

THE HIGH COURT

[2014 No. 1946 P]

BETWEEN

CLAIRE RUSHE

PLAINTIFF

– AND –

HEALTH SERVICE EXECUTIVE

DEFENDANT

JUDGMENT of Mr Justice Max Barrett delivered on 9th December, 2019.

1. A perfected order of the Master of the High Court issued on 19th July last. An intention to appeal that order appears swiftly to have been made. Under Order 63, Rule 9 of the Rules of the Superior Courts, there was a six-day time limit on making suitable application to the court. That six-day period, per the Interpretation Act 2005, s.18(h) included the 19th of July, with the result that, perhaps counter-intuitively, the six-day timeframe expired at midnight on the 24th of July.
2. Counsel for Ms Rushe correctly advised the solicitor for Ms Rushe as to the date and time of expiry of the six-day limitation period. Unfortunately, however, the papers were not lodged on time by that solicitor's town agents (also solicitors), who appear to have laboured under the misapprehension, even as late as the afternoon of 24th July when a concerned telephone call was placed to them by Ms Rushe's solicitor, that 25th July was the last day for filing the appeal. Though advised by counsel of the correct timing, Ms Rushe's solicitor accepted the assurance of his town agents that 25th July would do and did not (as he had planned) come to Dublin himself to file the papers on time on 24th July.
3. Unfortunately, these facts yield a near-classic example of that mistake of counsel or solicitor as to the meaning of a relevant rule to which Lavery J. refers in *Éire Continental Trading Co. Ltd. v. Clonmel Foods Ltd* [1955] IR 170 as generally *not* offering a basis for an extension of time. A question-mark perhaps arises as to why this general stance was adopted by Lavery J; however, there has been recognition by Geoghegan J., for the Supreme Court, in *Brewer v. Commissioner of Public Works* [2003] 3 IR 539, p. 548, that Lavery J. did not set an absolutist test when propounding the so-called '*Éire Continental*' test, that a court still has "*to consider all the surrounding circumstances in deciding how to exercise its discretion*". Here, unfortunately, there are no particular "*surrounding circumstances*" in play: there was but a mistake by a solicitor acting on the advice of solicitors, in the face of contrary (correct) advice from counsel and nothing more. While one may have (the court does have) considerable sympathy for Ms Rushe that this mistake occurred, she at least has a separate remedy now open to her, should she be so minded. By contrast, the HSE has not contributed to the above-described mistake and there seems no reason presenting why it should not benefit from the operation of the time limitation applying under O.63, r.9.

4. Not without sympathy for Ms Rushe, the court is coerced as a matter of law into declining to extend the time for the bringing of the appeal against the Master's order, with the result that that appeal cannot be heard.