[2020] IEHC 257

THE HIGH COURT

[No. 2014/4948 P.]

BETWEEN

JOSEPH KEARNS

PLAINTIFF

AND

ERIC EVENSON

DEFENDANT

JUDGMENT of Mr. Justice Mark Sanfey delivered on the 14th day of May 2020

Introduction

1. This judgment concerns an application by the defendant pursuant to Ord.12 r.26 of the Rules of the Superior Courts for an order setting aside service of the notice of summons in the proceedings on the defendant, and an order discharging the order of Eagar J. of 2nd July, 2018 granting the plaintiff liberty to serve notice of the proceedings on the defendant out of the jurisdiction.

2. In the alternative, the defendant seeks an order staying the proceedings, "pursuant to the inherent jurisdiction of this Honourable Court and on the grounds of *forum non conveniens*".

3. Specifically, this judgment addresses what counsel for the defendant describes as a "threshold issue", i.e. an issue which, if resolved in favour of the defendant, is determinative of the application and requires no further consideration by this court of the complex arguments in relation to jurisdiction raised by both sides.

4. In order to understand the basis for the defendant's application, it is necessary to consider the progress of the litigation from its inception to date.

The proceedings

5. The plaintiff issued proceedings against the defendant by way of a plenary summons dated 30th May, 2014. The defendant is a Canadian citizen who is resident in the Isle of Man. The plenary summons seeks, *inter alia*, judgment against the defendant in the sum of €965,000, orders requiring the defendant to disclose the whereabouts of funds allegedly held by him or assets acquired by him as a trustee, certain reliefs in respect of monies allegedly received by the defendant in respect of a named pension fund, and certain other reliefs in relation to a property in County Roscommon.

6. An application was made by the plaintiff to this Court for service out of the jurisdiction under Ord.11. An order to this effect was made by Hedigan J. on 21st July, 2014. Ultimately, notice of the summons was served on the defendant in April 2015. A memorandum of conditional appearance was filed on behalf of the defendant on 22nd July, 2016. This appearance was expressed to be "entered strictly without prejudice to the objections of the …Defendant to the jurisdiction of this Honourable Court to entertain the within proceedings against him, and, further, is entered strictly without prejudice to any application to contest jurisdiction which may subsequently be brought".

7. The appearance required delivery of a statement of claim, and the plaintiff delivered its statement of claim on 27th July, 2016. The defendant then issued an application on 3rd October, 2016 to set aside the order for service out of the jurisdiction of Hedigan J. This application was heard on 13th April, 2018 by Ní Raifeartaigh J., who gave an *ex tempore* judgment on 24th April, 2018 discharging the order of Hedigan J. and setting aside the service on the defendant.

8. I have had the benefit of reading the transcript of the judgment of Ní Raifeartaigh J. It is clear that the basis of her decision was that she did not consider that "the Court was sufficiently informed of relevant facts in order to have enough information before it to make an informed decision about whether leave should have been given". The court was setting aside the order of Hedigan J. "on the ground of, essentially, lack of candour". The judge made further comments on other aspects of the defendant's application which she described as "obiter".

9. The order of Hedigan J. was discharged by order of 8th May, 2018, and the costs of the motion were awarded to the defendant. By an order of 5th June, 2018 however, it was ordered that execution on foot of that costs order "be further stayed pending the determination of a fresh application being made". The stay was to expire in the event that such an application was not made within 28 days.

10. In the event, an affidavit was sworn by the plaintiffs on 30th June, 2018 addressing the deficiencies identified by Ní Raifeartaigh J., and an application for service out of the jurisdiction was made on 2nd July, 2018 to Eagar J., who ordered that pursuant to Ord.11 r.1(e) of the Rules of the Superior Courts, the plaintiff be at liberty to serve notice of the proceedings on the defendant at his residence in the Isle of Man.

11. Service was duly effected in accordance with the order, and a memorandum of conditional appearance in terms identical to the previous memorandum was entered on behalf of the defendant on 26th October, 2018. A statement of claim in terms identical to that delivered on 27th July, 2016 was delivered by the plaintiff on 16th November, 2018, and the present application issued on 6th February, 2019.

The hearing of the application

12. The hearing of the motion took place over three days, with the motion papers and the papers in relation to the previous application before Eagar J. being opened to the court. I do not require, for the purpose of this judgment, to set out the facts of the matter, or the submissions of the parties, in any detail. It is sufficient to say that the facts are quite complex, and there was an issue between the parties as to whether a preliminary hearing in respect of the conflict of facts in the affidavits would be necessary before a decision could be made on the defendant's application.

13. Ms. Anna Shanley BL for the defendant submitted that, for a number of reasons, the trial of a preliminary issue – which concerned the validity or authenticity of a jurisdiction clause in an agreement which the defendant alleged was forged – was inappropriate. It was argued that the plaintiff had not established a good arguable case in its statement of

claim, and that this was fatal to the validity of the service ordered by Eagar J. It was submitted that, in any event, Ireland was not a *forum conveniens* in all the circumstances.

14. Mr. Remy Farrell SC and Mr. Paul Fogarty BL appeared for the plaintiff. While it is not necessary for present purposes to consider the substance of the arguments, it should be said that Mr. Farrell strongly resisted the application and the foregoing arguments on behalf of the defendant. Detailed written submissions were made by both sides in relation to these issues.

15. However, there was another issue which Ms. Shanley canvassed in her written submissions, and which she described as a "threshold issue". She submitted that, once the order of Ní Raifeartaigh J. was made setting aside the order for service of the proceedings by Hedigan J., the plenary summons ceased to be in force for the purpose of Ord.8 of the Rules of the Superior Courts, and no application had been made to this Court for renewal of the summons. The order for service out of the jurisdiction by Eagar J., therefore, was made in relation to a summons which was not in force at the time, or which had "lapsed", the terminology used by Costello J. (as he then was) in *Cavern Systems Dublin Limited v. Clontarf Residents Association*, unreported, High Court, 28th February 1983. Ms. Shanley submitted that an order for service out of the jurisdiction could not be made in relation to a summons which was not in force according to the Rules of the Superior Courts.

16. Some complaint was made by counsel for the plaintiff that this issue had not been flagged in advance of the hearing. The issue was not adverted to in the affidavits or in correspondence between the parties, and the written submissions were not exchanged prior to the hearing. However, the notice of motion sought relief pursuant to Ord.12 r.26 of the Rules of the Superior Courts setting aside the order for service of the notice of the summons, and I did not consider that there was any basis for precluding counsel for the defendant from raising such an important point going to the jurisdiction of this Court to make the order impugned. Counsel for the defendant made it clear in her opening of the application that the defendant proposed to rely on this point, so the plaintiff's counsel had more than sufficient time to consider it before making submissions in reply.

The "Order 8 issue"

17. At the time of the application before Ní Raifeartaigh J., Ord.8, in as far as is relevant to the present application, was as follows:

> "1. No original summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; 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…and a summons so renewed shall remain in force and be available to prevent the operation of any statute whereby a time for the commencement of the action may be limited and for all other purposes from the date of the issuing of the original summons.

2. In any case where a summons has been renewed on an *ex parte* application, any defendant shall be at liberty before entering an appearance to service notice of motion to set aside such order."

18. The order was amended by the Rules of the Superior Courts (Renewal of Summons) 2018 (SI 482 of 2018), which, as of 11th January, 2019, substituted for r.1 of Ord. 8 the following rule:

"1.(1) No original summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; 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 or concurrent summons 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) The summons shall, where an order of renewal has been made, be renewed by being stamped with the date of the day, month and year of such renewal; such stamp to be provided and kept for that purpose in the Central Office and to be impressed upon the summons by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in the Form No. 4 in Appendix A, Part I; and a summons so renewed shall remain in force and be available to prevent the operation of any statute whereby a time for the commencement of the action may be limited and for all other purposes from the date of the issuing of the original summons."

19. It is common case that no such application for renewal was made by the plaintiff in anticipation of the judgment of Ní Raifeartaigh J. or since her order of 8th May, 2018.

There was no suggestion before me that it had been brought to the attention of Eagar J. that the plenary summons, of which an order for service out of the jurisdiction was sought, had ceased to be in force.

20. The defendant submitted that Eagar J. "should not have granted leave to serve Notice of the expired Summons out of the jurisdiction, or should have placed a condition on his granting leave that the Plenary Summons would have to be renewed prior to service being effected…any service effected by Notice of the expired Plenary Summons is of no effect and the purported service should be set aside" [para. 26-27 written submissions of defendant].

21. As we can see, Ord.8 refers to the expiry of the twelve-month period for renewal of the summons, rather than expiry of the summons itself. This begs the question as to what the status of the plenary summons is once this period has expired.

22. That issue was considered by the Court of Appeal of England and Wales in *Sheldon v. Brown Bayley's Steel Works Limited* [1953] 2 QB 393. In that case, a defendant entered an unconditional appearance to a writ which had been served on it outside the twelve-month period for service. There was no material difference between the rule considered by that court and the Ord.8 in force in this jurisdiction prior to the enactment of SI 482 of 2018, or the present Ord.8 in this jurisdiction as set out at para. 18 above.

23. Denning L.J. held that "if a writ can be renewed after the 12 months have expired, that must mean that it is not then a nullity". Rather it was "an irregularity which was waived by the unconditional appearance".

24. The Supreme Court considered this decision in *Baulk v. Irish National Insurance Company Limited* [1969] IR 66. Walsh J. held in that case that the provisions of Ord.8 r.1 that "…'no original summons shall be in force for more than twelve months from the day of the date thereof', does not mean that the summons becomes a nullity after that date but that it shall not be in force for the purpose of service after that date, unless renewed by leave of the court" [at p.71]. This passage was in turn cited by Peart J. in *Lawless v. Beacon Hospital* [2019] IECA 256 who also cited the Supreme Court's comments "…to the effect that where service is effected after the period of 12 months but without renewal, the entry of an appearance would cure the defect in the service". [Para. 33].

25. As we have seen, the defendant entered a conditional appearance before issuing the present motion. The Rules of the Superior Courts do not appear to require this step before an application is made to set aside the service ordered. Ord. 12 r.26 of the Rules of the Superior Courts, pursuant to which the present application is made, is as follows:

> "26. A defendant before appearing shall be at liberty to serve notice of motion to set aside the service upon him of the summons or of notice of the summons, or to discharge the order authorising such service."

26. However, the courts have recognised the entry of a conditional appearance prior to making an application pursuant to this rule. In *Fox v. Taher*, unreported, High Court, 24th January, 1996, Costello P. suggested that the appropriate manner in which to contest jurisdiction in relation to an order of Kinlen J. which deemed service good was to enter an appearance for the purpose of contesting jurisdiction, and then applying to court. In *Minister for Agriculture v. Alte Leipziger AG* [2000] 4 IR 32, Hardiman J. noted that Ord.12 r.26 envisaged a motion to set aside service being brought prior to entering an appearance, but that the practice was to enter a "conditional appearance" and that this course was followed in *Kutchera v. Buckingham International Holdings* [1988] IR 61. In that case, the defendant entered a conditional appearance, and on that basis applied for an order discharging the order authorising service out of the jurisdiction. Hardiman J. referred at para. 18 of his judgment to a note to the head-note of the report of that case at p.63 which referred to the practice, and stated that … "this conditional appearance is expressed to be 'without prejudice' and recites that the appearance is entered 'for the purpose of contesting jurisdiction only'".

27. Thus it would appear that the manner in which the defendant has brought the present application before this Court, while not according strictly with the terms of Ord.12 r.26, adheres to a practice which is established and has been recognised by the courts in this jurisdiction. The wording in the memorandum of conditional appearance in the present case makes it clear that the appearance is entered "strictly without prejudice to any application to contest jurisdiction which may subsequently be brought". This seems to me to be sufficiently conditional to make it clear that there is no acceptance of or acquiescence to the jurisdiction of this court by the defendant, save as will enable it to make an application to court to contest jurisdiction or, in this case, to apply to set aside service of the proceedings.

The Plaintiff's submissions

28. Mr. Fogarty responded on behalf of the plaintiff to the defendant's submissions in relation to this issue. He submitted that, with service having been set aside by Ní Raifeartaigh J., it was immediately the intention of the plaintiff that a fresh application for service out of the jurisdiction would be made which would address the deficiencies pointed out by Ní Raifeartaigh J. in the previous application of the defendant to set aside service. This intention was made clear to Ní Raifeartaigh J., as is evident from the wording of the costs order of 5th June, 2018 referred to at para. 9 above.

29. By letter of 17th May, 2018, the solicitors for the plaintiff wrote to the defendant's solicitors pointing out that "Our Counsel had enquired in court as to whether you required to be put on notice of our application for service out against Mr. Evenson…". The letter stated that "… it would be more efficient if we were to place you on notice, so that any objections could be made in a timely fashion…", and sought a response from the defendant's solicitors as to whether they wished to proceed in this manner.

30. The defendant's solicitors replied on 30th May, 2018, stating that they had "no further instructions as matters stand … We reserve our client's rights in relation to any

application your client may make". The application for service out was subsequently made to Eagar J. by the plaintiff. Events then unfolded as set out at para. 11 above.

31. The point is made on behalf of the plaintiff that his intention to move as quickly as possible with a further application after the adverse decision of the High Court was made evident to the court and to the defendant. The defendant did not, despite the invitation of the plaintiff, participate in the application to Eagar J., and did not at any time until the first day of the hearing before me raise the point that service of the proceedings on foot of the order of Eagar J. was invalid as the plenary summons had ceased to be in force.

32. Mr. Fogarty also makes the point that the conditional appearance of 26th October, 2018 was "not entirely conditional" in that it required delivery of a statement of claim, as had the conditional appearance previously entered by the defendants for the purpose of contesting service. That point does not appear to have been raised before Ní Raifeartaigh J. A request for a statement of claim could under certain circumstances be deemed to be a submission to the jurisdiction of the court, and a waiver of an entitlement to assert a technical point regarding service. However, in the present case, the request was stated on the face of a document, the purpose of which was to make clear in unequivocal terms that the appearance was being entered without prejudice to the objections of the defendant to the jurisdiction of the High Court, and any application of the defendant to contest jurisdiction. It does not seem to me that the conditional appearance can remotely be construed as a submission to jurisdiction, notwithstanding the request for a statement of claim.

33. Counsel asserted that it was inconceivable that, if an application had been made to Eagar J. for renewal of the summons as well as service out of the jurisdiction, the court would have refused that application. However, the defendant had refused to participate in the hearing of the application to Eagar J. for service out of the jurisdiction, and "did nothing until the following February", when it issued the present application. Counsel submitted that, if the point as to renewal of the summons had been made by the defendant "promptly" after service of it, an application could have been made immediately to Eagar J. asking the court to renew the summons. It was suggested that the outcome of such an application was inevitable, given that the evident intention of Eagar J. was to give effect to the original order of Hedigan J. once the deficiencies identified by Ní Raifeartaigh J. had been addressed. The defendant had "all the information it needed to object", but did not do so until the first day of the hearing before me, which counsel characterised as "an ambush".

34. It was submitted that Ord. 124 might provide a means by which the matter could be resolved, as it conferred on the court a power to deal with "irregularity". Ord. 124 is as follows:

> "1. 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.

2. No application to set aside any proceeding for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the notice of motion."

35. Counsel suggested that the "irregularity" of service of a summons which was not in force, while not condoned by the court, could be "dealt with in such manner and upon such terms as the court shall think fit". It was suggested that the present application was not made within a reasonable time, nor was the objection now relied upon by the defendant stated in the notice of motion. It was asserted that this court had all of the information necessary to decide whether renewal was appropriate, and in accordance with Ord. 124, could do so without the necessity for a separate application.

36. Counsel relied upon dicta of Finnegan P. in *McK. v. B.* [2005] IEHC 164. That case involved a claim pursuant to the Proceeds of Crime Act, 1996. An order was sought by the defendant, *inter alia*, setting aside an order for service of the summons out of the jurisdiction. The order provided that notice of the summons should be served, but it transpired that service of both the summons itself and the notice of the summons was effected. Finnegan P. held that service was effected in accordance with the order for service and that Ord. 8 r. 1 of the Rules of the Superior Courts had no application. However, he went on to say – in dicta which Mr. Fogarty acknowledges were *obiter* – that if this were not the case, he would be prepared to deem the service good under Ord. 9 r. 15, and that in any event

> "…service outside the period of 12 months from the date of issue is not a nullity but an irregularity: Sheldon v Brown Bayleys Steelworks Limited 1953 2 QB 393: Accordingly Order 124 Rule 1 applies. Order 124 Rule 2 also applies - an application to set aside any proceeding for irregularity shall not be allowed unless made within a reasonable time." [Emphasis in original]

37. Mr. Fogarty also made reference to the fact that the defendants had entered a conditional appearance despite not being required by Ord. 12 r. 26 to do so. He submitted that the wording of the conditional appearance suggested a challenge to the jurisdiction of the court, rather than a challenge to an order for service out of the jurisdiction. This contention seems to me to have some validity. The wording of the conditional appearance, set out in para. 6 above, makes no reference to a challenge to service of the proceedings rather than the "jurisdiction of this honourable court to entertain the within proceedings….".

38. However, I do not think that this point is fatal to the defendant's application for a number of reasons. Firstly, the defendant entered an identical conditional appearance prior to issuing the application under Ord. 12 r. 26 ultimately decided by Ní Raifeartaigh J. It is not apparent from the *ex tempore* judgment of the court on that occasion that the point was raised before Ní Raifeartaigh J. Secondly, as I have set out above, the process of

entering a conditional appearance prior to contesting service pursuant to Ord. 12 r. 26 seems to have received judicial acknowledgment, with Hardiman J. in *Minister for Agriculture v. Alte Leipziger* accepting the practice of entering a conditional appearance for the purpose of contesting service, in circumstances where the conditional appearance is entered "for the purpose of contesting jurisdiction only".

39. It seems to me in any event that, where the defendant has, by entering a conditional appearance, not submitted to the jurisdiction of the court, he cannot be precluded from applying to set aside service of the proceedings on him. It does not seem to me that there is any requirement on the defendant to state in the conditional appearance that he intends, in addition to objecting fundamentally to the jurisdiction of the court, to make an application under Ord. 12 r. 26 regarding the service of the summons. On the contrary, the fact that the court was persuaded to make the order in circumstances where the plenary summons was no longer in force is certainly a matter which requires to be drawn to the court's attention.

The defendant's response

40. Ms. Shanley submitted on behalf of the defendant that the burden was on the plaintiff to ensure that the summons it was seeking to serve outside the jurisdiction was valid. There was no obligation on the defendant to bring the matter to the attention of Eagar J. A separate application for renewal of the summons should have been made once the service had been set aside by Ní Raifeartaigh J. It was submitted that such applications were "carefully considered applications", with their own body of jurisprudence which established the criteria governing them. Ms. Shanley submitted that the plaintiff was asking the court to overlook the fact that he had simply neglected to make the application.

41. Counsel submitted that *McK. v. B*. had no application in the present matter. In that case, notice of the summons and the summons itself had been served on the defendant within days of the making of the order. This was clearly an irregularity such as is envisaged by Ord.124; it was submitted that *McK v. B.* could not be regarded as authority for the proposition that service of an expired summons could be regarded as an irregularity. It was also suggested that, if I were to make an order pursuant to Ord.124 overlooking or excusing the service of an expired summons, I would effectively be denying the defendant the opportunity to contest any application for renewal of the summons which the plaintiff might make.

42. Counsel submitted that the invocation of the court's jurisdiction under Ord.124 in the present case was particularly inappropriate as a means of avoiding an order setting aside service of a summons which was not in force, and that the defective service could not be "retrospectively amended".

A further application

43. As Ord. 8 r.1(3) permits an application for renewal of the summons outside the twelve month period for service, I asked Mr. Fogarty whether, if I were persuaded that I should accede to the defendant's application pursuant to Ord. 12 r.26, would the plaintiff intend

to make an application for renewal of the summons? Mr. Fogarty urged me to find that I could deal with the matter under Ord. 124, and stressed the desirability of avoiding a third episode in the ongoing saga of attempting to procure an order for service of the summons. However, he confirmed that, if necessary, an application for renewal could be brought before the court.

Conclusions

44. It is clear that, when the order of this court of 2nd July, 2018 was made, the plenary summons had by that stage ceased to be in force according to the Rules of the Superior Courts. The real issue which I have to decide is whether there is any basis upon which I can find that this is not fatal to the service of the proceedings.

45. I have come to the conclusion that the objection to service made by the defendant is well founded, and that the order for service should be set aside. I do not think that Ord. 124 provides a solution for the plaintiff. Ord. 124 deals with a challenge to the proceedings, stating that non-compliance with the rules "shall not render any proceedings void unless the court shall so direct…". However, the defendant is not seeking to have the proceedings rendered void; he is simply seeking to have the service upon him of an expired summons set aside. Notwithstanding that a "lapsed summons" may, in the words of Lord Denning, be an "irregularity", I do not consider that Ord. 124 is an appropriate vehicle for bypassing a requirement for an application to court to renew the summons.

46. In all the circumstances, I am satisfied that the order of the High Court of 2nd July, 2018 should not have been made and cannot be allowed to stand. The plaintiff cannot proceed upon the plenary summons unless valid service in accordance with an order of this court is effected. It follows that unless an application is made by the plaintiff for renewal of the summons, the proceedings can go no further.

47. For this reason, I have not dealt in this judgment with the other complex arguments between the parties as to the court's jurisdiction to deal with the matter, and the question of whether a hearing as to certain factual conflicts is necessary.

48. However, I am conscious of the fact that the parties spent the best part of three days arguing these matters before me. In addition, the lengthy written submissions of both parties were almost entirely devoted to the substantive jurisdictional issues.

49. Accordingly, I considered whether I should adjourn the motion to allow the plaintiff to bring before the court an application for renewal of the summons. This could be done on notice to the defendant. If the application were unsuccessful, it seems to me that this would effectively bring an end to the proceedings, and further arguments or consideration in relation to the question of jurisdiction would not be necessary. On the other hand, if the application were successful, the court could move directly to a consideration of the jurisdictional arguments without the need for further submissions. The court has ample resources to do so, given the detailed written submissions and ready access to the digital audio recording of the proceedings.

50. In considering this option, I am mindful of the contention of the plaintiff that he was somewhat unfairly treated in that the objection to service was not flagged by the defendant in advance of the hearing, and the plaintiff was not aware of it until it was mentioned by counsel for the defendant at the outset of the application. It is not at all apparent to me that this was a deliberate strategy on the part of the defendant's advisors; it is not uncommon for a cogent submission to suggest itself to a party's legal advisors for the first time shortly prior to a hearing. In any event, there was no order in the proceedings that the parties exchange written submissions in advance of the hearing, and no express obligation of which I am aware on the defendant's solicitors to apprise the plaintiff's solicitors of the defendant's intention to argue the objection.

51. However, the fact that the objection was not flagged in advance has resulted in an unsatisfactory situation whereby the question of the need for renewal of the summons was not anticipated by the plaintiff. If the plaintiff's solicitors had been aware that the point was to be relied upon by the defendant, they could have considered whether an application for renewal of the summons should be issued, perhaps to be heard in advance of the present application, with the necessity for consideration of the jurisdictional issues depending upon the result.

52. The notice of motion in the application before me seeks orders pursuant to Ord. 12 r. 26 setting aside service of the notice of the summons and discharging the order of this court of 2nd July, 2018. The order staying the proceedings on jurisdictional grounds is sought only in the alternative. It seems to me that I should grant the relief sought pursuant to Ord. 12 r. 26, and the only issue remains that of costs. I would require written submissions on that issue, which I do not regard as straightforward.

53. In the event that I make the orders sought, and bring an end to the present application, it seems that it would be open to the plaintiff to apply under Ord. 8 r. 3 for renewal of the summons in any event, preferably on notice to the defendant. It might be that, if the application were successful – and I stress that I do not have any view as to the plaintiff's prospects in this regard, Ms. Shanley's point being well made that entirely different principles would govern such an application – the jurisdictional arguments raised by the defendant would have to be canvassed and argued all over again, with the benefit of three days of argument of those issues before me being lost.

54. It seems to me that I should give the parties an opportunity to consider their respective positions. I consider that I must make an order discharging the order of 2nd July, 2018 in any event. Consideration of the question of costs could, if the parties wish, be deferred to allow the plaintiff to bring an application to this court pursuant to Ord.8 r. 3 for renewal of the summons, if this would lead to a more efficient and cost-effective disposition of the issues.

55. However, I think that such a course of action would have to have the consent of both parties. If this cannot be achieved, I will make orders in terms of paras. 1 and 2 of the notice of motion, and invite written submissions in relation to the question of costs, such submissions to be delivered by 4th June, 2020.