



LITIGATION AND DISPUTE RESOLUTION

Striking out proceedings for delay: a new approach by the Irish Courts?

by **Ian Lavelle**

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4th October 2019 | by Ian Lavelle

Two recent High Court judgments suggest that there may be a slight shift in the approach of the Irish courts when faced with applications to strike out dormant claims.

Maxwell v Francis J O'Mahony

Maxwell v Francis J O'Mahony & Co and Liam Lysaght & Co and Another [2019] IEHC 551 concerned professional negligence claims against two separate law firms. The proceedings commenced in October 2013 and defences were delivered in December 2014 and May 2015. The case ground to a halt at discovery stage in July 2016. In October 2018 the second defendant issued an application to strike out the proceedings on the basis that the delay was inordinate and inexcusable.

In coming to its decision, the court proceeded by reference the principles found in the Court of Appeal judgment in *Farrell v Arbolane Limited and Others* [2016] IECA 224. A court must ask three questions when considering a strike out application such as this. They are as follows:

1. Has there been an inordinate delay in progressing the proceedings?
2. Is there a reasonable excuse for the delay or is it inexcusable?
3. In the circumstances presented before the court, where does the balance of justice lie?

Applying this three-part test to the facts at hand, the court decided that there was an inordinate delay in the proceedings, that the delay was inexcusable and there were no factors to suggest that the balance of convenience would favour the plaintiff. Accordingly, the court granted the application and struck out the proceedings.

Mulligan v Wilkie and Flanagan

The High Court handed down judgment two months earlier in the similar case of *Noel Mulligan v Wilkie and Flanagan Solicitors* [2019] IEHC 289. It was also a professional negligence claim against a firm of solicitors.

Proceedings were issued in March 2011 and a defence was delivered in May 2014. The plaintiff failed to make adequate discovery despite motions and reminder letters, the last of which was sent in September 2016.

The plaintiff did not dispute that there had been inordinate and inexcusable delay. The sole issue for the court to decide was where the balance of justice lay. In deciding that it lay in favour of the court granting an order dismissing the proceedings, the court was influenced by various factors including the prejudice suffered by defendant because almost six years had elapsed since the alleged negligence without any intimation of a claim.

Comment

Many international insurers have held the view that the bar was set very high when it came to striking out dormant claims against their insureds. These decisions may instigate a re-assessment of that position. The decisions will be welcomed by professionals who have had proceedings hanging over them for considerable periods of time. Indeed, a particularly noteworthy element of both judgments is that the negative impact of the litigation on the defendant's professional indemnity insurance premium was a factor in deciding where the balance of justice lay.

Another case that may be of considerable interest to both litigants and legal practitioners who find themselves involved in court proceedings that are not progressing with sufficient speed is the [recent High Court ruling in *Walsh and Another v Blasco and Others*](#).

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