



August 2019

High Court: Impact of delay in prosecuting professional negligence claims on professional indemnity insurance highlighted

Maxwell v Lysaght p/a Francis J. O'Mahony & Co. & Ors [2019] IEHC 551 (17 July 2019)

The High Court dismissed a plaintiff's action for professional negligence against two separate law firms on the grounds of inordinate and inexcusable delay. In his judgment, Barrett J. observed that “[t]here is an obligation on a plaintiff who is pursuing a claim that will involve consideration of events of no little antiquity to progress with at least some expedition.”

Background

Mr. Maxwell first approached the first named defendant in relation to a personal injuries claim following a ‘trip and fall’ incident in 2001. He claims to have been badly served by the first named defendant. He then approached the second to fifth named defendants. A dispute arose, *inter alia*, in relation to whether the second to fifth named defendants were instructed to act for him. Professional negligence proceedings were then issued in October 2013 against both law firms. Pleadings were exchanged between the parties up until 2015 and the last letter from Mr. Maxwell's solicitor was received by the defendants in July 2016. The motion to strike out the proceedings on grounds of inordinate and inexcusable delay was issued in October 2018.

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Legal Principles

Barrett J. considered that “*as good a summary as any*” of the applicable legal principles was set out in the judgment handed down by the Court of Appeal in *Farrell v Aborlone Ltd & Ors [2016] IECA 224*. This decision fleshes out the matters that an applicant for dismissal must establish: (i) the delay was inordinate; (ii) the delay was inexcusable; and (iii) the balance of justice favours the dismissal of the claim.

The court also approved the dicta of Clarke J., as he then was, in *Greene & Anor v Triangle Developments Ltd & Anor [2008] IEHC 52*, in which the judge considered that it was inappropriate to issue proceedings alleging professional negligence unless the claim was supported by sufficient expert opinion. While that decision concerned an allegation of medical negligence, Barrett J. stated that the principle applies equally to the legal profession, as solicitors also have a professional reputation which forms part of their “*stock-in-trade*”.

Conclusions

Having concluded that the period of delay following the commencement of proceedings was inordinate, the court considered whether the delay was excusable. Barrett J. noted that procurement of an expert report had been mentioned in relation to the delay by Mr. Maxwell. However, he observed that discovery of a full copy of Mr. Maxwell’s file had been made by the fifth named defendant to his new solicitors in July 2015 and that an expert report in respect of same had not been obtained until February 2017. This delay was considered to be inexcusable.

On the balance of justice, Barrett J. notably referred to the fifth named defendant’s evidence that the ongoing litigation was having a detrimental effect on their professional insurance premium. In addition, the court noted that the potential outcome of Mr. Maxwell’s initial personal injury claim would now be very difficult to ascertain, given the period of time that had elapsed since his instruction of the first named defendant. The motion to strike out the proceedings on grounds of delay was therefore granted.

Comment

This decision provides welcome guidance on what will be considered as “*inordinate and inexcusable delay*” in the context of claims against solicitors. In particular, the court’s comments on insurance premiums and their effect on the consideration of the balance of justice is of note for any defendants in professional negligence proceedings who are considering issuing a motion to strike out on the grounds of delay.

For further reading on topics raised in this article, please see the following recent publications:

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