

**THE HIGH COURT**

[2022] IEHC 580

**[2017/11072 P]**

**BETWEEN**

**OLAYINKA JOHNSON**

**APPLICANT**

**AND**

**DUNNES STORES PLC**

**RESPONDENT**

**JUDGMENT of Ms. Justice Bolger delivered on the 18th day of October, 2022**

1. This is the defendant's application to strike out the plaintiff's proceedings as statute barred by way of a trial of a preliminary issue. The parties agree that this involves matters of fact and of law in relation to which the court heard evidence and submissions.
2. For the reasons set out below I am allowing the application and am striking out the proceedings as statute barred.

**Proceedings**

3. The plaintiff's personal injury summons pleads that the plaintiff was subjected to bullying and harassment in the course of her employment with the defendant, as a result of which she sustained personal injuries, loss and damage. The plaintiff claimed to have suffered significant health problems including sleep disturbance and stress for which she first attended her GP on 21 May 2014. The parties agree that the date of accrual of the plaintiff's cause of action is 21 May 2014.
4. The PIAB application was lodged on 21 March 2017 which was some ten months outside the two-year time limit. In reply to the defendant's plea that the proceedings are therefore statute barred, the plaintiff pleads that her proceedings were lodged within two years of her date of knowledge and in the alternative, pleads that she was under a disability throughout that time and is therefore entitled to an extension of time as provided for by the Statute of Limitations as amended.
5. The parties agreed that the plaintiff must satisfy the court that she was under a disability from 14 May 2014 in order for the proceedings to be within time, which requires an assessment of the medical evidence.

**The medical evidence**

6. The court heard the evidence of the plaintiff's GP Dr. Mullins. No medical evidence was proffered by the defendant. The plaintiff attended Dr. Mullins for the first time in relation to her injuries the subject matter of these proceedings on 21 May 2014, the day after she

left work for the last time. Dr. Mullins found the plaintiff to be extremely upset, tearful and distraught and certified her as unfit for work due to work related stress. Dr. Mullins continued to certify her as unfit due to work related stress over the following months. There were a number of attendances where Dr. Mullins noted an improvement, but on 6 August 2014 the plaintiff attended for review and Dr. Mullins diagnosed mild to moderate reactive depression secondary to work related stress. At that time the plaintiff was on a waiting list for counselling. Dr. Mullins discussed anti-depressant medication but the plaintiff was reluctant to take it and Dr. Mullins supported her decision. The possibility of medication was also raised by the plaintiff's counsellor in October 2014.

7. In her evidence Dr. Mullins emphasised the fluctuating nature of the plaintiff's mood from May 2014, which Dr. Mullins believed affected her executive functioning including her ability to work and possibly her ability to bring proceedings.
8. During this period the plaintiff attended with Citizens Advice and FLAC (Free Legal Advice Centre) and also signed a letter of complaint addressed to the defendant dated 11 June 2014. She also signed an LRC claim form dated 20 November 2014. All of those tasks were achieved with the considerable assistance of the plaintiff's husband who was very supportive to the plaintiff throughout her illness.
9. The plaintiff was admitted involuntarily to hospital as an inpatient under psychiatric care in May 2016 and was diagnosed with delusional disorder. Dr. Mullins was of the view that from in or around October 2015 "something was not right" and she seemed to date the onset of the plaintiff's psychosis to that time. During the earlier period of May 2014 to October 2015 Dr. Mullins described the plaintiff as following an atypical course to most people suffering from work related stress in that she was very up and down. There was never a period of time that Dr. Mullins could say the plaintiff had sustained improvement.

#### **Submissions of the plaintiff and the defendant on the medical evidence**

10. Counsel for the plaintiff laid heavy emphasis on Dr. Mullin's evidence of the plaintiff's lack of executive function and the absence of any medical evidence from the defendant to contradict Dr. Mullin's views. Counsel for the defendant contended that whether the plaintiff has capacity to instruct a solicitor during the period May 2014 (when she was first diagnosed with work related stress) to October 2015 (when her GP noted what seemed retrospectively to have been the onset of psychosis) is an evidential issue. They argued that Dr. Mullin's conclusions on the plaintiff's executive function during that time were inconsistent with the evidence of what the plaintiff was able to do including driving, banking, arranging her social welfare and attending Citizens Advice and FLAC for advice including meeting with representatives of those organisations on her own. Counsel also emphasised the plaintiff's ability to recount the details of her experience at work to her husband who used them to draft the letter of complaint and the complaint to the LRC, both of which were signed by the plaintiff.

#### **Date of knowledge and disability**

11. Sections 2(1) and 2(2) of the Statute of Limitation (Amendment) Act 1991:

"2.—(1) For the purposes of any provision of this Act whereby the time within which an action in respect of an injury may be brought depends on a person's date of knowledge (whether he is the person injured or a personal representative or dependant of the person injured) references to that person's date of knowledge are references to the date on which he first had knowledge of the following facts:

- (a) that the person alleged to have been injured had been injured,
  - (b) that the injury in question was significant,
  - (c) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty,
  - (d) the identity of the defendant, and
  - (e) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;
- and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(2) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him, or
- (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek".

Section 49 (1) (a) of the Statute of Limitations 1957:

"49.—(1) (a) If, on the date when any right of action accrued for which a period of limitation is fixed by this Act, the person to whom it accrued was under a disability, the action may, subject to the subsequent provisions of this section, be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired".

12. The defendant claims that the plaintiff's date of knowledge was 21 May 2014 when she attended her GP complaining of stress and harassment at work over the previous year. The plaintiff's evidence was that she told her GP that she had reported her concern to her HR manager and that she had contacted Citizens Advice online that same day, and was planning to go there directly after the surgery visit. The defendant argued that this evidence satisfied the requirement of s. 2 (1) in establishing the plaintiff's date of knowledge as the 21 May 2014.
13. The plaintiff argued that her date of knowledge did not accrue at that time as she was under a disability that caused her to be unaware of the significance of her injury, which continued until after she had recovered from her psychosis in 2017. Counsel for the plaintiff described an "overlap" between the date of knowledge point and the establishment of a disability. Counsel for the defendant argued that the date of knowledge and the onset of the plaintiff's disability were separate issues that had to be

determined on the evidence. Counsel argued that if the court found on the evidence that the plaintiff's date of knowledge was, as the defendant contended, the 21 May 2014 being the date on which she attended her GP, that the court could not then find that she was under a disability at that time. In effect the defendant's argument is that if the plaintiff was capable of understanding that a cause of action had accrued, that meant she had a mental capacity inconsistent with the concept of "unsound mind" in s. 49 and that she was capable at that time of instructing a solicitor.

**Decision on the date of knowledge**

14. Finding that the plaintiff's date of knowledge occurred during the two-year period immediately following the accrual of their cause of action does not in itself preclude a finding that the plaintiff was under a disability such that the time for instituting proceedings should be extended. It is ultimately a matter of evidence. It is possible that evidence could support a finding that a plaintiff's state of knowledge was acquired at a time they were under a disability. A plaintiff might satisfy the requirement in s. 2 (1) in terms of knowing they had suffered a significant injury etc. but could still have been incapable of instructing a solicitor to bring proceedings against the alleged perpetrator of that injury due to a disability. I find support for that in the wording of s. 5 (1) of the Statute of Limitations (Amendment) Act, 1991:

"5.—(1) Notwithstanding anything in section 49 (1) (a) of the Principal Act, if, in the case of—

(a) an action of the kind to which section 3 of this Act applies, or

(b) an action under section 48 (1) of the Civil Liability Act, 1961 (being an action where death is caused by wrongful act, neglect or default),

the person having the right to bring the action was under a disability either at the time when that right accrued to him or at the date of his knowledge, the action may be brought at any time before the expiration of three years from the date when he ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period specified in the said section 3 has expired, but section 49 (1) (c) of the Principal Act shall apply accordingly".

15. The wording of the subsection clearly envisages the possibility of a person having been under a disability (such as to allow the time for bringing proceedings to be extended) either when the cause of action accrued "or at the date of his knowledge".
16. The plaintiff's position on her actual date of knowledge is unclear, other than to contend that it did not occur until after she had ceased to be under a disability. For the same reasons that I cite above, I do not think her date of knowledge is necessarily automatically tied to the onset of her disability, even though on the evidence it is possible that this could be found to have occurred.
17. The Plaintiff attended her GP on 21 May 2014, and gave her GP a detailed account of what had happened to her, why she claimed to have been subject to bullying and harassment, by whom she claimed to have been bullied, the effect it had had on her, and

outlined her attempts to address it with her HR manager. Whilst the plaintiff gave evidence about how upset she was on this occasion, she also confirmed her recollection that Dr. Mullins had explained to her that her symptoms all related to her work. This account is consistent with Dr. Mullin's diagnosis at that time of work related stress i.e. that there was no alternative explanation or causation for her stress. The Plaintiff was therefore aware that she had sustained an injury which her doctor attributed to her treatment at work and not to anything else. The Plaintiff was also able to give her GP an account of her treatment which she claimed constituted bullying and harassment, was able to set out how she had attempted to address it, and explained how it had impacted on her.

18. On the evidence in this case, regardless of whether the plaintiff was under a disability from May 2014 onwards or not, I am satisfied that the plaintiff's date of knowledge was on the 21 May 2014 when she attended her GP.

**Finding on disability**

19. The parties agree that to avail of the extension of time by virtue of being under a disability pursuant to s. 48, that the plaintiff must have been under that disability at the time the cause of action accrued (as per Barron J. in *Rohan v. Bord Na Mona* [1992] IR 425).
20. "Unsound mind" is not defined in the legislation other than in s. 48 (2) which provides as follows:  
  
"(2) For the purposes of subsection (1) of this section but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is detained in pursuance of any enactment authorising the detention of persons of unsound mind or criminal lunatics".
21. In accordance with subs. 2 the plaintiff was conclusively under a disability during the time she was involuntarily detained in hospital in May 2016. Dr. Mullins report identifies the onset of the plaintiff's psychotic illness from approximately May 2015 but in her evidence she identified October 2014 as a point in time when she felt that things were not right for the plaintiff. Insofar as it might be relevant, I am satisfied that the evidence establishes that the plaintiff was under a disability arising from a psychotic illness from October 2014 even though her illness was not formally diagnosed until May 2016.
22. However, that does not get the plaintiff over the line in relation to the Statute of Limitations as she must satisfy the court she was under a disability from May 2014. Dr. Mullins has given her medical opinion that the plaintiff did not have the mental capacity to bring her claim from when she was first diagnosed with work related stress on 21 May 2014. Dr. Mullins described the fluctuating nature of the plaintiff's presentation and mood and opined that whilst the plaintiff was able to attend to some aspects of her daily living during this time including looking after her family, banking, driving and arranging her social welfare entitlement, that her executive functioning was such that she was unable to instruct a solicitor.

23. It is a matter of evidence for this court to determine to what the plaintiff was or was not able to do at the relevant time. Some contemporaneous support for Dr. Mullin's evidence to this court in relation to the plaintiff's abilities from May 2014 can be found in Dr. Mullin's letter of September 2014 to the defendant's occupational health doctor in which she refers to the plaintiff's distress in having to engage in a meeting with the defendant. Nevertheless Dr. Mullin's later suggestion in her medical report of an inability to instruct a solicitor during this time is inconsistent with other steps taken by the plaintiff including attending meetings with Citizens Advice on her own and attending at least one meeting with FLAC. The plaintiff acknowledges attending those meetings but had no memory of what took place. The plaintiff was brought to those meetings by her husband who was very supportive of her during that time. Mr. Johnson confirmed that the plaintiff attended at least one meeting with Citizens Advice on her own. Mr. Johnson claimed to have no memory of whether he attended the FLAC meeting with the plaintiff. No evidence was put before the court as to what advice, if any, was given to the plaintiff by FLAC. I do not suggest that such advice would not be privileged but insofar as the plaintiff makes the case that she was unable to instruct her solicitors during this time, the court notes at least one attendance with legal advisors during the relevant period.
24. The court also notes a detailed complaint was lodged with the LRC in November 2014. The plaintiff's evidence was that this form was filled out by her husband and Mr. Johnson confirmed that and said he had done so on the basis of the plaintiff's account of what happened to her. Therefore, the evidence confirmed that the plaintiff was capable, during the relevant times, of setting out a detailed account of her experiences (from which her husband filled out the form) and signing the form on which those were set out.
25. Dr. Mullins gave evidence of her diagnosis of the plaintiff initially in May 2014 of work related stress and subsequently in August 2014 of mild to moderate depression. She confirmed she had discussed anti-depression medication with the plaintiff in August 2014 which the plaintiff declined. It is clear that following on their discussions, Dr. Mullins was willing to support the plaintiff's decision to decline anti-depression medication and was willing to confine the plaintiff's treatment to counselling and time off work. The evidence did not suggest any lack of understanding by the plaintiff of her diagnosis and Dr. Mullins did not express any concern about the plaintiff's ability to make her own decisions about her treatment.
26. Dr. Mullins described the plaintiff's progress from her initial diagnosis of work related stress as atypical, different to most people and not following the usual pattern whereby a person improves on being taken out of the stressful work situation. Dr. Mullins emphasised that most people with a diagnosis of stress do not develop psychosis.
27. The plaintiff was able to engage with Citizens Advice alone. She also engaged with FLAC. The plaintiff's husband could not recall if he attended with her during the meeting with FLAC but had he been the person primarily engaging with those legal advisers, I think he would have retained a clearer recollection of doing so and of whatever steps he had

arranged for his wife to take on the basis of any advice furnished to him or to his wife in his presence.

28. The plaintiff was also able to recount a narrative of her experiences to her husband, based on which he completed a detailed letter of complaint to the defendant and a complaint form to the LRC. I am therefore satisfied that the plaintiff was capable of managing her affairs in relation to her experience of work as a reasonable person would do during that time.
29. The plaintiff and defendant both rely on the decisions of this court cited by Canny in 'Limitation of Action' (2nd ed., 2016) at para. 6.11 namely the UK decisions of *Kirby v. Leather* [1965] 2 Q.B. 367, *Maga v. Trustees of the Birmingham Archdiocese* [2010] EWCA Civ. 265; 2010 1 W.L.R. 1441 and the Irish decision of this Court in *Presho v. Doohan* [2009] IEHC 631. In each decision in which the plaintiff was found to have been a person of unsound mind, the condition diagnosed was a specific one, for example mild mental handicap (*Rohan*), low I.Q. and epilepsy, (*Maga*) and a bipolar mood disorder (*Presho*). Those conditions were all, to some extent, comparable to the actual and evolving psychosis from which the plaintiff was suffering from October 2015 to May 2016 and I believe the plaintiff was of unsound mind in accordance with s. 49 during that period. However, during the earlier period from May 2014 to October 2015 she was not, albeit that she was suffering from work related stress and mild to moderate depressive episodes. I consider her condition during this period to have been more comparable to that suffered by the plaintiff in *Morley v. Hunt & Co.* [2005] All ER 41. I note in that case that the court found the plaintiff's ability to instruct a solicitor during the relevant time to have been relevant in determining that he had not demonstrated an inability to manage his own affairs.
30. I am satisfied that the plaintiff was experiencing significant stress from May 2014 and was diagnosed as suffering from mild to moderate depression from August 2014 for which she was treated with counselling and time off work. However, this level of illness falls short of the type of condition that the courts have previously found to have satisfied the concept of "unsound mind" in s. 48.
31. It follows that I am not going to allow the plaintiff the extension of time that she seeks by reference to her claim that she was under a disability throughout the entirety of the two-year period from her date of knowledge on 21 May 2014.
32. I will strike out the proceedings as statute barred pursuant to the Statute of Limitations Act, 1991 as amended.

**Indicative view on costs**

33. In accordance with the provisions of s. 167 of the Legal Services Regulatory Act, 2015 my indicative view on costs is that costs should follow the cause and that the defendant is therefore entitled to the costs both of this motion and of the proceedings. I will list the matter for mention before me at 10:30a.m. on 1 November to allow the parties to make

such further submissions as they may wish to make in relation to costs and any final orders to be made.