

# Supreme Court Considers Service out of the Jurisdiction and “Special Circumstances” Test for Renewal of PI Summonses

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The Supreme Court, in *Power v CJSI Indigo Tajikistan & ors [2025] IESC 55*, considered the test for the renewal of a summons and also, certain court rule requirements for plaintiffs in terms of obtaining leave to serve out of the jurisdiction.

## Background

The plaintiff was employed as chief financial officer of the first and/or second defendant company, corporate entities based in Tajikistan and Sweden respectively. The third defendant is a Swiss public limited company, which the plaintiff contends had fiduciary duties in respect of the first defendant.

The plaintiff brought two separate sets of proceedings against the defendants, including personal injury proceedings commenced by a personal injuries summons (**PI Summonses**) issued in July 2019.

## Governing Provisions on Renewal

Order 8 Rule 1 Rules of the Superior Courts (**RSC**) deals with the expiry of a summons prior to service. It states that no summons shall be in force for more than 12 months. However, a plaintiff may apply to the Master for renewal prior to the expiration of 12 months or to the High Court to extend time for leave to renew if the 12-month period has elapsed. The High Court can order renewal if satisfied that there are “*special circumstances which justify an extension*”.

## Special Circumstances

The Supreme Court largely agreed with earlier Court of Appeal pronouncements<sup>1</sup> on what constitutes ‘*special circumstances*’ in this context, including;

- Whether special circumstances arise must be decided on the facts of a particular case;
- It is a higher test than that of ‘good reason’;

- The word ‘special’ does not raise the bar to ‘extraordinary’ but it nonetheless suggests that some fact or circumstance that is beyond the ordinary or the usual needs to be present;
- The court should consider whether it is in the interests of justice to renew the summons. This involves considering any general or specific prejudice or hardship alleged by a defendant and balancing that against the prejudice or the hardship that may result for a plaintiff if renewal is refused; and
- The jurisdiction to grant leave to renew is discretionary.

The Supreme Court opined that the test is a single overall assessment, namely whether the special circumstances justify an extension, having regard to all other background factors such as the interests of justice, prejudice to either party and the balance of hardship.

On whether inadvertence on the part of a plaintiff’s solicitor, for example, by failing to effect service of a summons, can ever amount to ‘special circumstances’, the Supreme Court noted it is very fact dependent but it would take something exceptional or extraordinary to amount to same.

## Service outside the Jurisdiction

Order 11A RSC deals with service to defendants domiciled outside Ireland in countries in the EU or party to the Lugano Convention. Rule 4(1) of Order 11A sets out the procedure to follow when serving co-defendants when not all are domiciled in the EU or a contracting state of the Lugano Convention. This includes, in certain circumstances, the requirement to obtain leave from the High Court to serve. The Court of Appeal, following an appeal brought by the second and third defendants, had held that the plaintiff’s failure to obtain such leave was a ‘*knockout blow*’ against obtaining renewal.

1. Murphy v HSE [2021] IECA 3, Nolan v. Board of Management of St. Mary’s Diocesan School [2022] IECA 10 & Kearns v. Evenson [2023] IECA 297

The Supreme Court considered whether Order 11A Rule 4(1) RSC should be interpreted as requiring leave to be obtained for service on all defendants, as the Court of Appeal found, or just those defendants that are not domiciled in an EU Member State or in a contracting state of the Lugano Convention. It concluded that the latter interpretation was correct, noting the wording of the rule required leave for service for “such” co-defendants, i.e. not each and every co-defendant in general. Further, the court held that even if it was wrong on this, and the text is ambiguous, the court should seek to discern the intended object of the rule, which in its view, was that the Order 11 requirement for leave applies to each and every co-defendant not domiciled in the EU or a contracting state of the Lugano Convention.

The Supreme Court held that the Court of Appeal erred in treating this requirement for leave as applicable in respect of the second and third defendants (domiciled in Sweden and Switzerland). It therefore had to consider if the PI Summons should be renewed in respect of these defendants, given that the “knockout blow” was now absent.

## Outcome of the Appeal

The Supreme Court found that the PI Summons should be renewed in respect of the Swedish second named defendant. The Swedish receiving agency, who was obliged to effect

service within one month of receipt (or inform of any delay), did not do so until after the PI Summons had expired. The plaintiff had no control over this and his solicitor was unaware of the delay. The Supreme Court found this amounted to special circumstances that *prima facie* could justify renewal of the PI Summons as they were circumstances beyond the ordinary or the usual. It went on to find that in these circumstances, it would be entirely contrary to the interests of justice to set aside the order for renewal of the PI Summons, as the claim would otherwise likely be statute barred.

However, the Supreme Court held that special circumstances did not exist in respect of the Swiss third defendant. No steps were taken to serve the PI Summons on the third defendant in Switzerland pursuant to the Hague Convention prior to the expiry of that summons in July 2020. While difficulties were experienced with service after this, special circumstances which *prima facie* could justify renewal of a summons must normally be circumstances which arise in the period of twelve months during which the summons was in force.

## Key Takeaways

The case provides useful direction on both renewal and service issues, while maintaining the fact-specific nature of the court’s approach.



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