[2019] IEHC 871

THE HIGH COURT

[2019 No. 115 MCA]

BETWEEN

DARREN PROUDFOOT

PLAINTIFF

AND

MGN LIMITED

DEFENDANT

JUDGMENT of Mr Justice Barr delivered on the 19th day of December, 2019

Introduction

1. This is an application brought by the applicant pursuant to section 11(2)(c)(ii) of the Statute of Limitations 1957 (as inserted by section 38 of the Defamation Act 2009) for a direction that the applicant be permitted to institute defamation proceedings against the defendant, notwithstanding that over one year has passed since the accrual of the cause of action.

2. The applicant's complaint concerns a portion of an article published in the Irish Daily Mirror newspaper on Friday 26th January, 2018, wherein it was stated that in the course of criminal proceedings heard in France, the following was said concerning the applicant, who was on trial before that court: "*The court heard the football coach was a known dealer and was under surveillance in his home country".*

3. The applicant maintains that not only was that statement untrue as to its substance, in that he has never been a drug dealer and was never under surveillance by An Garda Siochána; more particularly, he alleges that he has been defamed by the defendant because the statement reported as having been made in the article, was never in fact made about him in the course of the proceedings before the French court.

4. The applicant accepts that the article was published on 26th January, 2018 and that the first warning letter concerning the article was only sent to the defendant by his current solicitors on 19th March, 2019. That was followed by the issuing of the present notice of motion on 28th March, 2019. The applicant makes a number of submissions why the Court should exercise its discretion to allow him to bring defamation proceedings outside the one-year period and these can be briefly summarised in the following terms: (a) he was imprisoned in France from 17th January, 2018 until 13th August, 2018; (b) he had great difficulty consulting with his former solicitor and only managed to give instructions to him in late October 2018; (c) despite repeated contacts, it was not until the end of January 2019 or early February 2019, that the applicant's former solicitor told him that he could no longer act in the matter; (d) on 14th February, 2019, the applicant instructed his present solicitors and it was then that he learnt for the first time that there was a one-year time limit for the instituting of defamation proceedings; (e) his present solicitors acted promptly in sending the warning letter on 19th March, 2019, and in issuing the notice of motion grounding the present application on 28th March, 2019, and (f) having regard to the fact that the defendant was first notified only eight weeks outside the initial one-year limitation period, it could not be said that they would suffer any appreciable prejudice in defending the action as a result of such a short period of delay.

5. It was submitted that having regard to these factors, the applicant had furnished cogent reasons why he was not able to institute proceedings within the one-year limitation period and having regard to the fact that he would suffer very considerable prejudice to his reputation and good name if he were not able to proceed with the action and having regard to the fact that there was no evidence that the defendant had been caused to suffer any prejudice as a result of the short delay, it was an appropriate case in which the Court should exercise its discretion to allow the applicant to institute proceedings claiming damages for defamation against the defendant.

6. In response, it was submitted on behalf of the defendant that the applicant bore the burden of proof in this application, which meant that he had to do more than merely give an excuse for his delay in attempting to institute proceedings, but had to go further and persuade the Court that there was a good explanation as to why he had not instituted proceedings within the primary limitation period of one year from date of publication of the allegedly defamatory statement. It was submitted that the plaintiff had not gone anywhere near discharging the burden of proof that lay upon him. There was no evidence that he himself, or members of his family, could not have made contact with a solicitor while he was in prison, and tell the solicitor to institute defamation proceedings on his behalf. Even if the Court were to accept that it was not possible for him to take such steps while he was in prison in France, he was obliged to take the necessary steps upon his return to Ireland in the middle of August 2018. It was submitted that while the plaintiff had stated in his affidavit that he had encountered difficulties in consulting his former solicitor, he had stated clearly that he had given him detailed instructions on the matter at the end of October 2018. That was three months prior to the expiry of the one-year limitation period. No excuse had been proffered why the necessary proceedings had not issued within that period.

7. It was submitted that the defendant would suffer considerable prejudice if it were deprived of the opportunity to rely on the primary limitation period. It would face difficulty obtaining the necessary witness evidence from the reporter who had furnished the initial report on the French court proceedings in January 2018. They would also have to locate the witness who had translated the report furnished by the court reporter. The defendant would also be prejudiced in that it would have to undergo the expense of defending the action and in this regard the Court was entitled to have regard to a number of matters: firstly, that the defendant would be entitled to rely on the defence of qualified privilege in respect of its reporting of proceedings before a foreign court or tribunal, and secondly, the Court was entitled to take into account the candid averment by the applicant, that in the event of him losing the case, he would not be in a position to pay the defendant's costs. In these circumstances it was submitted that the Court should refuse the relief sought by the applicant in this application.

Background

8. When considering an application such as this, the background facts which are said to constitute the circumstances which excuse or justify the delay on the part of the applicant in instituting the defamation proceedings, are of considerable importance. In an affidavit

sworn on 20th March, 2019, the applicant set out his version of events. He stated that in January 2018 he was in his apartment in Alicante, Spain. A friend of his asked him to drive him to La Chambre in France. His friend was unable to drive, as he had recently undergone a hip replacement operation. He offered the applicant €500 to bring him to France. The applicant agreed and rented a car for that purpose.

9. The applicant stated that his friend told him that he wished to collect some medication, which the friend planned to bring with him to France. The friend purchased the medication from a pharmacist in Spain. The applicant and his friend then drove to France on 17th January, 2018. They were stopped by French customs officials in Estezagues, France. When the customs officers searched the boot of the applicant's car, they found the medication that his friend had purchased. The friend explained that he had lawfully purchased the medication. The applicant stated that he and his friend were arrested and were both sent for trial at Nimes Criminal Court.

10. The applicant continued his narrative by stating that he pleaded guilty to a charge of possession of dangerous goods for public health (psychotropic drugs) without regular documentary evidence, which was deemed a smuggled import. He was sentenced to a term of imprisonment of 18 months and was fined €35,000, which was reduced to €22,000 on appeal. He stated that the prosecutor had appealed against the initial sentence on the basis that it was unduly lenient, but that appeal was dismissed and the fine was reduced.

11. In his supplemental affidavit sworn on 12th July, 2019, the applicant stated that he first learned of the article in question in or around May 2018, while he was imprisoned in France. His brother had retained a copy of the article and had posted it to him in prison. He stated that he was incensed when he read it. Upon his return to Ireland, he immediately set about trying to arrange an urgent appointment with his solicitor.

12. The steps that were taken by the applicant in the weeks and months after his release from prison on 13th August 2018 and upon his return to Ireland in that month, are highly relevant to this application. It is appropriate to set out the applicant's account in his own words, which was set out at paragraph 12 of his first affidavit as follows:

> *"After I returned to Ireland, I consulted a number of solicitors, whom I asked to institute proceedings on my behalf. I first contacted [Mr. A] upon my return in August 2018, but I could not arrange an urgent appointment. I then consulted with [Mr. B] in September or October 2018. I was, however, unable to discharge his proposed retainer. I then contacted [Mr. A] again later in October 2018. I telephoned [Mr. A] more than a dozen times before he took instructions from me. I gave him detailed instructions in late October 2018. He told me that he would instruct senior and junior counsel and arrange a consultation in the Law Library to discuss my case. I waited patiently for [Mr. A] to arrange this meeting and to issue proceedings on my behalf, but he did not do so. I contacted [Mr. A] on several occasions in December 2018 and in January 2019, before he advised me in late January or in early February 2019 that he was unwilling to act for me."*

(The names of the solicitors have been redacted as they were unrepresented in this application.)

13. The applicant stated that he instructed his present solicitors on 14th February, 2019. He stated that he did not know what the statutory time limit was for defamation actions. The solicitors that he had consulted in 2018 did not advise him that the primary time limit would expire on 25th January, 2019. The applicant's present solicitors informed the defendant of their intention to seek to bring defamation proceedings on behalf of the applicant, by letter dated 19th March, 2019. On 28th March, 2019 they issued the notice of motion grounding the relief sought in this application.

The Relevant Legislation

14. The relevant legislation on this application is section 11(2)(c) of the Statute of Limitations 1957, as inserted by s.38 of the Defamation Act 2009. It is in the following terms:

38 (1) Section 11 of the Act of 1957 is amended—

(a) in subsection (2), by the substitution of the following paragraph for paragraph (c):

"(c) A defamation action within the meaning of the Defamation Act 2009 shall not be brought after the expiration of—

(i) one year, or

(ii) such longer period as the court may direct not exceeding 2 years,

from the date on which the cause of action accrued.",

and

(b) the insertion of the following subsections:

"(3A) The court shall not give a direction under subsection (2)(c)(ii) (inserted by section 38 (1) (a) of the Defamation Act 2009) unless it is satisfied that—

(a) the interests of justice require the giving of the direction,

(b) the prejudice that the plaintiff would suffer if the direction were not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given,

and the court shall, in deciding whether to give such a direction, have regard to the reason for the failure to bring the action within the period specified in subparagraph (i) of the said subsection (2)(c) and the extent to which any evidence relevant to the matter is by virtue of the delay no longer capable of being adduced.

(3B) For the purposes of bringing a defamation action within the meaning of the Defamation Act 2009, the date of accrual of the cause of action shall be the date upon which the defamatory statement is first

published and, where the statement is published through the medium of the internet, the date on which it is first capable of being viewed or listened to through that medium.".

(2) Section 49 of the Act of 1957 is amended by the substitution of the following subsection for subsection (3):

"(3) In the case of defamation actions within the meaning of the Defamation Act 2009, subsection (1) of this section shall have effect as if for the words 'six years' there were substituted the words 'one year or such longer period as the court may direct not exceeding two years'.".

Submissions of the Parties

15. It was submitted on behalf of the applicant that in the circumstances, which had been outlined in his affidavits, he had set out good reason as to why he had not been able to institute his defamation proceedings within the one-year time limit. In the first seven months of that year, from 17th January, 2018, until 13th August, 2018, he had been in prison in France. While it was accepted that he had had some communication with members of his family during his period of incarceration and had learned of the existence of the article when it was sent to him in May 2018, it was submitted that given that he was incarcerated and in a foreign country, it was not realistic or reasonable to expect him to engage the services of a solicitor during that period.

16. It was submitted that on his return to Ireland in August 2018, his initial primary focus had been on trying to get his old job back. He was unsuccessful in that regard due to the defamatory nature of the article that had been published about him the previous January. He also spent considerable time trying to source alternative employment as a football coach, but without success. Even while attempting to look after his financial situation, he had made attempts to contact his solicitor. He had outlined in his affidavit how he was unable to get an urgent appointment with Mr. A in August and how, in making contact with another solicitor, Mr. B, he had been told that that solicitor would only take on his case if he paid him a retainer, which the applicant was unable to do.

17. It was only after numerous attempts that he was eventually able to instruct Mr. A in late October 2018 to act on his behalf. The solicitor had told him that he would proceed to set up a consultation with counsel in the Law Library. It was submitted that the clear evidence of the plaintiff was that he was unaware of the one-year time limit and was not told of that by his former solicitor. In the months that followed the consultation with Mr. A in October 2018, the applicant presumed that his solicitor was taking the appropriate steps to look after his interests in the ordinary way. Even though the applicant had made contact with Mr. A on several occasions in December 2018 and in January 2019, it was not until late in January 2019 or in early February 2019, that Mr. A informed the applicant that he was unwilling to act for him.

18. It was submitted by Mr. Lyons S.C. on behalf of the applicant, that in instructing his present solicitors, he had acted promptly and reasonably to rectify the situation which he found himself in upon the departure of his former solicitor. His present solicitors had

acted promptly in sending the warning letter on 19th March, 2019, followed by the notice of motion for this application on 28th March, 2019. Counsel submitted that in these circumstances, the interests of justice would be served by allowing the applicant's proceedings to be initiated notwithstanding that that would be outside the one-year time limit provided for in the statute. It was submitted that the interests of justice would be properly served by such a course of action due to the fact that the applicant was personally blameless for the delay that had occurred.

19. Counsel accepted that the Court had to have regard to the question of prejudice and in particular the prejudice that the plaintiff would suffer if the direction were not given and whether that would significantly outweigh the prejudice that the defendant would suffer if the direction were given. The statute further provided that in deciding whether to give such a direction the Court should have regard to the reasons given for the failure to bring the action within the initial one-year period and the extent to which any evidence relevant to the matter was, by virtue of the delay, no longer capable of being adduced.

20. Counsel submitted that in this case the period of delay was very short, being in the order of eight weeks. Thus, this was not a case where the plaintiff had delayed to the outer limit of the two-year limitation period, but had acted only marginally outside the primary one-year limitation period. Furthermore, it was submitted that having regard to the circumstances of the case, it could not be said that the defendant had suffered any prejudice as a result of the eight week delay in informing them of the intention to institute proceedings. In particular, in their replying affidavit, the defendant had not pointed to any actual prejudice which it would suffer by having to meet the case at this stage. There was no evidence that any documentary evidence was lost or unavailable to the defendant, nor was there any evidence that any necessary witnesses had died or otherwise become unavailable to them.

21. Counsel submitted that in looking at the issue of prejudice to either of the parties, the Court was entitled to have regard to the fact that this was an alleged defamation of a very serious nature. To say that the person was a "*known dealer*", meaning a drug dealer, and that they had been under surveillance by the police in Ireland, was a very serious allegation to make about a person. While it was not alleged that the defendant had made that statement itself, the defamation lay in the fact that they reported that such a statement had been made in the course of the proceedings before the French court, when that was not the case. It was submitted that by virtue of the making of that defamatory statement, the plaintiff had suffered greatly in his general reputation and had suffered financial consequences in his inability to secure either his old position of employment, or alternative employment as a football coach.

22. Counsel further submitted that while undoubtedly the plaintiff's reputation was damaged by virtue of the fact that he pleaded guilty to an offence before the French court, that did not give a carte blanche to the defendant to make incorrect statements as to what was said about him in the course of those proceedings. The Court was entitled, when considering the issue of the prejudice that may be caused to the plaintiff if he is not

allowed to proceed with the action, to have regard to the fact that in defamation proceedings, the plaintiff would not only obtain an award of damages if he was successful, but he would also, by so doing, obtain a vindication of his good name and reputation. It was indicated that if the applicant was permitted to proceed with the action, he would include in the reliefs claimed, a correction Order and an apology.

23. It was submitted that insofar as it may be argued by the defendant that if it were the case that Mr. A had been responsible for the failure to institute proceedings within the one-year period, thereby losing the plaintiff's cause of action in defamation against the defendant, that that would give rise to an action in negligence by the applicant against his former solicitor; counsel submitted that such an action would not of itself vindicate the plaintiff's reputation or his good name and as such, he would suffer a very real prejudice by not being allowed to institute proceedings for defamation against the present defendant.

24. Finally, it was submitted that while it was true that the defendant would be put to some expense in defending the action, that was something which the defendant would have had to have faced in any event, even if the proceedings have been issued within the one-year period.

25. It was submitted that in all of these circumstances the Court should exercise its discretion to permit the plaintiff to institute the within proceedings against the defendant.

26. In response, Mr. English B.L. stated that both the wording of the statute and the case law on the subject made it clear that it was the applicant who bore the burden of proof in persuading the Court that the one-year time limit, which had been applied by an Act of the Oireachtas should be disapplied. The case law, and in particular the decisions in *Taheny v. Honeyman* [2015] IEHC 883 and *Rooney v. Shell E&P Ireland Ltd* [2017] IEHC 63, made it clear that the Court should conduct a qualitative assessment of the reason offered for the delay and that the mere proffering of the reason is not necessarily sufficient in and of itself.

27. Counsel submitted that where the applicant had accepted that he had contact with his family during his incarceration in prison in France, it was not necessarily axiomatic that he was unable to instruct an Irish solicitor once he became aware of the article in the newspaper in May 2018. Even if the Court held against him on that, there was clear evidence that he had taken steps to instruct a solicitor, upon his return to Ireland in August 2018. He had sworn in his affidavit that by late October 2018 he had given *"detailed instructions*" to his former solicitor, Mr. A, and that solicitor had undertaken to set up a meeting with counsel to discuss the case further. This meant that the applicant had the benefit of legal advice from a time that was at least three months prior to the expiry of the primary limitation period. No credible excuse has been given as to why proceedings had not been issued by Mr. A on behalf of the applicant within that period. All the applicant had stated was that at some undefined date, either at the end of January 2019 or in early February 2019, Mr. A had stated that he was no longer willing to act for the applicant. If these assertions were true, it was submitted that the applicant would

have a cast-iron action in negligence against his former solicitor for failing to protect his interests by issuing the necessary writ and thereby losing for the applicant his chose in action against the defendant.

28. In such circumstances, it was submitted that it would be highly prejudicial to the defendant to enable the applicant to proceed with his action outside the primary limitation period, when he had taken legal advice well within the expiry of that period. If there had been negligence or breach of duty on the part of the applicant's former solicitor, and as a result he had lost a valuable chose in action against the defendant, the plaintiff would suffer no prejudice by virtue of the fact that he could not proceed against the defendant, as he would recover the money by an action in negligence against his former solicitor.

29. On the prejudice issue, counsel submitted that the report on the French court proceedings had been provided by a stringer reporter, who was covering the proceedings before the magistrate on that particular day. It was not known whether the defendant would be able at this remove to locate the stringer reporter, given that such reporters tended to move from place to place. In addition it was not known whether the defendant would be in the position to locate the translator, who translated the report on the proceedings which had been furnished by the stringer reporter.

30. It was submitted that the Court was also entitled to have regard to the fact that prima facie the defendant was entitled to rely on the benefit of the expiry of the one-year limitation period and would be prejudiced by being deprived of that benefit and by having to go to the trouble and expense of defending proceedings which had in fact become statute barred. In addition, there was the very frank averment in the applicant's affidavit that if he were unsuccessful in the action, he would not have the means to pay the defendant’s costs. Furthermore, it was submitted that the Court was entitled to have regard to the fact that the defendant would be in a position to rely on the defence of qualified privilege in respect of its reporting of proceedings before a foreign court or tribunal. Thus, the reality was that for a number of reasons the defendant was likely to be successful in its defence, but would in all probability have to pay its own costs.

31. Counsel submitted that the Court should have regard to the dictum of Barrett J. in *Watson v. Campos* [2016] IEHC 18, that when it comes to bringing a defamation action, a one-year limitation period is standard, more than one year is exceptional. It was submitted that in the circumstances of this case, in particular where the applicant had the benefit of legal advice when he still had three months prior to the expiry of the primary limitation period and where there was no readily discernible obstacle to the institution of proceedings on his behalf, there was no basis on which the interests of justice required the Court to disapply the standard one-year limitation period.

Conclusions

32. The approach which the Court should take on an application such as this was helpfully summarised by Peart J. in *Taheny v. Honeyman & Others* [2015] IEHC 883 at paragraphs 22 and 23 as follows:

"[22] If the plaintiff was not time-barred for the reasons which I have just stated, he would in any event have had to satisfy the Court in relation to his reasons for delaying the commencement of his proceedings beyond one year and until the 10th March 2014. The section provides that the Court shall not give the direction sought under subsection (2) unless, firstly, it is satisfied that it is in the interests of justice to give the direction, and secondly, that the prejudice that the plaintiff will suffer by not giving the direction, will significantly outweigh the prejudice that the defendant would suffer if the direction is given.

[23] That onus is discharged in my view firstly by providing an explanation which excuses the delay so that the Court could be satisfied that the interests of justice are best served by allowing the case to proceed, and by satisfying the Court additionally that the prejudice which the plaintiff will suffer by being refused a direction outweighs the prejudice which the defendants will suffer if the direction is granted. It is insufficient in my view that there is a reason simpliciter for the delay. The Court must consider the quality and justifying nature of the reason or reasons put forward, and also weigh the respective prejudices. These requirements are evident from the words used in section 11, subsection 3A of the Act of 1957."

33. That statement of the law was adopted in the subsequent cases of *Rooney v. Shell* [2017] IEHC 63 and *O'Sullivan v. Irish Examiner Ltd* [2018] IEHC 625.

34. In *Rooney*, Ní Raifeartaigh J. had to consider the situation where the defamatory statement was made on 7th March, 2014; on 5th September, 2014 the applicant made a data access request which was replied to on 15th October, 2014. By 27th January, 2015 the applicant informed the defendant that having taken legal advice in the matter he had instructed his legal team to pursue the matter with due diligence. Thereafter, it appeared that he became unhappy with the speed at which his former solicitor was acting, and on 31st July, 2015 he consulted a new firm of solicitors. The file was transferred to them on 1st September, 2015. A plenary summons was issued on 14th October, 2015, and was served on the defendant on 12th January, 2016. In the course of her judgment, the learned judge stated as follows:

> *"In my view, the relevance of the comments of Peart J. is that a plaintiff who seeks to blame a former solicitor for an error which is relevant to his explanation for delay must do more than make a generalised assertion if he wishes the court to be satisfied of the validity of the complaint against his solicitor"*

35. The learned judge went on to state that the case law made it clear that the onus was on the plaintiff to explain the delay and that the evidence offered in support of the explanation must reach an appropriate level of detail and cogency. Later in the judgment at paragraph 28, she stated that it was correct to say that the potential availability of a remedy against his former solicitor on the part of the plaintiff was relevant to the Court's discretion. It was also relevant in that regard that the only relief sought in the defamation proceedings which the plaintiff sought to bring was the remedy of compensation. In that case the judge held that taking all of the relevant factors into account, she would not

exercise her discretion to make an Order permitting the plaintiff to institute the proceedings outside the one-year limitation period.

36. In *Watson v. Campos* [2016] IEHC 18, Barrett J. had to consider the situation where the plaintiff was aware of the allegedly defamatory article which had been printed in the newspaper and had consulted with her solicitor well within the primary limitation period. However, the solicitor had delayed in issuing the proceedings beyond the primary limitation period due to an alleged difficulty on his part in ascertaining the identity of the editor of the newspaper. The judge held that that was somewhat of a "*red herring*", and was not an adequate reason justifying the delay in the institution of the proceedings. In the course of his judgment, the judge gave some examples of the types of reasons that might justify a delay in instituting proceedings beyond the primary limitation period. He stated as follows at paragraph 26 of the judgment:

> *"What is the prejudice that Ms Watson will suffer if the direction is not given? She will not be able to bring a defamation action that, with the benefit of legal advice, she was ready to commence within the standard one-year limitation period and, for no identified reason, did not. What is the prejudice that MGN will suffer if the direction is given? It will be required to defend a defamation action that was eminently capable of being commenced within the one-year limitation period and, for no identified reason, was not. Even on this analysis, there is no good reason presenting – and none has been presented by Ms Watson – as to why MGN should suffer for Ms Watson's unexplained inaction. This is not a case, for example, where Ms Watson was prevented by want of legal advice from bringing her proceedings in a timely manner. Nor, for example, has she suffered from a bout of serious ill-health, or some other such factor that prevented her from learning of the alleged defamation and/or bringing her action in a timely manner. Though it is not stated in the statute, the court considers that it is these types of factor – incidents where delay is either blameless or where delay ought because of some mitigating reason to be excused – that would justify the issuance of a direction under s.11(2)(c)(ii) of the Act of 1957. No such factor or incident presents here. Thus the court considers that the balance of prejudice that Ms Watson would suffer if the direction is not given does not ' significantly outweigh' (indeed the court considers it is significantly less than) the prejudice that MGN would suffer if the direction were now given.*

37. Turning to the circumstances in this case, the Court is of the view that the applicant was probably not in a position to instruct any solicitor in relation to his proposed defamation proceedings while he was incarcerated in the prison in France between 17th January, 2018 and 13th August, 2018. Indeed, on his own account, he only became aware of the article in or about May 2018. However, he had arrived back in Ireland by the middle of August 2018. While undoubtedly, much of his time and effort would have been spent trying to source employment, either in the form of his old job, or in the form of another position of employment, this did not mean that he was incapable of instructing a solicitor. Indeed, the applicant has stated that he did in fact make attempts to contact Mr. A in August 2018, but was not able to obtain an urgent appointment.

38. He states that in September or October 2018, he was unable to obtain the services of another solicitor, Mr. B, due to the fact that that solicitor required payment of a retainer fee before he would act for the applicant. It may well have taken a large number of telephone calls for the applicant to make contact again with Mr. A, but he states that he did so in late October 2018. At that time he gave Mr. A "*detailed instructions*". The solicitor told him that he would instruct senior and junior counsel in the matter and would arrange a consultation with them at the Law Library. Thus, it is clear that Mr. A accepted instructions to act for the applicant as from the end of October 2018.

39. According to the applicant, nothing further happened in the weeks and months thereafter. In his affidavit sworn on 20th March, 2019 the applicant states that he *"contacted Mr. A on several occasions in December 2018 and in January 2019, before he advised me in late January or in early February 2019 that he was unwilling to act for me"*. Thus, it would appear that the applicant did in fact have some contact with the solicitor on a number of occasions during December 2018 and January 2019, prior to being informed that the solicitor was no longer willing to act for him.

40. The applicant has stated that he was not aware of the one-year primary limitation period until he was informed of it by his present solicitors, whom he instructed on 14th February, 2019. That does not mean that the applicant is entitled to the relief sought in this application. Where a person instructs a solicitor, they are deemed to know the relevant limitation period, because the solicitor, who becomes their agent, is clearly aware of the relevant limitation period. It seems to me that where a person consults with a solicitor within the one-year period in relation to an allegedly defamatory statement, where the making of the statement is clear because it is in written form; the date of publication of this statement is clear because it is stated at the top of the page of the newspaper, and the identity of the defendant is clear because, even if the name of the reporter is not given, the publisher of the newspaper is well known or easily ascertainable. In such circumstances, it seems to me that a person cannot plead the negligence of their own solicitor in failing to issue proceedings within time, as a means of defeating the primary limitation period.

41. That is not to say that in all cases where a person consults with a solicitor within the one-year period they must always manage to issue proceedings within that period. There may be occasions where either the date of the making of the statement, or the identity of the person who made or published the statement, may not be readily ascertainable. An example of such circumstances would be where defamatory emails are sent from a fictitious email address, or where a posting is made on a website under a pseudonym. In such circumstances the solicitor may have to take considerable legal steps, for example in the form of seeking a Norwich Pharmacal Order in order to ascertain the identity of the maker of the statement. An example of such a case arose in *Ryanair v. Besancon* [2019] IEHC 744 where the plaintiff had to seek such Orders from the courts in Canada in order to ascertain the true identity of the defendant, who had made an allegedly defamatory post about the plaintiff on a website called The Professional Pilots Rumour Network under the pseudonym "*Enjoy the View".*

42. However, where a person instructs his solicitor in relation to a defamatory statement where the making of the statement, the identity of the maker of the statement or publisher, and the date on which it was made, are easily ascertainable, and such instructions are given well within the one-year limitation period, it seems to me that the client cannot deprive the defendant of the benefit of the limitation period by pleading the negligence of their solicitor in failing to issue proceedings within the appropriate period. In this case, when the applicant gave his "*detailed instructions*" to Mr. A in October 2018, there was still three months within which to issue the necessary proceedings. The applicant cannot rely on the inaction of his solicitor in this regard to defeat the entitlement of the defendant to rely on the primary limitation period.

43. I am satisfied that were the Court to allow the applicant to defeat the defendant's entitlement to rely on the limitation period on this basis, this would not be acting in the interests of justice. There is no good reason why the alleged inaction on the part of Mr. A should deprive the defendant of a legitimate litigious advantage, which it has gained due to the fact that the primary limitation period was allowed to expire.

44. Support for this proposition is to be found in the judgment of the English House of Lords in *Horton v Sadler* [2006] UKHL 27, where Carswell L.J. stated:

> *"In Das v. Ganju [1999] Lloyd's Rep Med 198 at 204 and Corbin v. Penfold Metallising Co Ltd [2000] Lloyd's Rep Med 247 at 251 the Court of Appeal expressed the view that there was no rule that the claimant must suffer for his solicitor's default. If this is interpreted, as it was in Corbin, as meaning that the court is not entitled to take into account against a party the failings of his solicitors who let the action go out of time, that could not in my view be sustained and the criticism voiced in the notes to the reports of Das and Corbin would be justified. The claimant must bear responsibility, as against the defendant, for delays which have occurred, whether caused by his own default or that of his solicitors and in numerous cases that has been accepted: see e.g. Firman v. Ellis [1978] QB 886, Thompson v. Brown [1981] 1 WLR 744 and Donovan v. Gwentoys Ltd [1990] 1 WLR 472."*

45. When a client retains the services of a solicitor, the solicitor becomes the agent of the client. It would be an astonishing proposition that when that client sues a defendant, he could plead the negligent inaction of his own agent as an answer to the defendant's assertion that the action against him is statute barred. To enable that to happen would run completely contrary to well established principles of the law of agency. The Court is satisfied that the discretion given to it under section 11(2)(c) of the 1957 Act, was not for the purpose of affecting such a fundamental change in the law, but was designed to cater for circumstances such as those adverted to by Barrett J. in *Watson v. Campos* and for the circumstances that could be encountered with defamatory statements on the Internet, as outlined earlier in this judgement. Accordingly, for this reason, the Court is of the view that the interests of justice are not in favour of permitting the plaintiff to institute defamation proceedings at this stage against the defendant.

45. If the Court had to consider the issue of prejudice, the Court would not be satisfied that the prejudice the plaintiff would suffer if the direction were not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given, as required by the statute. This is due to the fact that if the plaintiff's assertions in relation to the failure to act on the part of Mr. A are correct, then he will have a good action in negligence against his former solicitor. He will be entitled to recover in that action compensation for loss of the chose in action against the defendant, which will be measured at the value of damages which he would likely have obtained if the defamation action had proceeded. In these circumstances, while the route will be somewhat more complex in a legal sense, he will be compensated for the damages that he would have received, had his defamation action been successful. In such circumstances it cannot be said that the prejudice to the applicant in not allowing the defamation proceedings to continue would "*significantly outweigh*" the prejudice to the defendant if the direction were given.

46. I therefore refuse the plaintiff’s application herein.