

THE HIGH COURT

[2017 No. 1407 P]

BETWEEN

PAULINE MULROONEY

PLAINTIFF/APPLICANT

AND

VICTOR SHEE

DEFENDANT/RESPONDENT

JUDGMENT of Mr. Justice Robert Eagar delivered on the 2nd day of December, 2019

1. This is a judgement in respect of an application by the defendant as set out on the notice of motion dated 27th November 2017 seeking:
 - i. An order pursuant to Order 19, rule 28 of the Rules of the Superior Court and/or pursuant to the inherent jurisdiction of the court to strike out the plaintiff's claim on the basis that it is bound to fail by reason of the fact it is manifestly statute barred
 - ii. Alternatively, an order pursuant to Order 25, rule 1 and/or Order 34, rule 2 of the Rules of the Superior Court setting down the preliminary issue the question to as to whether the plaintiffs claim is statute barred pursuant to the provisions of the Statute of Limitations Act 1957 (as amended).

Facts

2. The proceedings before the court is an action seeking damages in the context of personal injuries that arose out of an alleged assault which took place on the 9th of August 2011. This application is grounded on the affidavit of Dolph McGrath, solicitor. It is noted in the grounding affidavit that a claim was brought before the courts that arose out of the same incident bearing record number 2013 12042 P. This claim was struck out by the High Court on the basis that the plaintiff failed to obtain an authorisation from the Personal Injuries Board prior to the institution of the claim, thus, not satisfying section 12 of the Personal Injuries Assessment Board Act 2003.
3. A Personal Injuries Summons was issued on the 14th of February 2017. The Indorsement of Claim set out the reliefs sought by the plaintiff which are damages for personal injuries including physical and psychological injury arising from the assault on the plaintiff on 9th August 2011 at Main Street Carrick-on-Suir, Tipperary. The facts as set out in the Indorsement of Claim is that the defendant abused the plaintiff verbally, grabbed the plaintiff's left shoulder and hit the plaintiff with his fist into her shoulder while she was a passenger in her son's car. The assault caused bruising and pain in the left shoulder, associated anxiety causing post-traumatic stress disorder and tinnitus.
4. A statement of claim was delivered somewhat curiously on the 16th May 2017 following the entry of an Appearance. The Statement of Claim reiterates the injuries suffered as stated in the Indorsement of Claim. There are two principal reliefs sought in the Statement of Claim:
 - i. *"Damages for physical and psychological injury arising from the assault perpetrated on the plaintiff by the defendant;*

ii. *Damages for the injuries caused to the plaintiff by the unprovoked attack and assault by the defendant”.*

Personal Injury defence was delivered on behalf of the defendant on the 12th October 2017. The defence pleaded: -

i. *“These proceedings are statute barred pursuant to the provisions of the Statute of Limitations Act 1957 (as amended) and the defendant will apply to have the claim dismissed prior to or at the commencement of the trial of the action;*

ii. *These proceedings ought to have been commenced and pursued by way of Personal Injuries Summons alone by virtue of the provisions of section 10 of the Civil Liability and Courts Act 2004 (“the 2004 Act”). The Plaintiff has delivered a Statement of Claim and the Defendant will apply, either prior to or the commencement of the trial of the action, to have the plaintiff’s claim dismissed pursuant to section 10(3)(a)(iii) of the 2004 Act;*

iii. *Further or in the alternative and strictly without prejudice to the foregoing, the plaintiff has failed to comply with the requirements of section 10 (2) of the 2004 Act in his Personal Injuries Summons and the Defendant will apply, either prior or at the commencement of the trial of the action, to have the plaintiffs claim dismissed pursuant to section 10(3)(a)(iii) of the 2004 Act”.*

5. In the grounding affidavit of this application, Mr. McGrath states that it is manifest from the pleadings that the plaintiff is seeking damages for personal injuries in the context of this action. Accordingly, a two-year limitation period applies pursuant to the Statute of Limitations Act 1991 as amended. Mrs Mulrooney in her replying affidavit asserts that the present proceedings should not be struck out on the basis that they could be saved by an amendment to the pleadings to include a breach of her right to bodily integrity.
6. The plaintiff made an application to the Injuries Board on the 4th April 2016 in respect of the proceedings before the court. This is four years and seven months after the assault took place on the 9th August 2011. Mr. McGrath contends that the provisions of the Personal Injuries Board 2003 relating to the holding of limitation periods are of no relevance. He concludes that this action is clearly statute barred.
7. The plaintiff states that the suspension of the limitations period by the Board is relevant on the basis that an amendment can save the proceedings from being statute barred. Furthermore, she adds that there was serious delay furnishing a medical report to her by her then medical practitioner, Dr. R Roche-Nagle which then added to the manner in which the Gardaí investigated the allegation which resulted in a decision not to prosecute the defendant by the DPP for the alleged assault. The plaintiff states that the delay was to *“assist the defendant and in particular to frustrate any prosecution of the defendant for his assault on me”.*

Submissions

8. Counsel for the defendant, Mr. Roberts BL, provided a timeline of the proceedings as follows: -
 - i. The assault occurred on the 9th August 2011
 - ii. Previous proceedings involving the same incident were struck out on the basis that she had failed to obtain authorisation from the Personal Injuries Board, thus not satisfying S.12 of the Personal Injuries Board Act 2004.
 - iii. An application to the Injuries Board was acknowledged as complete on the 4th April 2016.
 - iv. An authorisation was issued by Personal Injuries Board on the 3rd January 2017.
 - v. A personal injuries summons was issued on the 14th February 2017 with no affidavit of verification.
 - vi. On the 9th August 2017, an affidavit of verification was delivered.
 - vii. On 12th October 2017, a defence was delivered by the defendant including a plea that the proceedings are statute barred pursuant to the Statute of Limitations Act 1957 (as amended).
 - viii. On 28th November 2017, the motion now before the court was issued.
 - ix. On the 22nd January 2018 this case was adjourned to the long motion list
 - x. On the 23rd July it was again adjourned.
 - xi. On 10th December, the case was adjourned and the plaintiff's application was marked as pre-emptory against the plaintiff.
9. He submits that the assault took place on the 9th August 2011 and personal injuries are being sought in this case by way of personal injury summons. Therefore, the relevant limitation period is one of two years and is unquestionably statute barred.
10. Counsel for the plaintiff, Mr. McCoy, BL, submitted that the defendant relies on S.10 (3)(a)(ii) of the Civil Liability and Courts Act 2004 but has not satisfied the burden on him in respect of that defence. He states that Mr. McGrath is critical of the fact that a statement of claim was delivered. However, he does not state anywhere in the affidavit that the defendant suffers prejudice as a result of this. Furthermore, he directs the court to the phraseology utilised in the pleadings. The defendant provides in their defence that there is a defect in the originating motion which is fatal to the claim and should be struck out pursuant to S.10 (3)(a)(ii) of the 2004 Act. He asserts that trespass to the person is essentially what is pleaded. However, assault is explicitly pleaded in the Indorsement of Claim and Statement of Claim. Counsel directed the court to Bullen & Leake & Jacob's *Precedents of Pleadings*, 13th Ed., 1990 at p. 53 which states:

"If the application of force directly to the person of another is intentional, the plaintiff has cause of action for assault and battery or trespass to the person as it may be described: if such application of force is the result of negligence, the plaintiff's cause of action is for negligence, even though in such a case it may also be called an action for trespass to the person; Letang v Cooper [1965] 1 Q.B. 232 C.A.

He submits that assault and trespass are interchangeable and that the use of assault ought to have indicated that this was a trespass to the person claim. On that note, a six-year limitation period applies. He continued to cite from Bullen & Leake:

"if the act or conduct speaks for itself as being plainly intentional or deliberate, e.g. hitting a person with the fists, it is permissible to omit the word 'intentional'".

The indorsement of claim reads:

"the defendant opened the door of the car the plaintiff was sitting in, verbally abused the plaintiff, grabbed the plaintiff's left shoulder and pulled her left arm and hit the plaintiff with his fists into her shoulder causing her bruising, an unprovoked attack which caused physical and emotional trauma to the plaintiff".

The law as shown in English case law do not require the word intentional to be explicitly stated in the pleadings on the condition that the act speaks for itself. Furthermore, he submits that no prejudice arises as a result from failure to explicitly mention trespass to the person in the pleadings nor has the defendant indicated that any prejudice has been suffered as a result. It is submitted that the personal injuries summons was drafted by his client as a misunderstanding or a moment of confusion. However, the word trespass need not necessarily be posited in the pleadings for it to be a claim in trespass to the person by virtue of the definition in Bullen & Leake.

11. In regard to the pleadings, he asserts that it is what is contained in the pleadings is important as opposed to the procedure in which they were instituted. The plaintiff quotes Order 19, rule 3 of the Rules of Superior Court, the golden rule of pleadings which provides: -

"Every pleading shall contain and contain only, a statement in summary form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved".

Commencement of Proceedings

12. A personal injuries summons was issued on the 14th February 2017. A personal injury summons is the method whereby personal injury actions are instituted. A personal injury action is defined in section 2 of the 2004 Act as:

"an action for the recovery of damages in respect of a wrong; for personal injuries; for both such injuries and damage to property (but only if it arises out of the same wrong) or; under section 48 of the Act of 1961."

A personal injury is defined in the Civil Liability Act 1961 as:

“includes any disease and any impairment of a person’s physical or mental condition, and “injured” shall be construed accordingly”.

Traditionally, personal injury actions were commenced by way of plenary summons. The commencement of personal injuries summonses are now prescribed for in section 10 of the Civil Liability and Courts Act 2004 and Order 1A of the Rules of Superior Courts.

Section 10 (1) of the Act of 2004 provides:

“Proceedings in the High Court, Circuit Court or District Court, in respect of a personal injuries action, shall be commenced by a summons to be known as and referred to in this Act as a ‘personal injuries summons’”.

Section 10 (2) of the Act of 2004 provides that the summons shall specify:

- i. the plaintiff's name, the address at which he or she ordinarily resides and his or her occupation,
 - ii. the personal public service number allocated and issued to the plaintiff under section 223 (inserted by section 14 of the Act of 1998) of the Act of 1993,
 - iii. the defendant's name, the address at which he or she ordinarily resides (if known to the plaintiff) and his or her occupation (if known to the plaintiff),
 - iv. the injuries to the plaintiff alleged to have been occasioned by the wrong of the defendant,
 - v. full particulars of all items of special damage in respect of which the plaintiff is making a claim,
 - vi. full particulars of the acts of the defendant constituting the said wrong and the circumstances relating to the commission of the said wrong,
 - vii. full particulars of each instance of negligence by the defendant.
13. Section 10 of the Act of 2004 is strengthened by section 13 of the Act of 2004 which requires a personal injuries summons to contain full and detailed particulars of the claim of which the action consists and of each allegation, assertion or plea comprising that claim. The pleadings shall also be in the form prescribed by Rules of Court.
14. Order 1A of the Rules of Superior Courts was introduced to give effect to section 10 of the Act of 2004. It provides:

“A personal injury action shall be instituted by an originating summons, for the commencement of plenary proceedings with pleadings and hearing on oral evidence, which shall be in the Form No. 1 in Appendix CC, to be called a personal injuries summons”.

Order 1A, rule 7(1) provides that a statement of claim is not required in personal injuries actions. Order 1A, rule 7(2) provides that a personal injuries summons is treated as the equivalent to a statement of claim for the purpose of the application of the rules. Order 4, rule 3A specifies that the indorsement of claim must contain a statement where

proceedings have been authorised by the Personal Injuries Assessment Board (PIAB) confirming that the proceedings have been authorised by PIAB, specifying the section of PIAB Act 2003 or rule made under section 46 (3) of that Act in accordance with such authorisation had been issued, the date of the authorisation and any reference or record number relating to such authorisation.

15. The defendant relies on section 10 (3) (ii) of the Act of 2004 which provides that the court may strike out the proceedings for failure to comply with section 10. Counsel for the plaintiff submitted that the defendant failed to satisfy the burden on him in respect of his submissions regarding this provision and the court agrees with this point. The indorsement of claim contained in the personal injuries summons did not aver to any negligence on behalf of the defendant which caused injury to the plaintiff in this case. The statement of claim also did not aver to any negligent action of the defendant. The plaintiff addressed this matter by way of submission, asserting that there was no averment to negligence because this was not a case in negligence but a case for trespass to the person. The issuing of a personal injury summons was a mistake and this is why a statement of claim was issued as if it was a plenary summons. The fact remains that a personal injury summons was issued.
16. It is noteworthy, at this stage, that applications for compensation under the Garda Síochána (Compensation) Act 1941 and 1945 and actions where damages are claimed for false imprisonment or trespass to the person are specifically excluded from the definition provided in section 2 of the Act of 2004. It provides: "*but shall not include an application for compensation under the Garda Síochána (Compensation) Acts 1941 and 1945, or an action where the damages claimed include damages for false imprisonment or trespass to the person*". This provision expressly prohibits trespass to the person claims from being instituted by personal injuries summons. This point was raised by the plaintiff in *Connolly v HSE* [2013] IEHC 131 but was not elaborated on in any detail in the judgement of Gilligan J.
17. Therefore, the method in which proceedings were commenced in the proceedings before the court was by personal injury summons. Counsel for the plaintiff argued that the pleadings in the Indorsement of Claim and the Statement of Claim that was issued shortly after contain an action for trespass to the person. As noted above, section 2 of the Act of 2004 explicitly precludes personal injury summons from being used to commence actions for trespass to the person. Section 2 states the scope of personal injury actions and continues "*but shall not include an application for compensation under the Garda Síochána (Compensation) Acts 1941 and 1945, or an action where the damages claimed include damages for false imprisonment or trespass to the person.*" The court will note at this point that the purpose of plenary summons and personal injury summons are to be instituted for plenary proceedings with pleadings and hearing on oral evidence. Therefore, can be said to fulfil the same purpose.

18. The issue before the court is of a procedural nature. The court will need to determine whether non-compliance with sections 2 and 10 of the Act of 2004 (which must be read together) and the Rules is fatal to the claim in trespass.

Jurisprudence – Incorrect Originating Procedure

19. The court will now consider the legal authorities whereby a defect in the originating procedure has arose. The court also takes in to consideration, Order 124, rule 1 which provides that non-compliance with the Rules will not render any proceedings void unless the court so directs but that proceedings may be set aside wholly or in part as irregular.
20. In *Meares v Connolly* [1930] IR 333, O'Byrne J. held that the Court had no power to amend the summary summons and allowed the action to proceed as if commenced by a plenary summons. O'Byrne J. stated that

"these proceedings have been brought in a form that is not only not authorised by the rules but is expressly prohibited by them".

Accordingly, the case was struck out.

21. In *Bank of Ireland v Lady Lisa Ireland Ltd.* [2013] IEHC 131 O'Hanlon J. followed the decision in *Meares v Connolly* [1930] IR 333 and held that the use of summary summons procedure where it was not available was fatal and the court had no power to allow the action to proceed as if it had been commenced by way of plenary summons. These authorities indicated that the use of the wrong originating procedure was a fundamental flaw and would result in the striking out of proceedings.
22. Delany and McGrath in *Civil Procedure in the Superior Courts*, 4th Ed, 2018 assert that these authorities should be treated with *"considerable caution because this strict approach has not been followed in other cases which have instead emphasised the wide discretion conferred by Order 124, rule 1"*.
23. In *Wicklow County v Fenton* [2002] 2 ILRM 469, proceedings were commenced by way of originating notice of motion seeking relief under ss.57 of the Waste Management Act 1996. Section 57 required proceedings to be commenced by way of originating notice of motion whereas s.58 required applications pursuant to that section to be brought by way of special summons. It was sought to strike out the proceedings on the basis that there was a flaw in the procedure used. Kelly J. stated that *"if I were satisfied that any real prejudice would be suffered by the respondents, different considerations might apply"* however concluded that no prejudice arose and did not elaborate on what considerations might arise had the respondent suffered prejudice. The learned judge did note that the only prejudice that might arise in the circumstances of this case was that there might be no automatic right of cross-examination of deponents in proceedings commenced by motion. Kelly J. took the view that the objection raised was *"unreal"* and *"academic"* in circumstances where there was an overlap between the reliefs sought, in that the proceedings related to the same site and the same waste and there was a degree of urgency to the proceedings.

24. In *McKenna v J.G.*, [2006] IEHC 8 an issue arose as to whether proceedings commenced pursuant to s.4 of the Proceeds of Crime Act 1996 had been properly instituted by way of special summons. Finnegan P. considered the decisions in *Meares* and *Lady Lisa*. It was noted that *Meares* did not contain an equivalent rule to Order 124 and was not considered in *Lady Lisa*. He also adverted to the provisions of Order 2, rule 2 which provided that procedure by way of summary summons could be adopted by consent of the parties as strongly suggesting that the adoption of the summary summons procedure where the plenary summons procedure was appropriate was a mere irregularity and not a nullity. Ultimately, casting doubt on the correctness of the decisions made in *Meares* and *Lady Lisa*.
25. In *Earl v Cremin* [2007] IEHC 69 an issue arose as regard to the jurisdiction to strike out proceedings where the incorrect originating procedure was used and was considered in detail by Smyth J. In those proceedings, the plaintiff liquidator had obtained leave from the High Court to institute proceedings against the defendants seeking relief for reckless trading and misfeasance pursuant to ss.297A and 298 of the Companies Act 1963. Order 74, rules 49 and 136 stipulated that applications for such relief were required to be brought by way of the originating notice procedure. However, the proceedings were instituted by way of plenary summons.

The defendants brought an application to strike out the proceedings as improperly constituted and should be struck out on the basis that the plaintiff had made a deliberate decision to utilise the wrong procedure to obtain a procedural advantage and that they were prejudiced by the failure to use the correct procedure. Smyth J. concluded that the provisions of Order 74, rules 49 and 136 directing that the proceedings be brought by way of originating notice of motion were directory rather than mandatory and did not prescribe an exclusive procedure. Therefore, the institution of proceedings by way of plenary summons was permissible thereby rejecting the contention that proceedings were a nullity. Smyth J. was satisfied that the adoption of the incorrect procedure was not deliberate but due to an oversight stating that it was: -

"not a matter of deliberate choice to place the defendants or any of them at a disadvantage. There was certainly no mala fides of any description in this regard".

He was also satisfied that any prejudice to the defendants by use of the incorrect procedure could be remedied by staying the proceedings until all of the documentation required by Order 74, rules 49 and 136 to be provided to the defendants was furnished by them.

26. Counsel for the plaintiff relies on the case of *Connolly v HSE* [2013] IEHC 131. In this case the plaintiff was left with a cosmetic defect in the aftermath of a biopsy procedure. An order was sought to strike out the proceedings on the grounds that it was statute barred and an order to strike out the proceedings pursuant to s.2 of the 2004 Act which precludes relief being sought in actions commenced by way of personal injury summons. Gilligan J. held that O.124 of the Superior Court Rules 1986 gave the court discretion

when deciding whether to strike out proceedings for it being in an incorrect form. On that basis, Gilligan J. stated: -

"I find that while the plaintiff's claim of trespass to the person was incorrectly pleaded in the Personal Injuries Summons rather than correctly by way of a plenary summons, it is not fatal to the claim".

Gilligan J. continues: -

"The claim arises out of the same incident and is clearly defined in the Personal Injuries Summons. The defendant has suffered no prejudice as a result of the error and the claim was made within the prescribed limitation period.

Therefore, the learned Judge held that the plaintiff's claim for negligence and breach of duty be struck out on the basis that they are statute barred and in exercising his discretion under Order 124, rule 1 allowed the claim in trespass to proceed.

27. The issue of non-compliance also arose in cases before the English courts. Some time ago, Bowen LJ in *Cropper v Smith* [1884] 26 Ch D 700 at 710 thought it:

"a well-established principle that the object of the courts is to decide the rights of the parties, and not to punish them for mistakes they made in the conduct of their cases by deciding otherwise than in accordance with their rights".

Bowen LJ added:

"I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party".

28. This very much echoes the recent decisions before the Irish courts on the matter of non-compliance with the Rules. Order 2, rule 1 of the Rules of the Supreme Court iterate the effect of non-compliance with the Rules in the UK. Order 2, rule 1 provides:

"(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such

amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

- (3) *The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed."*

These rules were enacted in England as a result of the decision in *Re Pritchard* [1963] Ch 502. In this case, proceedings had been commenced by originating summons in the district registry instead of the Central Office. The Court of Appeal held that the error constituted a fundamental defect which rendered the proceedings a nullity. The rule was changed the year following the judgment in *Re Pritchard*.

29. The position in England was that no irregularity or defect automatically renders the proceedings a nullity. Instead, the court is entitled to consider each case according to the particular circumstances and exercise its discretion in making whatever decision it deems just. Therefore, in *Metroinvest Ansalt v Commercial Union* [1985] 2 QB 729 Cumming-Bruce LJ stated

"the way in which the court exercises its powers under Order 2, rule 1 is likely to depend upon whether it appears that the opposite party has suffered prejudice as a direct consequence of the particular irregularity".

30. In *Golden Ocean Assurance v Martin (The Golden Mariner)* [1990] 2 LLR 215 the main issue before the Court of Appeal was the effect of irregular service on companies outside the jurisdiction. One of the defendants had been served with a form of acknowledgement of service without the actual writ. McCown and Megaw L JJ. held that the defendant had not suffered prejudice and accordingly exercised their discretion against setting aside the service. Lloyd LJ, dissenting stated that although prejudice is always a factor to be considered, *"absence of prejudice is by no means conclusive in favour of the plaintiffs"*. Lloyd LJ concluded that the failure to serve the defendant with anything but an acknowledgement of service is an omission so serious that it cannot be cured by the curative provision of the Rules. This approach can also be seen in *Leal v Dunlop Bio-Processes* [1984] 1 WLR 874 whereby it was indicated that the seriousness of the irregularity could be a basis for not exercising the discretion to cure it, whether real prejudice was caused or not. Similarly, in *Metroinvest*, Cumming Bruce LJ stated that that the exercise of discretion to cure may often be justified by prejudice but this is not always the case.
31. The court is satisfied that the test to be employed is that the irregularity will not nullify the proceedings unless there is an apprehension of prejudice suffered to the affected party causing irremediable injustice. In this instance, to the defendant as a result of the plaintiff adopting the incorrect procedure to commence the proceedings before the court.

32. On that note, it is necessary to identify what prejudice could arise in this case, and in the court's view the only prejudice that could arise is the deprivation of the affected party's benefit of the Statute of Limitations.

Jurisprudence – Statute of Limitations

33. The court will now examine the legal authorities regarding the issue of whether the proceedings before the court is statute barred.
34. Section 3 of the Statute of Limitations Act 1991, as amended by the Civil Liability and Courts Act 2004, states that an action claiming damages in respect of personal injuries *"shall not be brought after the expiration of two years from the date on which the cause of action accrued or the date of knowledge (if later) of the person injured."*
35. The cause of action would have accrued from the date the alleged assault took place, but for the avoidance of all doubt, the court will also examine the date of knowledge aspect of Section 3.
36. Section 2(2) of the Statute of Limitations Act 1991 provides: -
- i. *"For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire—from facts observable or ascertainable by him, or*
 - ii. *from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek."*
37. The date of knowledge elements of the 1991 Act as for the most part is a subjective test which was discussed and subsequently approved by the Supreme Court in *Bolger v O'Brien* [1999] 2 ILRM. It was held that the date of knowledge is the date when the plaintiff first had knowledge that the injury suffered was significant. Quirke J. noted in *Whitely v. Minister for Defence* [1998] 4 I.R. 442 that the 1991 Act did not define 'significant' but held that the meaning of significant should be given a subjective meaning and stated that *"the court should take into account the state of mind of the particular plaintiff at the particular time having regard to his particular circumstances at that time"*. Quirke J. elaborated on the subjective element to the test by holding that it is to be balanced by the wording used in s.2(2) of the 1991 Act which introduced additional considerations of whether or not the particular plaintiff at the particular time *"ought reasonably to have sought medical or other expert advice having regard to the symptoms from which he was suffering and the other circumstances in which he then found himself"*. The court is satisfied that the date of knowledge in which the Plaintiff became aware that the injury was significant was immediately after the alleged assault on the 9th August 2011. Firstly, on the grounds that Mrs. Mulrooney attended her then GP, Dr. Richard Roche Nagle on the date in which the alleged assault took place. She had been examined by Dr. Roche Nagle and in his report he states that *"this lady attended my surgery on 9th August 2011 in a distressed state"* and on examination of the shoulder he found *"superficial bruising over the anterior area of the joint... she was prescribed a mild*

tranquilliser for a few days to ease her acute stress and was advised to return in two weeks". Dr. Roche Nagle concluded Mrs Mulrooney "suffered superficial bruising of her shoulder from an apparent assault with associated psychological stress. I do not foresee any long term medical problems relating to this incident". Secondly, on the basis that she had written to Superintendent J. Courtney of An Garda Síochana at Clonmel Garda Station in Tipperary on the 9th August 2011 in regard to the assault that took place on that date. The letter set out what had occurred earlier that day.

38. The court takes note of the date, 4th April 2016 in which an application was submitted to the Personal Injuries Assessment Board in order for the claim to be assessed by the Board. This is four years and four months after the incident took place. The court is of the view that the suspension of the limitation period while the matter was before the Board contained in the Personal Injuries Assessment Board Act 2004 is of no relevance in the within proceedings.
39. The court is of the view that it is clearly the case that the claim before the court for damages in the context of personal injuries is statute barred on the basis that the alleged assault had occurred in August of 2011, whereas the personal injury summons was issued in February of 2017, and is therefore, undoubtedly statute barred.

Conclusion

40. In this case the plaintiff issued a personal injury summons. The plaintiff received an authorisation under s. 32 of the Personal Injuries Assessment Board Act, dated 13th January 2017. The date of the claim was the 9th August, 2011.
41. All of the pleadings chosen by the plaintiff and the plaintiff's solicitor was that of a personal injuries summons. However, the personal injuries summons did not comply with the requirements to set out the information required to be supplied in the personal injury summons under s. 10(2) of the Civil Liability and Courts Act, 2004. It appears to be the intention of the plaintiff to provide those details by way of statement of claim delivered on 16th May, 2017.
42. Section 7 of the Civil Liability and Courts Act, 2004 provides for amendments to the Statute of Limitations (Amendment) Act, 1991 and that is amending the period of limitation of a personal injury action to one of two years from the date of the cause of action.
43. The court is also aware that a personal injuries summons was brought before the court out of the same incident bearing record no. 2013/1204P this claim was struck out by the High Court on the basis that the plaintiff had failed to obtain an authorisation from the Personal Injuries Assessment Board prior to the institution of the claim.
44. Counsel on behalf of the plaintiff states that by simple amendment of the proceedings to include the assault as being a trespass to the person the case could be saved on the basis of the decision of Gilligan J. in *Connolly v. the Health Service Executive* [2013] IEHC 131. In that case Gilligan J. held that O. 124 of Rules of the Superior Court 1986 gave the

court discretion (this Court's emphasis) when dealing with whether to strike out proceedings for it being in an incorrect form and he said "*I find that while the plaintiff's claim of trespass to the person was incorrectly pleaded in the Personal Injuries Summons rather than correctly by way of a plenary summons, it is not fatal to the claim.*"

45. The court notes that the defendant's reply by way of a personal injuries defence and it was open to the plaintiff to take the appropriate proceedings a way of plenary summons until the 9th August, 2017.
46. No plenary summons was ever issued despite having initially instituted proceedings by way of personal injury summons. The court also notes that s. 2 of the Act of 2004 provides "*but shall not include an application for compensation under the Garda Síochána (Compensation) Acts 1941 and 1945, or an action where the damages claimed include damages for false imprisonment or trespass to the person*".
47. The court is aware that the first application for the amendment of the summons was made at a time after the six – year period which is the statute of limitations in relation to plenary summons issues, and which expired on the 9th August 2017. What is being sought is a plenary summons seeking a plenary hearing. In any event, the court is satisfied that the application to amend the proceedings was made a time after the six – year limitation period.
48. The court distinguishes the decision of Gilligan J. in *Connolly v. Health Service Executive* on the basis that in this case there was initially an application for a personal injury summons which was struck out and then there was a personal injury summons issued in relation to the incident when clearly what has been sought is a plenary summons seeking a plenary hearing. The application to treat the matter as if it were a plenary summons was made at a time outside the six – year time limit for plenary summons and in those circumstances the court is satisfied that it must strike out the plaintiff's claim on the basis that it is bound to fail by reason of the fact that it is manifestly statute barred.