

**THE HIGH COURT**

[2024] IEHC 384  
**Record No. 2020/5825 P**

**BETWEEN:-**

**LEILA ANGLADE**

**PLAINTIFF**

**-AND-**

**TRANSDEV DUBLIN LIGHT RAIL LTD, TRANSPORT INFRASTRUCTURE IRELAND AND, BY  
ORDER OF THE COURT, ALSTROM TRANSPORT IRELAND LTD**

**DEFENDANTS**

**JUDGMENT of Mr Justice Barr delivered *ex tempore* on 26<sup>th</sup> day of June 2024.**

**Introduction.**

- 1.** The proceedings in this case arise out of an accident that occurred on 16 January 2018. While the plaintiff was crossing the Luas tracks at a pedestrian crossing point at the Milltown Luas stop on Richmond Avenue South, Dublin 6, she was caused to trip and fall to the ground due to what she alleges was the unsafe and dangerous condition of the pedestrian crossing.
- 2.** The plaintiff's action against the third defendant was commenced by issuance of an amended personal injuries summons on 6 December 2022.
- 3.** This is an application by the third defendant to have the plaintiff's action against it struck out on the grounds that her claim against it is barred by the provisions of the Statute of Limitations 1957, as amended. It is submitted by the third defendant, that having regard to the date of the accident, and even allowing for the suspension of the running of time for the institution of proceedings, while an application was pending before PIAB, and allowing for the extension of time for a further period of six months from date of the issue of the authorisation by PIAB, the plaintiff was out of time to institute proceedings against the third defendant, when she issued her amended personal injury summons in December 2022.
- 4.** In response to that argument, the plaintiff relies on the provisions of s. 2 of the Statute of Limitations (Amendment) Act 1991, and pleads that her date of knowledge of the fact that the third defendant was the entity with responsibility for maintenance of the pedestrian crossings on Luas tracks, and in particular at the locus of the accident, only arose upon the delivery of a defence by the second

defendant on 27 July 2022, wherein it blamed the third defendant for the condition of the locus.

**5.** The plaintiff states that she was only aware of the alleged involvement of the third defendant when she and her legal advisers saw the affidavit sworn by Ms Clara Cassidy on 26 July 2022, which was sworn for the purpose of grounding the application by the second defendant for liberty to join the third defendant as a third party to the proceedings. The plaintiff states that it was only upon receipt of that affidavit and with sight of the documents exhibited thereto, that she acquired knowledge that the second defendant had a contract with the third defendant to provide maintenance and repair services at the locus of the accident.

**6.** The plaintiff submits that upon becoming aware of the possible liability of the third defendant, she immediately took steps to have that entity joined as a defendant to the proceedings, which was done by order of the High Court dated 14 November 2022. Thereafter, an amended personal injury summons was served on the third defendant on 6 December 2022. It is submitted that in these circumstances, the plaintiff's proceedings against the third defendant were issued within two years of her acquiring the necessary knowledge to enable her to commence proceedings against that defendant and accordingly, her proceedings against it are not statute barred.

**Summary of Relevant Dates.**

**7.** The dates that are relevant to the application that is before the court, can be summarised in the following way:

5 December 2018	A pre-litigation letter is sent by the plaintiff's former solicitors to seven entities, including the third defendant.
30 December 2019	Application lodged with PIAB against all seven respondents.
23 July 2020	Authorisation issued by PIAB.
18 August 2020	A personal injury summons is issued against the first defendant only.
7 October 2021	A defence is filed on behalf of the first defendant,

	in which it blames the second defendant.
31 January 2022	Order of High Court joining second defendant to the proceedings.
27 July 2022	A defence is delivered by second defendant.
29 July 2022	Second defendant issued a motion to join the third defendant as third party.
14 November 2022	Order of High Court joining third defendant into the proceedings.
6 December 2022	Amended personal injury summons issued by plaintiff against the three defendants.
28 July 2023	Defence filed on behalf of third defendant. On the same date, the third defendant issues the present motion seeking to strike out the action against it, as being statute barred.

**Discussion.**

**8.** At the hearing of this application, Mr Gilligan BL submitted that having regard to the pre-litigation letter sent by the plaintiff's former solicitor on 5 December 2018, and having regard to the fact that the plaintiff sought and obtained an authorisation from PIAB on 23 July 2020 to proceed against seven parties, including the third defendant; it could not be argued that the plaintiff's date of knowledge of the possible liability on the part of the third defendant, only arose upon receipt of the affidavit sworn on behalf of the second defendant by Ms Cassidy on 26 July 2022, in support of their application to join the third defendant as a third party to the proceedings.

**9.** It was submitted that at the very least, having regard to their understanding of the possible involvement of the third defendant as of 5 December 2018, the plaintiff and her solicitor were obliged to make further enquiries as to the possible liability of the third defendant. It was submitted that had these enquiries been made, the plaintiff would have acquired the relevant knowledge far earlier than in fact happened. It was submitted that there was a duty on the plaintiff's solicitor to make all necessary

enquiries as to the identity of the correct defendant, or defendants, to be sued in proceedings: see *O Sullivan v Ireland* [2020] 1 IR 413.

**10.** In response, it was submitted by Ms Leonowicz BL that it was clear from the wording of the letter of 5 December 2018, that the plaintiff's former solicitor did not know which of the seven parties may have been responsible for the locus. They specifically said in the letter that they did not know which of the addressees were the appropriate respondents for the purposes of the proceedings. She noted that no reply to that letter had been forthcoming from the third defendant, or its insurers.

**11.** It was submitted that while somewhat of a scattergun approach had been taken by the plaintiff's former solicitors in making the application to PIAB and naming seven respondents in the application, when the authorisation issued to the plaintiff, the plaintiff's present solicitor had adopted a more cautious approach. He had instituted proceedings against the entity he thought most likely to be responsible for maintenance of the locus, being the first defendant.

**12.** When the proceedings were served on the first defendant, the first defendant sought to blame the second defendant for the condition of the locus. When the plaintiff had the second defendant joined into the proceedings, they, in turn, blamed the third defendant, on the basis that they had a contract with them to maintain the pedestrian crossings on the tracks.

**13.** It was submitted that it was only when the plaintiff and her legal advisers had had sight of the grounding affidavit sworn by Ms Cassidy, that they had knowledge of the possible liability on the part of the third defendant. It was submitted that it was unrealistic to expect the plaintiff to have obtained knowledge of the existence of the subcontract between the second and third defendants, or to have obtained sight of it, prior to receipt of that affidavit.

**14.** It was submitted that once appraised of the relevant facts, the plaintiff had acted quickly in obtaining an order from the High Court joining the third defendant to the proceedings, which order had been obtained in November 2022; thereafter, the plaintiff had promptly issued her amended personal injury summons on 6 December 2022. It was submitted that in these circumstances, the plaintiff and her legal advisers had acted reasonably in proceeding with the litigation against such parties as were identified as having a possible liability.

**15.** It was submitted that the relevant date of knowledge for the purposes of the 1991 Act, had only arisen in relation to the third defendant, upon receipt of Mr Cassidy's affidavit in July 2022. As the amended summons had issued against the third defendant in December 2022, there was no question of

the plaintiff's action against it being out of time.

**Relevant Statutory Provisions.**

**16.** Section 2 of the 1991 Act is as follows:

*2.—(1) For the purposes of any provision of this Act whereby the time within which an action in respect of an injury may be brought depends on a person's date of knowledge (whether he is the person injured or a personal representative or dependant of the person injured) references to that person's date of knowledge are references to the date on which he first had knowledge of the following facts:*

*(a) that the person alleged to have been injured had been injured,*

*(b) that the injury in question was significant,*

*(c) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty,*

*(d) the identity of the defendant, and*

*(e) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant; and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.*

*(2) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire—*

*(a) from facts observable or ascertainable by him, or*

*(b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek. (3) Notwithstanding subsection (2) of this section—*

*(a) a person shall not be fixed under this section with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice; and*

*(b) a person injured shall not be fixed under this section with knowledge of a fact relevant to the injury which he has failed to acquire as a result of that injury.*

**Conclusions.**

**17.** At the hearing of this application, counsel for the third defendant laid great stress on the fact

that a pre-litigation letter had been sent by the plaintiff's former solicitor on 5 December 2018 to seven parties, calling on them to admit liability for the accident which had befallen the plaintiff eleven months earlier, on 16 January 2018. In particular, it was submitted that because the plaintiff's former solicitors clearly had knowledge of the existence of the third defendant, this placed a heavy onus on the plaintiff's former and current solicitors to have investigated the possible involvement of the third defendant further. It was submitted that had all necessary enquiries in this regard being made by the plaintiff's legal advisers, she would have acquired the date of knowledge far earlier than the date on which she was purporting to rely in resisting this application.

**18.** In support of his submission that a solicitor acting for a plaintiff must make all reasonable enquiries to ascertain what entity or entities should be named as defendants in proceedings, counsel referred to the decision in *O'Driscoll v Dublin Corporation* [1999] 1 ILRM 106, where there had been some confusion about what entity was the owner or occupier of a site where the plaintiff's accident had occurred. In the course of his judgment, Geoghegan J held that the reference in s. 2(2) of the 1991 Act to "other appropriate expert evidence" was a reference to the advice of an expert witness, rather than to the party's own lawyers. However, he went on to hold that solicitors are agents for their clients. Therefore, knowledge which they might reasonably have been expected to acquire in their capacity as agents, must be imputed to the plaintiff himself.

**19.** The court is not satisfied that the letters sent by the plaintiff's former solicitor on 5 December 2018, show that the plaintiff, or her legal advisers, had knowledge of the potential liability of any of the seven addressees. The fourth paragraph of that letter made it clear that the plaintiff and her legal advisers were in the dark as to what involvement, if any, any of the seven addressees may have had with the maintenance or repair of the locus at the time of the accident.

**20.** In the fourth paragraph of that letter, the plaintiff's former solicitors clearly stated "*We do not know whether you*" or the other addressees, were the appropriate respondents for the purpose of proceedings. Counsel for the third defendant laid stress on the following sentence from the letter that was sent to his client:

*"Please note however that it is our understanding that Alstrom has entered into an infrastructure maintenance contract with Transdev Ireland Ltd/Transdev Dublin Light Rail Limited in relation to the maintenance of the Luas trains and tracks, including at the Mount St Anne's Luas stop."*

**21.** However, it is noteworthy that in the letter sent to Veolia Energy Services Ireland Ltd that

sentence had been included, but in a different format, as follows:

*“Please note however that it is our understanding that Veolia has entered into an infrastructure maintenance contract with Transdev Ireland Ltd/Transdev Dublin Light Rail Ltd in relation to the maintenance of the Luas trams and tracks, including at the Mount St Anne’s Luas stop.”*

**22.** Thus, it is clear that the plaintiff’s former solicitors had indeed adopted a wide scattergun approach in relation to the entities to whom such letters were addressed. It is equally clear that such “understanding” as they may have had in relation to what entity or entities may have been responsible for maintenance of the pedestrian crossings on the Luas tracks, was vague in the extreme.

**23.** In argument at the bar, counsel for the third defendant suggested that having regard to the level of knowledge that was indicated in the letter of 5 December 2018, the plaintiff’s former solicitor and subsequently her current solicitor, were under a duty to have made further enquiries. However, this ignores the fact that the third defendant did not reply to the letter of 5 December 2018. In the absence of any reply to that letter, it is unclear what enquiries could have been made by the plaintiff at the pre-litigation stage, which might have unearthed the existence of the contract between the second defendant and the third defendant in relation to maintenance of the pedestrian crossings over the tracks.

**24.** I accept the submission made by counsel on behalf of the plaintiff that the relationship between the various parties concerning responsibility for the locus, appears to have been somewhat opaque. This is due to the fact that when Transdev were sued initially, they sought to place the blame on the second defendant. The second defendant then sought to pass the blame on to the third defendant, maintaining that they had a contract for the maintenance of the pedestrian crossings with the third defendant, and that if there was any defect at the locus, it was due to a breach of contract or breach of duty on the part of the third defendant. It was on that basis, that they sought to bring the third defendant into the proceedings as a third party.

**25.** The court is satisfied that as the plaintiff was at the pre-litigation stage, it was not realistically feasible for the plaintiff to have done much more than was done on her behalf by her former solicitors, by the issuance of the letters dated 5 December 2018. When no reply thereto was forthcoming from the third defendant, or its insurers, the plaintiff had little option but to proceed against whichever of the entities appeared to be the most likely entity to be responsible for the maintenance of the locus at the time of the accident. It would not have been possible for the plaintiff to have obtained discovery of documents prior to the commencement of litigation. This meant that, in reality, the plaintiff was not

aware of the existence of any contract between the second defendant and the third defendant, until she was specifically advised of the existence of such a contract in the defence filed on behalf of the second defendant and in the affidavit sworn by Ms Cassidy on 26 July 2022.

**26.** The court accepts the submission that was made by counsel on behalf of the plaintiff that a mere suspicion on the part of a party, or his legal advisers, that a person or entity may be responsible for the accident, is not sufficient to fix him with knowledge for the purposes of starting time to run against him under the 1991 Act. In *O'Sullivan v Ireland*, Charleton J cited with approval the dicta of Donaldson MR in *Halford v Brooks* [1991] 1 WLR 428, in relation to the level of knowledge that is required to start time running against a plaintiff, wherein it was stated that suspicion, particularly if it is vague and unsupported, will not be enough; but reasonable belief will normally suffice: see p. 450.

**27.** That a plaintiff may be fixed with knowledge by information that is furnished at a later date, or may be placed under a duty to make further enquiries upon acquiring certain information, is established by the decision in *O'Reilly v Collier* [2015] IEHC 729, where it was held that the plaintiff was put under an obligation to make further enquiries upon receipt of the statements made by certain Garda witnesses, which were contained in the Garda abstract report. In that case, the plaintiff was fixed with knowledge as and from the date on which he received the Garda abstract report.

**28.** In the circumstances of this case, I am not satisfied that the plaintiff's former solicitor had anything like the required knowledge when he wrote the letters to the seven addressees on 5 December 2018. There is no evidence that any of the parties responded thereto in such a way as may reasonably have put him under a duty to make further enquiries in relation to any particular defendant. By its failure to respond to that correspondence, the third defendant did not make any information available to the plaintiff, which would have caused her to acquire knowledge that that defendant had any likely or potential responsibility for the locus, nor to put her former solicitors on any specific inquiry in this regard.

**29.** Notwithstanding that the plaintiff had obtained an authorisation from PIAB to proceed against all seven named respondents, I find that it was reasonable for the plaintiff's current solicitor to elect to sue a single defendant, being the first defendant, which appeared to be the most likely entity to be responsible for the locus, as it is the company which operates the Luas tram system. It is noteworthy that that company did not seek to lay any blame at the door of the third defendant. This indicates that they were probably unaware of the contract that existed between the second defendant and third defendant. Instead, the first defendant only sought to lay the blame at the door of the second defendant.



It was the second defendant which indicated that they had concluded a contract with the third defendant for the maintenance and repair of the pedestrian crossings on the tracks. On that basis, the second defendant asserted that, if there was any blame in the matter in relation to the plaintiff's accident, such blame lay at the door of the third defendant.

**30.** I find that it was not until receipt of the defence from the second defendant in July 2022 and upon receipt of the affidavit sworn by Ms Cassidy later that month, that the plaintiff's solicitor became aware for the first time that the third defendant may indeed have had a potential liability in the matter.

**31.** I am satisfied that in making an application at the hearing of the third-party motion brought by the second defendant, to have the third defendant joined as a co-defendant, the plaintiff acted in a timely and reasonable manner. Once that order was made by the High Court in November 2022, the plaintiff did not delay in issuing the amended personal injury summons on 6 December 2022.

**32.** I find as a fact that the plaintiff's date of knowledge in relation to the identity of the third defendant, as a party who may have had responsibility for maintenance of the locus at the time of the accident, did not occur until July 2022 at the earliest. Given that the necessary application was made, and the amended proceedings were issued within five months of that date, the plaintiff's action against the third defendant is not statute barred, having regard to the provisions of the 1991 Act.

**33.** Accordingly, the court would propose to make an order in the terms of paragraph 1 of the notice of motion issued by the third defendant on 28 July 2023, directing that the issue as to whether the plaintiff's action is statute barred against the third defendant, be tried by way of a preliminary issue; the order will further provide that on the hearing of the preliminary issue, the reliefs sought by the third defendant at para. 3 of its notice of motion dated 28 July 2023, seeking to have the plaintiff's action against it dismissed on grounds that the plaintiff's action is statute barred, be refused.