

THE HIGH COURT

BETWEEN

NOEL MURPHY AND JEAN CULLEN

PLAINTIFFS

AND

A.R.F. MANAGEMENT LIMITED, HARRY CASSIDY, ELANA CASSIDY, JOHN
MULHOLLAND, RUTH M. WOODS AND JOHN WHYTE

DEFENDANTS

JUDGMENT of Mr. Justice Meenan delivered on the 22nd day of November, 2019

Introduction

1. This judgment concerns the provisions of the Rules of the Superior Courts (RSC) that provide for the renewal of a summons. The relevant rule is Order 8, which was amended by S.I. 482 of 2018: Rules of The Superior Courts (Renewal Of Summons) 2018. I will consider the terms of the amendment to Order 8, in order to determine whether it is still permissible for a court to renew a summons on more than one occasion, as was permitted by the original wording of Order 8. The amended rule came into operation on 11 January 2019.

Background

2. These proceedings relate to an alleged misappropriation by the first named defendant and/or its former directors in the sum of €3,376,255. The plaintiffs seek damages for, *inter alia*, fraud, deceit and/or misrepresentation, breach of fiduciary duty, breach of contract, negligence and breach of duty. The plenary summons was issued on 28 April 2017.
3. On 22 October 2018, the court made an Order renewing the summons for a period of six months. This application was made under the original Order 8.
4. On 12 April 2019, the court made an Order further renewing the summons for a period of three months to permit the plaintiffs to issue a request for service abroad of the summons, in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, on one of the director defendants who resides in the Russian Federation.
5. On 8 July 2018, the court made an Order further renewing the summons for a period of three months to allow service to be effected in accordance with the said Convention. The court held that "*special circumstances*" existed which justified a further renewal, the reasons being "*complexities and delays involved in the service of proceedings on some of the defendants residing outside the jurisdiction.*" However, the issue as to whether, under the amended Order 8, such a renewal was permissible does not appear to have been in issue. Finally, on 7 October 2019, this Court made an Order further renewing the summons for a period so as to enable legal submissions to be made in respect of the effects of the revision of Order 8.

Order 8 R.S.C.

6. The original Order 8(1) provides: -

"1. No original summons shall be in force for more than twelve months from the day of the date thereof... but if any defendant therein named shall not have been served therewith, the plaintiff may apply before the expiration of twelve months to the Master for leave to renew the summons. After the expiration of twelve months, an application to extend time for leave to renew the summons shall be made to the Court. The Court or the Master, as the case may be, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed summons..."

The amended Order 8 provides: -

- "(1) No original summons shall be in force for more than twelve months from the day of the date thereof... but if any defendant therein named shall not have been served therewith, the plaintiff may apply before the expiration of twelve months to the Master for leave to renew the summons.
- (2) The Master on an application made under sub-rule (1), if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original... be renewed for three months from the date of such renewal inclusive.
- (3) After the expiration of twelve months, and notwithstanding that an order may have been made under sub-rule (2), application to extend time for leave to renew the summons shall be made to the Court.
- (4) The Court on an application under sub-rule (3) may order a renewal of the original or concurrent summons for three months from the date of such renewal inclusive where satisfied that there are special circumstances which justify an extension, such circumstances to be stated in the order.
- (5) ..."

It seems to me that the following are the material amendments: -

- (i) The period of renewal is reduced from 6 months to 3 months;
- (ii) The words "*and so from time to time during the currency of the renewed summons*" in the original Order 8 are not repeated in the amended Order 8;
- (iii) The original rule provides that the court may order a summons "*be renewed*" whereas the amended rule provides that the court may order "*a renewal*" of the summons; and
- (iv) Under the original rule the court may renew a summons "*if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason*" whereas

the amended rule provides that "The court...may order a renewal of the... summons... where satisfied that there are special circumstances which justify an extension..."

Submissions of the plaintiff

7. Counsel for the plaintiff referred to the decision of Finlay Geoghegan J. in *Chambers v. Kenefick* [2007] 3 I.R. 526, where she stated: -

"...proper approach of this Court to determining whether or not it should exercise its discretion under O., 8 r. 1 where the application is based upon what is referred to therein as "other good reason" is the following. Firstly, the court should consider is there a good reason to renew the summons. That good reason need not be referable to the service of the summons. Secondly, if the court is satisfied that there are facts and circumstances which either do or potentially constitute a good reason to renew the summons then the court should move to what is sometimes referred to as the second limb of considering whether, because of the good reason, it is in the interests of justice between the parties to make an order for the renewal of the summons. Thirdly, in considering the question of whether it is in the interests of justice as between the parties to renew the summons because of the identified good reason, the court will consider the balance of hardship for each of the parties if the order for renewal is or is not made."

This approach was followed by Feeney J. in *Bingham v. Crowley and Others* [2008] IEHC 453. Feeney J. also held that any application for a renewal, after a six-month renewal had been granted, had to be made "*during the currency of the renewed summons*".

8. On the issue as to whether the amended Order 8 still allows for multiple renewals, Counsel for the plaintiff submitted that if it was intended that the amended Order 8 would only allow for one renewal this would have been clearly stated. As multiple renewals are a common feature in litigation, such an amendment would represent a considerable change. This point was illustrated, it was submitted, by the following passage from the Supreme Court decision in the application of *Liam Liston* (1996) 1 I.R. 501 where, Keane J. (as he then was), delivering the judgment of the Supreme Court on an issue concerning the effect of a provision in the Income Tax Act, 1967 on the Finance Act, 1983, stated: -

"If the intention of the Oireachtas was that the deeming provision in question should be confined in the manner suggested, the draughtsman would have used the usual formula at the beginning of the subsection, i.e. 'for the purposes of this section'. No reason has been advanced as to why, in the absence of any such indication, the section should be construed in the manner suggested."

Consideration of submissions

9. In interpreting Order 8 RSC, I must look to the plain meaning of the text. I adopt the following passage from the judgment of Finlay C.J. in *McGrath v. McDermott* [1988] I.R. 258 where, at p. 276, he stated: -

"The function of the courts in interpreting a statute of the Oireachtas is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to consideration of the purpose and intention of the Legislature to be inferred from other provisions of the statute involved, or even of other statutes expressed to be construed with it. The courts have not got a function to add to or delete from express statutory provisions so as to achieve objectives which to the courts appear desirable. ..."

10. In interpreting Order 8 RSC, as amended, two issues have to be considered. Firstly, the circumstances under which a court can renew a summons and, secondly, how often a court can renew a summons. As to the first issue, the amended Order 8 has brought about a change in that under the original Order 8 the court may order a summons be renewed *"if satisfied that reasonable efforts have been made to serve ... but for other good reason"* whereas now a court has to be satisfied *"that there are special circumstances"* which justify a renewal. Assuming that the court is satisfied that special circumstances exist to order a renewal, this raises the second issue as to whether such an order can be made by a court on more than one occasion. This requires an interpretation of the wording of the amended rule.
11. The fact that the period of renewal has been reduced, from six months to three months, may indicate an intention to tighten procedures, but it does not provide an answer as to whether multiple renewals are still permissible. Of significance is the fact that the words *"... and so from time to time during the currency of the renewed summons"* have been deleted from the amended Order 8. It was these words that enabled multiple renewals by the court, provided that the application was made during the currency of the renewed summons. The absence of these words clearly indicates that more than one renewal is no longer permissible. I refer to the following passage from Feeney J. in *Bingham v. Crowley and Others* where he stated: -

"19. ...The Court is obliged to give effect and meaning to the wording of Order 8, Rule 1 and that includes to the words 'during the currency of the renewed summons'. The only interpretation which can be given to the words 'the currency of the renewed summons' is the period identified as being the six month period of renewal provided for in an order to renew the summons. The rule provides a more stringent requirement in relation to a second or subsequent renewal in that after the first renewal, a summons will be incapable of further renewal unless an application to renew is made within the currency of the renewed summons."

12. Further, the original Order 8 referred to *"...may order that the original ...summons be renewed..."*. The amended Order 8 refers to *"a renewal of the ... summons"* as opposed to *"renewal"* which could be both in the singular and the plural (see s. 18 of the Interpretation Act, 2005). To my mind, this interpretation is consistent with the effects of the deletion of the words in the original rule, which I have already referred to, which permitted renewals on more than one occasion.

Conclusion

13. By reason of the foregoing, I am satisfied that, on its true construction, the amended Order 8, as provided for by S.I. 482 of 2018, provides that a court can only renew a summons on one occasion. It is no longer permissible for a court, having already renewed a summons, to order a further renewal.