

THE HIGH COURT

[2021] IEHC 854

[2019 No. 3724 P]

BETWEEN:

KRISTINA KANDAUROVA

PLAINTIFF

– AND –

CIRCLE K ENERGY GROUP LIMITED

DEFENDANT

JUDGMENT of Mr Justice Max Barrett delivered on 21st December, 2021.

1. Ms Kandaurova claims that on or about 26th August 2016, while she was attending at one of the defendant's premises she was caused and/or permitted to trip and fall over a protruding kerb in a vehicle forecourt. She claims that she suffered severe personal injuries, *etc.* Following on the incident, Ms Kandaurova received an authorisation under s.14 of the Personal Injuries Assessment Board Acts against the defendant, further to which a personal injury summons was issued and filed on 10th May 2019. The defendant then entered an appearance on 10th May 2019. The personal injury summons was drafted by Ms Kandaurova's husband, an architect, and is deficient in a number of respects.

2. Following the issuance and filing of the personal injury summons, Ms Kandaurova retained Barry Lyons Solicitors. Consequent upon that retainer the within application was

brought, under O.28, r.1 RSC, seeking liberty to amend the indorsement of claim in the personal injury summons. In this regard, Mr Lyons has averred as follows in his affidavit evidence:

- “7. *I say and believe that the said originating Personal Injury Summons and Indorsement of Claim, while broadly reflecting the claim herein, does so more from the perspective of architect/inspecting engineer than a legal representative and accordingly requires amendment to more accurately reflect the issues and real questions in controversy between the Plaintiff and Defendant....*
8. *I further say and believe that the amendment sought raises no additional issues within the proceedings and serves to simplify the form of the Plaintiff’s claim while removing extraneous or irrelevant pleadings from the original Indorsement of Claim. Accordingly, I say and believe that the said amendment will not give rise to any prejudice to the Defendant herein.”*

3. The principle that informs amendment applications brought under O.28 is that the interests of justice are best served if the real issues in controversy between the parties are before the court. (There is also a natural reluctance on the part of the courts to abridge the constitutional right of a party to litigate and to exclude her from making the case she wants to make). An end-consequence of the foregoing is that a party will generally be allowed to amend her pleadings, provided irreparable prejudice is not thereby done to the opposing party – though it is important to recall in this regard the observation of Lord Keith of Kinkel in *Ketteman v. Hansel Properties Ltd* [1987] A.C. 189, as approved by Murray J. in *Aer Rianta v. Walsh Western International Ltd* [1997] 2 I.L.R.M. 45, that:

“The sort of injury which is here in contemplation is something which places the other party in a worse position from the point of view of presentation of his case than he would have been in if his opponent had pleaded the subject-matter of the proposed amendment at the proper time....It is not relevant type of prejudice that allowance of the amendment will or may deprive him of a success which he would achieve if the amendment were not to be allowed”.

4. There is simply no type of injury of the type posited by Lord Keith of Kinkel presenting here. The sole prejudice that could conceivably arise is that type of prejudice which Lord Keith of Kinkel dismisses as “*not relevant type of prejudice*”. The court will, therefore, make the order of the type sought in item 1 of Ms Kandaurova’s notice of motion.

5. Separately, Circle K has issued a notice of motion seeking one or more of an order: (i) pursuant to s.10(3)(a)(ii) of the Civil Liability and Courts Act 2004 dismissing Ms Kandaurova’s claim, (ii) pursuant to s.10(3)(a)(i) of the Act of 2004 staying these proceedings until such time as Ms Kandaurova complies with s.10(2) of that Act, and (iii) pursuant to O.19, r.28 RSC and/or pursuant to the inherent jurisdiction of the court striking out the proceedings on the grounds that they are frivolous and vexatious and/or bound to fail and/or for want of prosecution. Circle K’s application was brought by reference to the pleadings as they were, not as they now will be following on the amendments that will be permitted by the court. There is simply no basis for making any of the orders sought by Circle K when one has regard to the amended pleadings or the conduct of the proceedings.