had been received from the plaintiff dated 11th and 16th March, 2022. She essentially just reiterated the points that they had already made in relation to why the submission was not maintainable by the plaintiff and concluded by stating that they were "extremely confused" as to what point the plaintiff was making in relation to the receipt of the monies under the settlement agreement.

31. On the previous day, 4th April, 2022, the plaintiff had sworn a further affidavit, deposing to the fact that she had received the letter dated 31st March, 2022 from the defendant's solicitor. She again referred to the affidavit that had been sworn by Mr. Gleeson on 14th July, 2020. She also referred to the grounding affidavit sworn by Ms. Dunne on 16th

December, 2020 and recited the various exhibits contained therein. She recounted the various steps that had been taken in relation to the negotiation and signing of the settlement agreement. She then went on to set out the terms of settlement that had been reached between her and Aramark in relation to a separate employment dispute between them. She stated that she was still awaiting a response to a request that had been made by her that the defendants would make voluntary discovery in the matter. She concluded by saying that she hoped that the motion would clarify whether the monies that she had received were "legally binding". Again, the plaintiff did not set out any particular grounds on which she maintained that the settlement agreement was not enforceable.

Legal Submissions.

32. Mr. Fogarty BL on behalf of the defendants, submitted that it was clear from the affidavits that had been filed and from the exhibits thereto, that the plaintiff had settled her proceedings with the defendants. He submitted that it was clear that the settlement covered the injury referred to in the authorisation, which authorisation had formed the basis of the plaintiff's cause of action as set out in her personal injury summons.

33. It was submitted that the plaintiff had agreed to accept a certain sum in compromise of her claim, when she had signed the agreement to that effect. She had received the money that was due to her under the agreement. It was submitted that that extinguished her cause of action against the defendants.

34. Counsel pointed out that there was no evidence of any duress or coercion on the part of any of the defendants on the plaintiff in relation to the reaching of the settlement agreement.

35. Counsel accepted that the second named defendant had not been a party to the settlement agreement. The first and third defendants had agreed to indemnify the second defendant in relation to its liability in the proceedings and had taken over the defence of the action on its behalf.

36. It was submitted that the authorisation that had issued by PIAB referred to injuries arising in August 2012. Insofar as the plaintiff had tried to include injuries suffered prior to that time, and subsequent to that time, in the period pleaded in her personal injury summons of 2009-2013, it was submitted that that was not covered by the authorisation that she had obtained from PIAB and therefore was not maintainable as a cause of action against the defendants.

37. In response, the plaintiff stated that because the defendants had not engaged with PIAB in relation to the applications that she had lodged with them, the authorisations had issued. She stated that she had felt coerced by the lack of engagement by the defendants, into accepting the settlement offer that had been made on behalf of Aramark.

38. The plaintiff further submitted that the authorisations that she had received from PIAB clearly concerned injuries that occurred in/or after August 2012.

Conclusions.

39. It is not disputed that the plaintiff signed the settlement agreement dated 21st March, 2016. I accept the evidence of Ms. Dunne, recounting the account given by Ms. Donohoe, as to how the settlement agreement came about. That evidence was not challenged by the plaintiff. It is not disputed that the plaintiff received the agreed settlement figure of €15,000 and lodged it to her bank account.

40. While the plaintiff did not have legal advice in advance of signing the settlement agreement, I accept the evidence of Ms. Donohoe that the plaintiff was advised to obtain her own legal advice in advance of signing the settlement agreement. The plaintiff chose not to do so. That was her entitlement. The absence of legal advice is not a ground to set aside the agreement.

41. It is also clear from the timeline of the negotiations leading to the conclusion of the agreement in March 2016, that the plaintiff was, in effect, given more than ample "cooling off" time; or to put it another way, she had ample opportunity to reconsider her position. That was due to the fact that her name had been incorrectly spelt in the first version of the agreement that had been sent to her and she was not able to print off the corrected version, necessitating the agreement being left out for her in hardcopy for her signature. Thus, she had a reasonable opportunity to carefully consider her position prior to signing the agreement on 21st March, 2016.

42. At the hearing of this application, the plaintiff made a vague assertion that she felt coerced into accepting the defendant's offer, due to the fact that the defendants had not engaged with the PIAB process, leading to the issuance of the authorisations by PIAB. I do not think that there is any substance in this argument.

43. I am satisfied from the evidence set out in the affidavit sworn by Ms. Dunne on 16th December, 2020, that the plaintiff was not coerced, or unduly influenced, into entering the settlement agreement. It was the plaintiff who had initially approached Aramark with a view

to attempting to settle her claim. At that time, she had merely put in her applications to PIAB and had obtained the necessary authorisations. She made her initial contact with the HR department in September 2015. While she issued her personal injury summons in December 2015, she did not serve it on the defendants until November 2016. Thus, the negotiation and conclusion of the settlement agreement, took place without the defendants being aware of the existence of the legal proceedings. They were only aware that she had made a claim to PIAB in respect of her injuries.

44. When one has regard to the fact that it was the plaintiff who made the initial approach to the company in September 2015; allied to the fact that it was she who made the subsequent approach in March 2016, after the company had indicated that it would not countenance paying the figure that she had requested by way of counter offer, it is clear that there was no coercion on the plaintiff to accept the figure that had originally been offered by the company.

45. While the plaintiff complained that the defendants had not engaged with the PIAB process, that had concluded with the issuance of the second authorisation in June 2015, that was long before the commencement of the settlement negotiations and ultimate conclusion of the settlement agreement in March 2016. Taking all of these matters into account, the court holds that the settlement agreement signed by the plaintiff on 21st March, 2016, was not concluded by her as a result of any coercion, or undue influence, on the part of the defendants.

46. I am satisfied from the terms of the settlement agreement dated 21st March, 2016, that it encompasses the injuries which were authorised by PIAB on 10th June, 2015; which authorisation forms the basis of the plaintiff's claim in her personal injury summons. Therefore, I hold that the settlement agreement covered the plaintiff's cause of action as set out in her personal injury summons.

47. Accordingly, I hold that the plaintiff has compromised her action against the first and third defendants by virtue of the agreement dated 21st March, 2016. In these circumstances, the first and third defendants are entitled to an order striking out the plaintiff's action against them on grounds that the plaintiff's cause of action against them has been extinguished by accord and satisfaction.

48. I hold that the plaintiff's action against the second defendant is not covered by the settlement agreement. The second defendant is not mentioned in the written agreement,

either by express reference, or by implication. Accordingly, I hold that they are not entitled to the benefit of the settlement agreement entered into between the plaintiff and the first and third defendants on 21st March, 2016. The fact that the first and third defendants may have entered into an agreement with the second defendant, to furnish it with an indemnity in respect of any liability that it may be found to have to the plaintiff in these proceedings, and to take over carriage of its defence, is not relevant.

49. I turn now to the second line of argument, which remains relevant from the point of view of the second defendant. It was submitted that having regard to the terms of the authorisation that had issued by PIAB on 10th June, 2015, that the plaintiff was not entitled to claim in these proceedings for any injuries, either prior, to or subsequent to, August 2012.

50. Having regard to the content of the plaintiff's two application forms submitted to PIAB; and to the content of the medical report furnished by Dr. Maher; and, in particular, having regard to the content of the authorisation dated 10th June, 2015, I am satisfied that on a correct interpretation thereof, the plaintiff is entitled to claim damages in respect of injuries suffered by her on "*various dates from in or about the month of August 2012*".

51. The court holds that on a correct interpretation of the authorisation that issued to the plaintiff, she is entitled to seek damages in respect of personal injury suffered by her due to the alleged deficiencies in the dishwashers at the two premises owned by the second defendant, notwithstanding that those injuries either commenced, or became worse, after August 2012. The word "from" used in the authorisation, makes it clear that the claim dates from that period, rather than being restricted to injuries sustained in that particular month.

52. I hold that the authorisation obtained by the plaintiff, does not entitle her to claim for injuries that became manifest prior to August 2012. As noted, the authorisation clearly states "*from in or about the month of August 2012*"; meaning injuries or symptoms that occurred from that date onwards.

53. Finally, there was a somewhat vague reference in one of the documents filed on behalf of the plaintiff, to her awaiting a response to a request for voluntary discovery, followed by a list of documents that she required. In view of the fact that the court has ruled that the plaintiff's action against the first and third defendants must be struck out; it is preferable, that if the plaintiff wishes to pursue an application for discovery against the second defendant, she should do so by a separate notice of motion, grounded on affidavit, setting out clearly the documents that she requires and the reasons why they are necessary

to her action against the second defendant. Accordingly, she will have to issue a separate motion in that regard if she wishes to obtain an order for discovery against the second defendant.

54. Having regard to the findings of the court as outlined in this judgment, the court would propose to make the following orders: -

- (i) An order striking out the plaintiff's action against the first and third defendants;
- (ii) An order refusing the application on behalf of the second defendant to strike out the action against it.

55. As this judgment is being delivered electronically, the parties will have two weeks within which to furnish brief written submissions in relation to the terms of the final order, and on costs and on any other matters that may arise. Those submissions should be emailed to the registrar.

56. The matter will be put in for mention at 10.30 hours on 21st March, 2023 for the purpose of making final orders.