

THE HIGH COURT

[2015 No. 786 P]

BETWEEN

CHRISTOPHER CHAMBERS

PLAINTIFF

– AND –

RATHCALED DEVELOPMENTS LIMITED

– AND –

SV BETONG AS

DEFENDANTS

JUDGMENT of Mr Justice Max Barrett delivered on 30th June 2021.

I

Background

1. On 2nd February 2015, Mr Chambers issued a personal injury summons against Rathcaled Developments Limited, claiming that, on 28th January 2014, in the course of employment with Rathcaled, he suffered a fall.

2. On 1st November 2018, Mr Chambers obtained an order from the Master of the High Court joining SV Betong AS as a defendant to the proceedings, and an order granting liberty to issue and serve an amended summons on Betong. The critical portion of the Master’s order states as follows:

“IT IS ORDERED that SV Betong AS having its registered office at Dreierveien 25, Sandnes 4321, Norway be joined as Co-Defendants in this Action AND IT IS ORDERED that 1. The Plaintiff to have a period of twenty-eight days from the date hereof to issue and serve an Amended Summons.”

3. The application made before the order was grounded on an affidavit which exhibited an “*amended Personal Injuries Summons which it is proposed to issue*”. Key extracts from that amended proposed personal injuries summons are set out in Appendix A hereto.

4. Mr Chambers subsequently obtained an *ex parte* order on 2nd April 2019 granting a further period of five weeks (to 7th May 2019) for compliance with the order of 1st November 2018.

5. On 7th May 2019, Mr Chambers issued what purports to be a concurrent personal injuries summons. This summons bears a date of issue of 2nd February 2015, the same date as the original personal injuries summons which issued as against Rathcaled and bears a stamp stating that it is issued pursuant to the Orders of 1st November 2018 and 2nd April 2019. Betong was served with this purported concurrent personal injuries summons on 7th August 2019. Key extracts from that purported concurrent personal injuries summons are set out in Appendix B hereto.

6. A number of points fall to be made about the purported concurrent summons. First, it does not bear the word ‘Amended’ anywhere on its face. Second, it does not include the underlining in the proposed amended summons. Third, it does not bear any indication which indicates that it has been amended in any way. Fourth, it does not indicate to Betong that it was joined as a defendant at a later date.

7. While the court does not know quite how the document that issued came to contain the just-described errors, it is accepted by the defendants that what occurred was innocently done. The court turns to consider the applicable law later below. However, by way of general observation it notes that innocent technical error which, as here, is fully and honestly admitted and yields no prejudice to an ‘affected’ person is unlikely generally to yield more than a knowing nod from judges who have themselves been in practice and who know that there are few, if any, legal practitioners of any experience who have not committed a technical *faux pas* at some point which has not resulted in any prejudice. That is not to say that legal professionals should now rush to err (as if they would) not least though not only because if one errs one ends up depending on one’s colleagues or a judge not to magnify an innocent technical error into something that it is not, and it is better not to find oneself placed in such a position of dependence.

II

The Summons that/as Issued

8. Returning again to the affidavit sworn in support of the within application, the court respectfully does not see that the above-described errors have culminated in the legal and procedural travesty for which Betong contends. The deponent for Betong avers as follows:

9. [A] [1] “[T]he Summons which issued did not bear the word ‘Amended’ anywhere on its face”; [2] “[N]or did it [the summons] include the underlining present in the proposed amended *Personal Injuries Summons*”; [3] “*The Summons does not bear any indication anywhere, either in its title, its content or its form, which it indicates that it has been amended in any anyway.*”; [4] “*The Summons does not disclose to the Second Named Defendant the fact that it was joined as a Defendant at a later date, and was not a party to the proceedings from the outset*”.

10. [Court Note: All of points [1]-[4] are variations of a single point, viz. that Betong could not know from the summons received that what it was receiving was an amended summons. That single point is notably weak for the following reason: the purported concurrent summons contains the following clear and unmissable Central Office-affixed stamp in Bold Text on its first page:

“CONCURRENT SUMMONS ISSUED THIS
7th DAY OF May 2019 PURSUANT
TO ~~ORDER 6, RULES 1 AND 2 (R.S.C.)~~ ORDERS
DATED THE 1st DAY OF November 2018
+ 2nd April 2019”

11. The solicitors for Betong are doubtless competent solicitors and the first thing that any competent solicitor would do on reading this Central Office-affixed stamp would be to ask to see a copy of the said Orders, which would (and do) reveal the truth of what had occurred. So, yes, Betong could not know from the summons received that what it was receiving was an amended summons. However, the truth of matters is pointed to on the face of summons and readily discernible by competent solicitors (and the solicitors for Betong are doubtless competent).

12. [B] *“The Summons [as issued]...conceal[s] from the Second Named Defendant the nature of the case it has to meet, and in particular, whether a point might be capable of being raised in respect of the Statute of Limitations. I say that there is a point capable of being raised in respect of the Statute of Limitations...”*

13. [Court Note: To the extent that the verb ‘conceal’ suggests that something untoward was at play on the part of the plaintiff, it is accepted by Betong that this was and is not the case. Moreover, the court does not see how any element of the case has been concealed: the summons is complete in what is alleged; the fact that there is a co-defendant is obvious from its face; and the Statute of Limitations point that the court will now consider has no substance to it when looked at more closely. Why so? Because the court does not see how a summons served in 2019 which expressly and clearly alleges in its body that an alleged incident occurred in January 2014, and which bears the above-described Central Office-affixed stamp suggesting that some form of summons issued but has been the subject of various orders, can properly be seen as anything other than a document that ‘calls out’ that there may be some form of Statute of Limitations point presenting. In passing, the court notes that its conclusions in this judgment do not prevent the said limitations point from being raised in the future. How that point will

fare when and if raised, the court does not know, nor does it entertain any view in this regard. That is a matter for a future judge, when and if raised, and does not fall to be adjudicated upon in the present application.]

14. “[T]he *Summons as issued and served on the Second Named Defendant is a nullity, and is not capable of being remedied by amendment. The Plaintiff had not obtained liberty to serve a Concurrent Summons outside of twelve months from the date of issue of the original summons, pursuant to Order 6, rule 1. Therefore, the Central Office did not have authority to issue the Summons, and it is a nullity.*”

15. [Court Note: The court respectfully does not see how as a matter of logic Betong can keep claiming that the amended summons does not show itself to be the amended summons that it is and, in the next breath, claim that the amended summons ought not to have issued because it is in fact a ‘Concurrent Summons’. The truth of matters is that the purported concurrent summons that was served was an amended summons, a deficient amended summons but not fatally so.

III

The Notice of Motion

16. By notice of motion of 17th September 2020, Betong comes to court claiming the following principal reliefs:

“1. *An Order, pursuant to Order 124, Rule 1 [RSC], striking out the Concurrent Personal Injury Summons herein (the Summons) for nullity and/or irregularity. In particular, the objections which will be insisted upon at the hearing of this motion which render the Concurrent Personal Injury Summons a nullity and/or irregular are as follows:*

(a) *in breach of Order 6, Rule 1, the plaintiff issued the Summons over four years after issue of the*

Originating Summons to which it corresponds, without obtaining leave of the Court to do so.

- (b) in breach of the Order of the Master of the High Court dated 1 November 2018 the Plaintiff did not issue and serve an Amended Summons in the form for which liberty was obtained.*
- (c) the Summons is stamped as having issued pursuant to Orders dated 1 November 2018b and 2 April 2019. These Orders do not give liberty to issue and serve a Concurrent Summons over 12 months after the Originating Summons to which it refers, and the Summons is therefore a nullity.*
- (d) the Summons which issued and was served on the Second Named Defendant is manifestly different in substance and in form from that for which the Order of 1 November 2018 was obtained.*
- (e) In breach of Order 28, Rule 9, the Summons does not bear any indication anywhere, either in its title, its content or its form, which indicates that it has been amended in any way....*
- (f) the Summons does not disclose to the Second Named Defendant the fact that it was joined a Defendant at a later date, and was not party to [the] proceedings from the outset”.*

The Text of the Rules Mentioned in the Notice of Motion

17. Order 124(1) of the Rules of the Superior Courts (“RSC”) provides as follows:

“Non-compliance with these Rules shall not render any proceedings void unless the Court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court shall think fit.”

18. Order 6(1) RSC provides as follows:

“The plaintiff in any proceedings may, at the time of, or at any time during twelve months after the issuing of the originating summons, issue one or more concurrent summons or summonses, each concurrent summons to bear the same date of issue as the original summons, and to be marked with a seal bearing the word ‘concurrent’ and the date of issue of the concurrent summons; and such seal shall be impressed upon the summons by the proper officer; provided always, that such concurrent summons or summonses shall only be in force for the period during which the original summons in such proceedings shall be in force.”

19. Order 28(9) RSC provides as follows:

“Whenever any indorsement or pleading is amended, the same when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: ‘Amended the [•] day of [•] pursuant to order of [•] dated the [•] day of [•]’”.

Lord Denning's Judgment in *Re Pritchard*

20. If ever there was a judge whose judgments overwhelmingly point to where the justice of matters typically lies, that judge is Lord Denning, easily the most interesting and perhaps also the most important English judge of the twentieth century, equalled perhaps in this jurisdiction only by the late Walsh J., a judge of whom it has rightly been said that he “*found a city of brick and left behind a city of marble*” (Hogan, G., Mr Justice Brian Walsh: The Legacy of Experiment and the Triumph of Judicial Imagination” (2017) 57 *Irish Jurist* (n.s.) 1, p. 13) – an accolade that might also be made of Lord Denning. As for Lord Denning’s judgment in *Re Pritchard* [1963] Ch. 502, like Lord Atkin’s dissent in *Liversidge v. Anderson* [1942] A.C. 206 (albeit that the facts in *Re Pritchard* are rather less dramatic) it is a classic example of a dissent that the tides of time have washed high on the shores of renown, even as they have largely effaced the memory of the details of the majority decision to which the dissent was a response.

21. The facts in *Pritchard* are relatively straightforward. An originating summons under the Inheritance (Family Provision) Act 1938, was sealed in and issued out of the Pontypridd District Registry instead of the Central Office as required by Order LIV, rule 4b of the then Rules of the [English] Superior Courts (RESC). The defendants entered appearances and did not take objection to the issue of the summons. However, the validity of the summons was subsequently raised by the district registrar at a time when the period within which proceedings under the Act of 1938 could be begun had expired. By Order LXX, rule 1 RESC, non-compliance with any rule of court did not render any proceedings void unless the court or judge so directed. There was no mention of an originating summons in the Supreme Court of Judicature (Consolidation) Act 1925 (c.49), which, in s.225, defined an action as a civil proceeding “*commenced by writ or in such other manner as may be prescribed by rules of court.*” Order LIV, rule 4b RESC, provided that an originating summons “*shall be sealed in the Central Office ... and when so sealed shall be deemed to be issued*”. It was held by the Court of Appeal (Upjohn and Danckwerts LJJ), in a notably harsh decision, that there had not been any commencement of proceedings, for the originating summons had not been issued out of the Central Office as required by Order LIV, rule 4b RESC, which was in mandatory terms, and the originating summons was a nullity; there was not, therefore, a mere irregularity but a fundamental defect, which the defendants could not waive, to which Order LXX, rule 1 RESC, did not apply, and for which no rule of court provided a remedy. Lord Denning dissented. His summary of the facts (at pp. 511-512) is masterful and bears repeating:

“Alfred Pritchard died on March 14, 1961. His executor proved his will on April 10, 1961. He was not a rich man. His estate was only worth £914. But he left it by his will to others and made no provision for his widow. She had, however, a right under the Inheritance (Family Provision) Act, 1938, to come to the High Court and ask for reasonable provision to be made for her maintenance out of his estate. She had to apply within six months of the probate of the will. That is, she had to apply before October 10, 1961. She went to a solicitor in Mountain Ash and he prepared an originating summons for issue in the High Court. The summons named Mrs. Pritchard as the plaintiff and the executors as the defendants. It asked for reasonable provision to be made for the widow. Her solicitor prepared it and on Friday, October 6, 1961, he took it along to the local office of the High Court, which was at Pontypridd. It is called the Pontypridd District Registry. The officer at the registry accepted it and sealed it with the seal of the High Court, dated October 9, 1961. It was stamped in a circle with the words: ‘Her Majesty’s High Court of Justice, District Registry, 9th October, 1961, Pontypridd.’ You might well think that Mrs. Pritchard’s solicitor had done his duty. He had issued the summons in the High Court and received the official seal with the date October 9, 1961, just within the six months. The executors accepted it as being in order. Their solicitor (also of Mountain Ash) entered an appearance in the Pontypridd District Registry. The solicitors on both sides then agreed that the residuary legatees should be added as defendants. This was done and the residuary legatees duly entered an appearance. None of the solicitors saw anything wrong with the procedure: and on December 11, 1961, they attended before the district registrar. He directed them to file affidavits verifying the statements of fact and matters on which each party relied. The district registrar then adjourned the summons to January 11, 1962, for these affidavits to be filed.

Before the next hearing, however, the district registrar made a discovery: and on January 11, 1962, when the parties attended before him, the district registrar told them that he considered the proceedings

had been wrongly issued in the registry and that he had grave doubts whether he had power to deal with the matter. The reason he said this was because of R.S.C., Ord. 54, r. 4B, which says that an 'originating summons shall be sealed in the Central Office and when so sealed shall be deemed to be issued.' In short, Mrs. Pritchard's solicitor, instead of taking the summons to the District Registry of the High Court at Pontypridd, ought to have taken it to the Central Office of the High Court in London, where it would have been stamped in a circle with the words 'Supreme Court of Judicature, Oct. 9, 1961, Central Office, writ, appearance judgment.'

In order to rectify the error Mrs. Pritchard's solicitor, on March 6, 1962, took out a summons before the district registrar in which he made an application 'why this cause having irregularly issued from the district registry instead of from the Central Office of the Honourable High Court of Judicature this cause should not be removed to the Central Office.' After hearing arguments the district registrar refused the application. He held that the proceedings were not merely irregular but a nullity. Shortly afterwards Wilberforce J. directed that the matter should be brought before the Chancery Division to review the decision of the district registrar. On reviewing it on June 5, 1962, he held that the proceedings were a nullity and dismissed the summons.

This would not have mattered very much if Mrs. Pritchard's solicitor could have issued another originating summons in the Central Office. It would have only meant some costs thrown away. But it was far too late then to issue a summons in the Central Office. The six months' limitation had long since expired.

So Mrs. Pritchard appeals to this court asking that the error be rectified."

22. So, what did Lord Denning consider ought to be done? Amongst other points (some of which are specific solely to English procedure), Lord Denning made the following observations:

– first, he considered that “[a]part from [then English] authority...the High Court had ample jurisdiction to correct the error. It ought not to penalise the widow for a technical slip, especially when the defendants have not been in the least prejudiced by it....The court ought to allow any necessary amendment to put it right” (p.513).

– second, he noted how, even in Statute of Limitations case (and the present case is one where a Statute of Limitations point may yet be raised but does not fall to be adjudicated upon by this Court), a plaintiff “will be allowed to correct technical defects. If a plaintiff has commenced a known genuine case before the time limit has expired, but has made a technical slip...he will be allowed to rectify the defect if it can be done without injustice to the defendant” (p.513).

– third, he noted how the English courts had latterly turned from a strictness of spirit to a liberality of spirit when it came to procedural defects of the type presenting and indicated that he “would approach this present case in the same spirit.... There was a technical defect in the procedure but it can be rectified without the least injustice to the defendant” (p.515).

– fourth, having noted that the solicitor had made a mistake that anyone could make, he added that:

“We all know that on the technicalities of procedure such as these, we rely on the officers of the court to keep us straight. If the officer at Pontypridd had himself noticed the error when the summons was presented to him, he would no doubt have warned the solicitor of it: and the solicitor would have sent it to London and got it issued in time. As it was, the officer himself did not notice it. He sealed the summons and issued it. He made a mistake himself. Hence all this trouble. When an officer of the court itself makes a mistake, the consequences should not be visited on the unfortunate litigant, but they should be remedied by the court itself. It is not even as if it was a serious error” (pp. 515-16).

– fifth, of the manifold cases to which the Court of Appeal was referred, he indicated that “They are most confusing because of the loose way in which the word ‘nullity’ is used: and the sooner it is put in its proper place the better. Often a proceeding has been said to be a ‘nullity’ when

it would have been more correct to say that, if the irregularity has not been waived, it will be set aside ex debito justitiae” (p.516).

– sixth, by way of related point to the just-mentioned fifth point, he observed that *“The cases, therefore, do not compel us to hold that this originating summons was a nullity. And there are many reasons why we should not do so. [He quotes several examples. One suffices for present purposes].... [I]f the summons had been taken out in the Queen’s Bench Division instead of in the Chancery Division...it would not have been a nullity. There are special provisions which would enable a transfer to be made to the Chancery Division. If such mistakes are not fatal, why should this mistake be so?” (p.517).*

23. Ultimately, Lord Denning concluded that the originating summons was not a nullity and indicated that he *“would remedy the error by removing the proceedings to the High Court here in London and allowing the widow’s case to be heard” (p.517),* ending his judgment with a withering criticism of the majority judgment which bears repeating if only to remind oneself of what is at stake for judges when it comes to applications such as that which presented in *Re Pritchard* and that which presents here:

“My brethren take a different view. They think the defect is fatal, and that the widow must be driven from the judgment seat without a hearing. I greatly regret that this should be so. Quite recently in Pontin v. Wood [1962] 1 Q.B. 594, 609 (CA), Holroyd Pearce L.J. recalled the proud boast of Bowen L.J.: ‘It may be asserted without fear of contradiction that it is not possible in the year 1887 for an honest litigant in Her Majesty’s Supreme Court to be defeated by any mere technicality, any slip, any mistaken step, in his litigation.’ The present case, and some others which I have quoted, show that in this year, 1963, the assertion can no longer be made. We have not followed the handwriting of our predecessors. We have marred our copy-book with blots, and the more’s the pity of it” (p. 518).

24. That is a brutal rebuke in beautiful English, something of ‘a metal fist in a velvet glove’, sounding a rightly cautionary note for all future judges.

25. Six key points of relevance to the within application can, it seems to the court, be drawn from Lord Denning’s above-recounted observations in *Pritchard*:

- (1) a court should not lose sight, even in the face of the rules of court, of its ample inherent jurisdiction to correct error.
- (2) a plaintiff ought not to be penalised for a technical slip, especially when a defendant has not been in the least prejudiced by that slip. A court ought to allow any necessary amendment to put it right.
- (3) a court should rightly lean in this regard towards a liberality of spirit.
- (4) when an officer of the court itself makes a mistake, the consequences should not be visited on the unfortunate litigant, but should be remedied by the court itself, doubly so in the case of non-serious error.
- (5) the historical treatment of ‘nullities’ has been most confusing; often a proceeding has been said to be a ‘nullity’ when it would have been more correct to say that, if the irregularity has not been waived, it will be set aside *ex debito justitiae*.
- (6) the ideal to be striven for is that an honest litigant should not be defeated by “*any mere technicality, any slip, any mistaken step*” in her/his litigation.

26. In passing, the court notes that the effect of the majority decision in *Pritchard* was later reversed in its result by the ameliorating provisions of new rules which abolished the distinction between a nullity and an irregularity. Given the tenor of the majority decision in *Pritchard*, “*it is little wonder*”, as Smyth J. observes in *Re Cedarlease Ltd* [2007] IEHC 69, para.29, “*that the [English] rules making committee brought in amended rules*”.

VI

The Position Adopted by the Irish Courts

27. The court was referred in argument to a number of Irish cases, the principal ones being (1) *Meares v. Connolly* [1930] I.R. 333, (2) *Bank of Ireland v. Lady Lisa Ireland Ltd* [1992] 1 I.R. 404, (3) *Murphy v. GM* [1999] IEHC 5, (4) *Wicklow County Council v. Fenton* [2002] 2 I.R. 583, (5) *McKenna v. G(J)* [2006] IEHC 8, (6) *Pidgeon v. Donnelly* [2006] IEHC 426, (7) *Re Cedarlease Ltd* [2007] IEHC 69, and (8) *Connolly v. HSE* [2013] IEHC 131. The court turns to consider each of these cases briefly hereafter, albeit that it turns to *Meares* and *Lady Lisa* with some reluctance: Finnegan P., in *McKenna*, delivered something of a precedential ‘kiss of death’ to the soundness of *Meares*, and to the extent that *Lady Lisa* relies on *Meares* it stands similarly tainted. However, because the two cases were opened to the court, the court mentions them hereafter but subject to the foregoing observations.

(1) *Meares*

28. The court notes its general observation above as to the standing of *Meares* as an authority.

29. In *Meares*, the plaintiff issued a summary summons, claiming possession of certain rooms in a house, which, by an agreement in writing, the plaintiff had let to the defendant from year to year, the tenancy having been determined by a notice to quit. The notice to quit was given in pursuance of a proviso in the agreement whereby the tenancy could be determined by a notice to quit when the rent was in arrears. It was held by O’Byrne J. in the High Court that (a) procedure by summary summons was not applicable in an action for the recovery of premises on a notice to quit where the right to give notice depended on happening of a contingency, and (b) the High Court had no power to amend a summary summons and allow the action to proceed as if commenced by a plenary summons. It was contended before O’Byrne J. that he had jurisdiction under O.XV, r.5 of the then Rules of the Superior Courts to treat the summons before him as a plenary summons and allow the action to proceed as if commenced by a plenary summons. However, to this he indicated, at p.336, that “*I do not accept that construction of O.XV, r.5, which, it seems to me, provides only for cases properly brought in the first instance by summary summons.*”

30. Order XV, rule 5 of the since-superseded Rules of the Superior Courts 1927 provided as follows:

“On the hearing of any Summary Summons, the Master in a case within his jurisdiction, or the Judge, as the case may be, may give Judgment for the relief to which the Plaintiff may appear to be entitled or may dismiss the action or matter or may adjourn the case for plenary hearing as if the proceedings had been originated by Plenary Summons with such directions as to pleadings or discovery or settlement of issues or otherwise as may be appropriate, and generally may make such order for determination of the question in issue in the action or matter as may seem just.”

31. The Master/Judge concerned would only ever so proceed where a case had been commenced by summary summons and ought to have been commenced by plenary summons, which is precisely the situation that presented before O’Byrne J. So it is difficult to see the sense to the distinction that O’Byrne J. made, albeit that one can see the distinction that he was making. It is possible that O’Byrne J. *may* have been trying to make some distinction between a process that was a nullity and one that involved some lesser error. However, in point of fact, he never quite says this but in *McKenna v. G(J)* [2006] IEHC 8, at para.8, Finnegan P., before proceeding to undermine the correctness of *Meares* observed that to that time *Meares* had been seen as authority for the proposition that “*the effect of issuing a summary summons in contravention of Order 1 Rule 6 is to render those proceedings a nullity*”.

32. O’Byrne J. did not give any consideration in his judgment to the question of inherent jurisdiction, *i.e.* what Denning MR was later to refer to in *Pritchard* as “*the [English] High Court[’s]...ample jurisdiction to correct...error*”. But, even if *Meares* continued to be good authority, and post-*McKenna* the court respectfully does not see how this could be so, it is just not relevant. All it shows is that under a particular rule of court that is not at play in these proceedings it was held at one time that the High Court did not have power to amend a summary summons and allow the action to proceed as if commenced by a plenary summons.

(2) *Lady Lisa*

33. The court notes its general observation above as to the standing of *Meares* and *Lady Lisa* as authorities.

34. In November 1986, by a lease for a term of years, the plaintiff in this case let a business premises in Henry Street, Dublin, to the defendant. The lease contained a proviso for re-entry for non-payment of rent. The defendant fell into arrears in the payment of rent. In December, 1990, the plaintiff served on the defendant a notice entitled ‘Notice of Re-entry and Forfeiture’ which stated that pursuant to the proviso for re-entry in the lease “*the lessor hereby exercises its right to determine the lease for failure to pay*” the rent. It required the defendant to yield possession on a specified date. However no effort was made by the landlord to physically take possession of the premises. One week after the service of the notice of re-entry the plaintiff issued proceedings for possession by way of summary summons. For reasons that do not need to be considered here, O’Hanlon J. held that the plaintiff ought to have proceeded by way of plenary summons but followed the approach adopted in *Meares*, concluding in this regard that he “*had no power to amend the summary summons and allow the action to proceed as if commenced by a plenary summons*”. O’Hanlon J. makes clear (at p.410) that the reason he was following *Meares* is because “*the rules which were under consideration in that case were in all relevant respects on all fours with the rules which have application in the present case*”. As with *Meares*, *Lady Lisa* does not seem especially relevant to the facts at hand. All it shows is that under a particular rule of court that is not at play in these proceedings it was held at one time that the High Court did not have power to amend a summary summons and allow the action to proceed as if commenced by a plenary summons. To the extent that *Lady Lisa* relies on *Meares*, it is difficult to see that, post-*McKenna*, O’Hanlon J.’s judgment in the case continues to be good authority.

(3) *Murphy*

35. This was an application for an interlocutory order pursuant to s.3(1) of the Proceeds of Crime Act, prohibiting the respondents from disposing or otherwise dealing with a sum of £300,000 partly made up of sterling and partly of Irish pounds. The respondents contended that the plenary summons was defective. Accordingly, they argued that the proceedings should be dismissed. The applicants maintained that the respondents should have applied by way of notice of motion to have the claim struck out or to set aside the plenary summons for irregularity. On appeal, the Supreme Court held that there was no deficiency in procedure; however, what is note for present purposes is that O’Higgins J. declined to strike out the proceedings, *inter alia*, because “[t]he defect in the pleading was of a technical nature and could not conceivably have worked to the prejudice of the Respondents” (para.10)

(4) *Fenton*

36. The procedural application in *Fenton* arose in proceedings brought under ss.57 and 58 of the Waste Management Act 1996, though the procedural application was made by persons who were being proceeded against under s.58 only. Section 57(2) of the Act of 1996 required that an application for an order under that section should be by motion. Section 58(2) of the Act of 1996 required that an application under that section should be brought in a summary manner. The second, third and fourth respondents (who were proceeded against under s.58 only) brought a motion seeking to have the proceedings against them set aside pursuant to O.124, r.1 RSC on the basis that the proceedings against them should have been commenced by summary summons rather than originating notice of motion. The respondents' motion was unsuccessful, because (i) of a perceived need to reconcile ss.57 and 58; (ii) it was perceived that no “*real prejudice*” (p.474) would be suffered by the defendants; (iii) of the overlap between the s.57 and s.58 proceedings, as brought; and (iv) because of a certain commonality of facts and urgency presenting.

37. In truth, when one stands back for a moment and considers matters the judgment on the procedural application in *Fenton* is authority for what might be contended to be the somewhat surprising proposition that when the Oireachtas stated in s.58(2) of the Act of 1996 that “*An application for an order under this section shall be brought in a summary manner...*”, it meant that ‘An application for an order under this section shall be brought in a summary manner, save where it is not, in which case matters can proceed otherwise if (I) an applicant proceeds against other people in the same proceedings under another provision, (II) there is an absence of “*real prejudice*”, and (III) there is a certain commonality of facts and urgency presenting.’ The respondent’s application was also criticised by the court in *Fenton* (at p.473) as “*unreal and academic*”. Again, however, that is to make what might be contended to be the somewhat surprising proposition that when the Oireachtas stated in s.58(2) of the Act of 1996 that “*An application for an order under this section shall be brought in a summary manner...*”, it meant that ‘An application for an order under this section shall be brought in a summary manner, save where it is not, in which case matters can proceed otherwise, provided an ‘unreal and academic test’ is satisfied’.

38. If the Oireachtas expressly contemplates different manners of proceeding, as it did under ss.57 and 58, deference to democratically elected lawmakers requires that one should bend towards requiring parties to proceed as statute expressly contemplates, not least when it is perfectly feasible as a matter of procedure for a party to proceed as contemplated by statute. To suggest that there was a need to reconcile ss.57 and 58 where one set of proceedings was brought against several parties, some under s.58 only, was to start from the premise that where a person acts in breach of the express wording of s.58 the courts may/ought to cure such breach by undertaking a process of interpretation which attributes an intention to the Oireachtas/statute which could reasonably be contended to (the court would respectfully suggest that it does) diverge from the credible, and from what statute expressly provides.

(5) *McKenna*

39. In *McKenna*, the proceedings had been commenced by special summons. The second-named defendant sought an order dismissing the proceedings on the basis that they were not commenced in accordance with the Rules of the Superior Courts, pointing in particular to the requirement in O.1, r.6 RSC that “*In all proceedings (other than to take a minor into wardship) commenced by originating summons, procedure by plenary summons shall be obligatory except where the procedure by summary summons or by special summons is required or authorised by these Rules*”, and to the related decisions in *Meares* and *Lady Lisa*. The plaintiff pointed, however, to O.3 and the provision therein that:

“Procedure by special summons may be adopted in the following classes of claims –

(21)(a) any other proceeding which is required or authorised by law to be brought in a summary manner and for which no other procedure is prescribed by these Rules. (b) any other proceeding which is required or authorised by law and for which no other procedure is prescribed by these Rules.

(22) such other matters as the court may think fit to dispose of by special summons.”

40. The question for the court in that case was whether or not the just-quoted provisions were of avail to the plaintiff. Notably, it appears to be the first case of note in which the High Court expressly drew a distinction between errors that were a nullity and those that were ‘but’ an irregularity, Finnegan P. proceeding in this regard on the basis that this *was* a distinction which had been made in *Meares*, albeit that, *stricto sensu*, O’Byrne J. *may* have proceeded by reference to such a distinction but did not expressly state this. Finnegan P. concluded, at para.35 that “*As to Rule 3(22) giving the same its ordinary meaning the Court may dispose of a matter commenced by special summons notwithstanding that it does not come within any of the categories listed in Order 3(1) to (21).*” He noted that *Meares* had been decided at a time when the “*Rules did not contain a provision corresponding to Order 3(22) of the present Rules nor indeed a Rule corresponding to Rule 124 of the present Rules as to relief against irregularity unless the same was imported by Order 1 Rule 1 thereof*”. He also suggested that it was possible that *Meares* may have been incorrectly decided because it proceeded without consideration of a provision of the then Rules (akin to O.2(2) of the Rules at the time of *McKenna*) which provided that “*Procedure by summary summons may be adopted by consent of all parties in the case of a claim not coming within any of the classes in Rule 1*”, a provision which suggested to Finnegan P. that “*to adopt procedure by summary summons where a plenary summons is appropriate is an irregularity and not a nullity*” – because if it was a nullity how could the consent of the parties cure it?

(6) *Pidgeon*

41. Here the plaintiff had previously obtained an injunction restraining the defendant from issuing or bringing any proceedings or applications in any court against the plaintiff and/or his legal representatives without the leave of the High Court. That order was granted arising out of an application by way of notice of motion. In this application the defendant sought to have the said order set aside on the grounds that the affidavit relied upon in the hearing of the motion was not the affidavit relied upon in the notice of motion, the affidavit was not duly sworn, and further the plaintiff had failed to comply with O.52, r.11 RSC, 1986. In her judgment, Laffoy J. held that: (1) the notice of motion was incorrect insofar as it provided the wrong name of the deponent of the grounding affidavit; however, such a technical error could not have resulted in any prejudice to the defendant and did not render the order invalid; (2) the defendant’s allegation that the affidavit was not properly sworn was not established on the evidence; and (3) while the plaintiff conceded that he failed to comply with the requirements of O.52, r.11

RSC in that he did not obtain leave to serve the notice of motion on foot of which the order was made. However, that irregularity was not such as to require the setting aside of the order, as the defendant did not apply to have the order set aside within a reasonable time and furthermore the defendant was not prejudiced by the plaintiff's failure to obtain leave to serve the motion. Notable in the foregoing is the reference to prejudice as a determinative factor.

(7) *Re Cedarlease Ltd*

42. This case is also sometimes referred to as *Earl v. Cremin*.

43. Here the plaintiff instituted proceedings by way of plenary summons claiming declaratory relief against the defendants pursuant to ss.297(a) and 298 of the Companies Acts, 1963. However, under O.74, rr.49 and 136 RSC, such an application ought to have been brought by way of originating notice of motion supported by affidavits. Consequently, the defendants submitted that the proceedings were improperly constituted and should be struck out. The defendants alleged that the proceedings were a nullity or in the alternative were an irregularity and should be struck out due to the deliberate decision of the plaintiff to adopt the wrong procedure to the prejudice of the defendants. It was held by Smyth J. that under O.74, rr.49 and 136. the plaintiff's application was directed to be brought by way of originating notice of motion and no express provision was made for such relief to be sought by way of plenary summons. However, the rules did not apply a mandatory procedure. Accordingly, it was permissible for these proceedings to have been instituted by way of plenary summons.

44. In the course of his judgment, Smyth J., *inter alia*: (i) observes (with some understatement) that "*the Irish courts do not appear to have discussed the distinction between nullity and irregularity to the same extent as appears from the reported cases in England*" (para.37); in fact, *McKenna* seems to be the first case of note where this distinction was expressly considered; (ii) distinguishes *Meares* (para.38) and appears to distinguish *Lady Lisa* (which he notes, at para.3, was decided by reference to *Meares*); (iii) notes Finnegan P.'s observation in *McKenna* that neither *Meares* nor *Lady Lisa* were concerned with r.124; (iv) observes that "*I do not consider myself in any way departing from established case law in situations where; (a) the subject matter of the litigation is radically different, and (b) where specific orders of the rules were not considered*" (para.39); (v) draws a distinction between the case before him which widened the scope of inquiry available and *Meares* and *Lady Lisa* "*here a restricted form of*

procedure was being invoked such as might preclude the Defendant in each case from advancing such evidence as the proceedings of wider scope would have enabled” (para.39); (vi) at paras.51-52, expressly endorses the observations of Lord Denning in Pritchard (at p.513) that “If a plaintiff has commenced a known genuine case before the time limit has expired, but has made a technical slip in his procedure, then he will be allowed to rectify the defect if it can be done without injustice to the defendant” and (at p.516) that “When an officer of the court itself makes a mistake, the consequences should not be visited on the unfortunate litigant, but they should be remedied by the court itself”, adding (at para.53) that “While those factors are not identical to the facts of the instant case the underlying reasoning behind them in my judgment is applicable”.

(8) *Connolly*

45. Here, the defendant sought that a claim for trespass to the person be struck out as it should have been issued by plenary summons pursuant to O.1 r. 1 RSC. Gilligan J. held that O.124 RSC gave the court a discretion when deciding whether to strike out proceedings for it being in an incorrect form. It was held that the claim for trespass against the person should not be struck out on the basis that no prejudice was caused to the defendant, as well as the fact that the claim resulted from the same incident as the personal injury claims. In his judgment, he observes, *inter alia*, as follows:

“14. *The issue of the correct originating procedure has been considered on a number of occasions by the courts. In Bank of Ireland v. Lady Lisa Ireland Ltd [1992] II.R. 404, O’Hanlon J. followed the decision of Meares v. Connolly [1930] I.R. 333 and held that the use of the summary summons procedure where it was not available was a fundamental flaw that was fatal to the claim and accordingly the claim was dismissed.*

...

16. *In Earl v. Cremin [2007] IEHC 69 the proceedings were commenced by way of plenary summons when O.74, rr. 49*

and 136 stipulated that the claims in question should be brought by the originating notice procedure. The defendants sought to strike out proceedings as improperly constituted and prejudicial. Smyth J. held that the adoption of the incorrect originating procedure was due to oversight and that any prejudice suffered could be adequately remedied by the court.

...

18. *It is clear that O. 124 gives the court discretion when deciding whether or not to strike out proceedings due to non-compliance such as a want of form. In the present case, 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. 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."*

VII

Some Points Arising from Case-Law

46. What points can be identified from the just-considered cases? It seems to the court that the following points might safely be identified:

- (1) following on the judgment of Finnegan P. in *McKenna*, the greatest of caution should be exercised before relying on *Meares* or *Lady Lisa*; it now appears that *Meares* may have been wrongly decided and given (and to the extent of) the

reliance placed in *Lady Lisa* on *Meares*, *Lady Lisa* likewise falls to be approached with the greatest of caution;

- (2) notable in cases such as *Murphy*, *Pidgeon*, *Cedarlease*, and *Connolly*, is the emphasis placed by the Irish courts, when it comes to procedural deficiencies in proceedings, in striking a stance that does not fetishize the technical and which focuses heavily on what (if any) prejudice has arisen by virtue of any such deficiency to the party not guilty of error,
- (3) although the concepts of nullity and irregularity do appear in Irish case-law, the courts have not traditionally got ‘hung up’ on this aspect of matters, preferring to focus on (a) the particular rule(s) in play, (b) where the justice of matters lies, having particular regard to the issue of prejudice to the party not guilty of error, and (c) a proper desire to respect and enforce the law as extant/enacted whilst avoiding unyielding allegiance to technicality,
- (4) subject to point (3), of note in *McKenna* is Finnegan P’s observation that “*to adopt procedure by summary summons where a plenary summons is appropriate is an irregularity and not a nullity*”,
- (5) consistent with point (3) and noting the express approval in *Cedarlease* of certain elements of the judgment of Lord Denning in *Pritchard*, it seems to the court that the following points of principle extracted by this Court from that judgment can usefully be borne in mind as useful ‘rules of thumb’ for a court tasked with adjudicating on procedural error:

- (i) a court should not lose sight, even in the face of the rules of court, of inherent jurisdiction to correct error;
- (ii) a party ought not to be penalised for a technical slip, especially when its opponent has not been in the least prejudiced by that slip (and a court ought to allow any necessary amendment to put it right);
- (iii) a court should rightly lean in this regard towards a liberality of spirit;
- (iv) when an officer of the court itself makes a mistake, the consequences should not be visited on the unfortunate litigant, but should be remedied by the court itself, doubly so in the case of non-serious error;
- (v) a point of relevance more in the English context than to post-Independence Irish case law (on which see, in particular, point (3)), it is worth noting that the historical treatment of ‘nullities’ (at least in English case-law) has been most confusing; often (in English case-law) a proceeding has been said to be a ‘nullity’ when it would have been more correct to say that, if the irregularity has not been waived, it will be set aside *ex debito justitiae* (‘as of right’, *i.e.* where a litigant is entitled to something merely on the asking for it, as opposed to its being a

matter of judicial discretion/
determination); and

- (vi) the ideal to be striven for is that an honest litigant should not be defeated by any mere technicality, any slip, or any mistaken step in her/his litigation.

VII

The Notice of Motion

47. Conscious from its consideration of case-law as to how it ought to proceed, and mindful of the consideration of facts that it embarked upon previously above the court turns next to a consideration of the bases of relief identified in the notice of motion. The reader will recall that the motion mentions that the particular *“objections which will be insisted upon at the hearing of this motion which render the Concurrent Personal Injury Summons a nullity and/or irregular are as follows”*:

48. *“(a) in breach of Order 6, Rule 1, the plaintiff issued the Summons over four years after issue of the Originating Summons to which it corresponds, without obtaining leave of the Court to do so”*.

49. Court Note: Order 6(1) RSC is concerned with the issuance of a concurrent summons. Although the impugned summons states itself to be a concurrent summons, in truth it is just ‘masquerading’ as such. If one looks to the orders referenced in the Central Office-affixed stamp it is clear that what was sought to issue was an amended plenary summons, and what issued as a purported concurrent summons is essentially a facsimile of the amended plenary summons. The court is therefore being asked to ‘hang’ the plaintiff on a matter of nomenclature, which is precisely the type of technicality-minded approach that the thrust of Irish case-law has consistently rejected. The plaintiff had leave to issue an amended plenary summons and the court does not see that any prejudice has issued for the respondents by virtue of the fact that what issued ‘masquerades’ as a concurrent summons. The court notes that the ‘masquerade’ was facilitated by the court (through the Central Office) and recalls in this

regard the sensible observation of Lord Denning in *Pritchard* (at p.516) (as expressly approved in *Cedarlease*) (at para.52) that “*When an officer of the court itself makes a mistake, the consequences should not be visited on the unfortunate litigant, but they should be remedied by the court itself*”.

50. “(b) in breach of the Order of the Master of the High Court dated 1 November 2018 the Plaintiff did not issue and serve an Amended Summons in the form for which liberty was obtained”.

51. Court Note: It is obviously sensible to issue the summons in respect of which leave has been obtained. However, the question that arises is what to do in the circumstances presenting where, through some form of what is accepted to be innocent inadvertence, this did not occur. Here the court would reiterate the points made immediately above concerning point (a), save for the first sentence concerning what Order 6(1) RSC provides.

52. “(c) the Summons is stamped as having issued pursuant to Orders dated 1 November 2018b and 2 April 2019. These Orders do not give liberty to issue and serve a Concurrent Summons over 12 months after the Originating Summons to which it refers, and the Summons is therefore a nullity”.

53. Court Note: The court would reiterate the points made above concerning point (a), save for the first sentence concerning what Order 6(1) RSC provides.

54. “(d) the Summons which issued and was served on the Second Named Defendant is manifestly different in substance and in form from that for which the Order of 1 November 2018 was obtained”.

55. Court Note: It is not.

56. “(e) In breach of Order 28, Rule 9, the Summons does not bear any indication anywhere, either in its title, its content or its form, which indicates that it has been amended in any way”.

57. Court Note: Here the court would reiterate the points made immediately above concerning point (a), save for the first sentence concerning what Order 6(1) RSC provides. In passing, the court struggles to see that in a case of innocent inadvertence an absence of underlining would ever be considered a matter of great seriousness.

58. “(f) *the Summons does not disclose to the Second Named Defendant the fact that it was joined a Defendant at a later date, and was not party to [the] proceedings from the outset*”.

59. Court Note: The central point being touched upon in this regard is the Statute of Limitations point that the court has already treated with above. To reiterate, the court does not see how a summons served in 2019 which expressly and clearly alleges in its body that an alleged incident occurred in January 2014, and which bears the above-described Central Office-affixed stamp suggesting that some form of summons issued but has been the subject of various orders, can properly be seen as anything other than a document that ‘calls out’ that there may perhaps be some form of Statute of Limitations point presenting. In passing, the court notes that its conclusions in this judgment do not prevent the said limitations point from being raised in the future. How it will fare when and if raised, the court does not know, nor does it entertain any view in this regard. That is a matter for a future judge, when and if raised, and does not fall to be adjudicated upon in the present application.

VIII

Conclusion

60. For the various reasons stated, the court respectfully declines to strike out the summons which it perceives to have been afflicted by irregularity in the manner described above but certainly not a nullity.

61. Given that the confusion that has arisen is entirely attributable to the plaintiff, the court anticipates that Betong may consider that, although it has failed in this application, the costs of this application should nonetheless be ordered against the plaintiff or, at the least, that there should be no order as to costs. So rather than make any remark as to costs the court will hear

the parties further (and briefly) in this regard in the event that they cannot reach agreement between themselves, and it may be that they will.

APPENDIX A

*Form of Proposed Amended Personal Injuries Summons that was
before the Master on 1st November 2018.*

“THE HIGH COURT

RECORD NO.2015/786P

BETWEEN:

CHRISTOPHER CHAMBERS

PLAINTIFF

– AND –

RATHCALED DEVELOPMENTS LIMITED and SV BETONG AS

DEFENDANTS

AMENDED PERSONAL INJURY SUMMONS

***To the Defendant: Rathcaled Developments Limited having its registered office at: 7 Tivoli
Avenue, Harolds Cross, Dublin 6W***

***To the Defendant: SV Betong AS having its registered office at Dreierveien 25, Sandnes
4321, Norway***

*This Personal Injury Summons requires you to enter an Appearance in person or by Solicitor
in the Central Office, Four Courts, Dublin in the above action within eight days after the
summons has been served on you (exclusive of the days of such service) and **TAKE NOTICE**
that if you do not enter an appearance the Plaintiff may proceed in this action, and judgment
may be given in your absence.*

BY ORDER THE HONOURABLE Susan Denham Chief Justice of Ireland

The day of

*This summons is to be served within twelve calendar months from the date hereof, unless the
time for service has been extended by the Court.*

*The Defendant may appear to this summons by entering an Appearance either personally or
by Solicitor at the Central Office, Four Courts, Dublin.*

AMENDED ENDORSEMENT OF CLAIM FOR A PERSONAL INJURY SUMMONS

1) *The plaintiff is a formwork operator and resides at...[Stated Address]. He was born on...[Stated Date].*

2) *The **first-named** defendant is a limited liability company having its registered office at: 7, Tivoli Avenue, Harolds Cross, Dublin 6W.*

3) ***The second named defendant is a limited liability company having its registered office at Dreierveien 25, Sandnes 4321, Norway.***

4) *At all material times, the second-named defendant was employed by the **first-named** defendant as a formwork/shuttering carpenter and was assigned to work on various construction sites in Norway.*

5) *At all material times, the second-named defendant was the main contractor on the construction site the subject-matter of these proceedings at Stavanger, Norway.*

WRONG ALLEGED AGAINST THE DEFENDANTS.

[No change]

PARTICULARS OF THE WRONG ALLEGED AGAINST THE DEFENDANTS AND OF THE CIRCUMSTANCES RELATING TO THE COMMISSION OF THE SAID WRONG.

7) *On the 28th day of January 2014, the plaintiff in the course of his employment with the **first-named** defendant was working at a construction site in Stavanger, Norway **on which the second-named defendant was the main contractor**....*

8) *The said accident was caused by the negligence and breach of duty including breach of statutory duty and breach of contract of the defendants **and each of them, or, alternatively, one or other of them, ~~its~~ their respective** servants or agents.*

9.) *By reason of the matters aforesaid, the plaintiff suffered severe personal injuries, loss, damage and expense.*

PARTICULARS OF THE ACTS OF THE DEFENDANTS CONSTITUTING THE SAID WRONG AND OF EACH INSTANCE OF NEGLIGENCE AND BREACH OF DUTY AND BREACH OF CONTRACT OF THE DEFENDANTS.

*The defendants **and each of them ~~its~~ their respective** servants or agents, were negligent and n breach of duty including breach of statutory duty and breach of contract in that ~~it~~ they:*

[No changes to said Particulars]

...AND THE PLAINTIFF CLAIMS

1) *Damages for negligence and breach of contract.*

2) *Interest pursuant to the Courts Act, 1981.*

3) *The costs of these proceedings.*

The High Court has power under Article 6 of the revised Lugano Convention, 2007, to hear and determine the plaintiff's claim against the second-named defendant by virtue of the fact that Norway, being the country where the said company has its seat, is a Member State of EFTA and is therefore a State bound by the said Convention, and the Court should assume jurisdiction to hear and determine the said claim under the provisions of Article 6 of the revised Lugano Convention, 2007, on the basis that these proceedings have been issued against a joint tortfeasor (the first-named defendant) which has its seat within the jurisdiction of this Honourable Court.

No proceedings between the parties concerning this cause of action are pending between the parties in any Member State of EFTA or in any other Member State of the European Union.

SCHEDULE

PARTICULARS OF ITEMS OF SPECIAL DAMAGE

[No changes to said Particulars]

*The Personal Injuries Assessment Board has authorised the plaintiff to bring these proceedings **against the first-named defendant** pursuant to Section 14 of the Personal Injuries Assessment Board Acts....*

*The Personal Injuries Assessment Board has authorised the plaintiff to bring these proceedings **against the second-named defendant** pursuant to Section 46 of the Personal Injuries Assessment Board Acts....”.*

APPENDIX B

Form of Concurrent Personal Injuries Summons that issued on 7th May 2019.

“THE HIGH COURT

RECORD NO.2015/786P

BETWEEN:

CHRISTOPHER CHAMBERS

PLAINTIFF

– AND –

RATHCALD DEVELOPMENTS LIMITED and SV BETONG AS

DEFENDANTS

CONCURRENT PERSONAL INJURY SUMMONS

To the Defendant: *SV Betong AS having its registered office at Dreierveien 25, Sandnes 4321, Norway*

*This Personal Injury Summons requires you to enter an Appearance in person or by Solicitor in the Central Office, Four Courts, Dublin in the above action within eight days after the summons has been served on you (exclusive of the days of such service) and **TAKE NOTICE** that if you do not enter an appearance the Plaintiff may proceed in this action, and judgment may be given in your absence.*

BY ORDER THE HONOURABLE *Susan Denham Chief Justice of Ireland*

The 2 day of February 2015

This summons is to be served within twelve calendar months from the date hereof, unless the time for service has been extended by the Court.

The Defendant may appear to this summons by entering an Appearance either personally or by Solicitor at the Central Office, Four Courts, Dublin.

CONCURRENT SUMMONS ISSUED THIS
7th DAY OF MAY 2019 PURSUANT

~~TO ORDER 6, RULES 1 AND 2 (R.S.C.)~~ ORDER 5

DATED THE *1st* DAY OF *November 2018*

+ 2nd April 2019

[Court Note: The text shown opposite is a Central Office-affixed stamp on p.1 of the Summons].

ENDORSEMENT OF CLAIM FOR A PERSONAL INJURY SUMMONS

- 1) *The plaintiff is a formwork operator and resides at...[Stated Address]. He was born on...[Stated Date].*
- 2) *The first-named defendant is a limited liability company having its registered office at: 7, Tivoli Avenue, Harolds Cross, Dublin 6W.*
- 3) *The second named defendant is a limited liability company having its registered office at Dreierveien 25, Sandnes 4321, Norway.*
- 4) *At all material times, the second-named defendant was employed by the first-named defendant as a formwork/shuttering carpenter and was assigned to work on various construction sites in Norway.*
- 5) *At all material times, the second-named defendant was the main contractor on the construction site the subject-matter of these proceedings at Stavanger, Norway.*

WRONG ALLEGED AGAINST THE DEFENDANTS.

[No change]

PARTICULARS OF THE WRONG ALLEGED AGAINST THE DEFENDANTS AND OF THE CIRCUMSTANCES RELATING TO THE COMMISSION OF THE SAID WRONG.

- 7) *On the 28th day of January 2014, the plaintiff in the course of his employment with the first-named defendant was working at a construction site in Stavanger, Norway on which the second-named defendant was the main contractor....*
- 8) *The said accident was caused by the negligence and breach of duty including breach of statutory duty and breach of contract of the defendants and each of them, or, alternatively, one or other of them, their respective servants or agents.*
- 9.) *By reason of the matters aforesaid, the plaintiff suffered severe personal injuries, loss, damage and expense.*

PARTICULARS OF THE ACTS OF THE DEFENDANTS CONSTITUING THE SAID WRONG AND OF EACH INSTANCE OF NEGLIGENCE AND BREACH OF DUTY AND BREACH OF CONTRACT OF THE DEFENDANTS.

The defendants and each of them, their respective servants or agents, were negligent and n breach of duty including breach of statutory duty and breach of contract in that they:

[No changes to said Particulars]

AND THE PLAINTIFF CLAIMS

- 1) *Damages for negligence and breach of contract.*
- 2) *Interest pursuant to the Courts Act, 1981.*

3) *The costs of these proceedings.*

The High Court has power under Article 6 of the revised Lugano Convention, 2007, to hear and determine the plaintiff's claim against the second-named defendant by virtue of the fact that Norway, being the country where the said company has its seat, is a Member State of EFTA and is therefore a State bound by the said Convention, and the Court should assume jurisdiction to hear and determine the said claim under the provisions of Article 6 of the revised Lugano Convention, 2007, on the basis that these proceedings have been issued against a joint tortfeasor (the first-named defendant) which has its seat within the jurisdiction of this Honourable Court.

No proceedings between the parties concerning this cause of action are pending between the parties in any Member State of EFTA or in any other Member State of the European Union.

SCHEDULE

PARTICULARS OF ITEMS OF SPECIAL DAMAGE

[No changes to said Particulars]

The Personal Injuries Assessment Board has authorised the plaintiff to bring these proceedings against the first-named defendant pursuant to Section 14 of the Personal Injuries Assessment Board Acts....

The Personal Injuries Assessment Board has authorised the plaintiff to bring these proceedings against the second-named defendant pursuant to Section 46 of the Personal Injuries Assessment Board Acts....”.