APPROVED **[2026] IEHC 444**

THE HIGH COURT

2013 12432 P

BETWEEN

TOM JORDAN

PLAINTIFF

AND

JOHN MURPHY
MURPHYS GARAGE HEADFORD LTD

DEFENDANTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 9 July 2026

INTRODUCTION

1. This judgment is delivered in respect of an application to join an additional defendant to extant proceedings. The joinder application is made pursuant to Order 15, rule 13 RSC. The intended defendant is a company which is connected to the existing defendants. The plaintiff alleges that this company is being used as a vehicle to take over the business and assets of the existing corporate defendant, with a view to circumventing the claims of its creditors, including the plaintiff himself.

2. The joinder application is resisted by the existing defendants on grounds including delay, prejudice, lack of necessity and the supposed absence of a stateable claim against the intended defendant. It is also submitted that the joinder would be a futile exercise in circumstances where the intended defendant is said to have a complete defence to any claim against it by virtue of the Statute of Limitations 1957.

3. The existing corporate defendant will be referred to throughout this judgment as "*Old Co*" and the intended defendant as "*New Co*". The use of this shorthand should not be understood as implying any finding of fact on the validity of the plaintiff's claims. It is simply being used for ease of exposition.

PRINCIPLES GOVERNING JOINDER OF DEFENDANTS

4. The general position is that a litigant in private law proceedings is not required to obtain permission from the court prior to the institution of proceedings against any particular defendant. (The position is different in respect of public law proceedings under Order 84 RSC). There is no court-controlled screening mechanism whereby the prospects of success of a claim are assessed in advance of proceedings being commenced. A defendant who has been joined to proceedings from the outset may, of course, apply to strike out any claim, or part of a claim, which discloses no reasonable cause of action, amounts to an abuse of process, is bound to fail, or has no reasonable prospect of succeeding.

5. The position is different where it is sought to join a defendant *after* proceedings have already been commenced. In such a scenario, it is necessary to obtain the permission of the court to the proposed joinder. The requirement for permission reflects, among other things, the fact that the belated joinder of an additional

defendant may disrupt the progress of extant proceedings to the detriment of the existing defendants. If a new defendant is joined at an advanced stage of the proceedings, at a time when the pleadings have already closed and a trial date has been fixed, the joinder may result in significant delay in the determination of the proceedings against the existing defendants. It may, for example, be necessary to vacate the trial date to allow time for the exchange of pleadings and the making of discovery by or against the newly joined defendant. Moreover, the introduction of a new defendant may increase the hearing time required for the trial of the action, with all of the attendant additional costs.

6. For this reason, the court will carefully consider whether the joinder of a new defendant will cause prejudice to the existing defendants. The court will also consider, to a more limited extent, the position of the *intended defendant*. If, for example, it is apparent that there is no stateable cause of action against the intended defendant, the court may refuse to allow joinder. This puts the intended defendant in a more favourable position as compared to a defendant who has been joined to the proceedings from the very outset. More specifically, the intended defendant will have the benefit of a court-controlled screening mechanism.

7. The court's role on a joinder application is necessarily limited. As explained by Laffoy J. in *Allied Irish Coal Supplies Ltd v. Powell Duffryn International Fuels Ltd* [1998] 2 IR 519, the onus on a plaintiff is no greater than to demonstrate that there is a stateable case against the proposed defendant. Moreover, where conflicts of evidence arise on affidavit, it is generally neither necessary nor appropriate to attempt to resolve them at the joinder stage. Rather, the proper approach is to determine whether there is a stateable case on the basis that the

plaintiff's version of the disputed facts is the true version. The court nevertheless retains a discretion to refuse joinder where the proposed claim is futile, founded upon insufficient evidence, or would otherwise constitute an abuse of process.

8. Having regard to one of the arguments advanced in the present case, it is necessary to highlight the following feature of Order 15, rule 13. Where a party is added as a defendant pursuant to the rule, the proceedings against that party are deemed to commence only on the making of the joinder order. The claim against a newly added defendant does not relate back to the earlier date upon which the proceedings were first commenced against the existing defendants. Rather, time continues to run against the newly added defendant, for limitation purposes, up until the date of joinder.

9. In light of this deeming provision, one argument which is frequently advanced in opposition to joinder applications is that the limitation period has already expired, such that the intended defendant would have a complete defence under the Statute of Limitations 1957. The argument continues to the effect that, in those circumstances, joinder would serve no useful purpose and would be futile.

10. However, the case law cautions against allowing a joinder application to become a miniature trial of the action. As MacMenamin J. observed in *O'Connell v. Building and Allied Trades Union* [2012] IESC 36, [2012] 2 IR 371, a court should be very slow to enter into an inquiry as to whether a claim may or may not be statute-barred when hearing a procedural motion seeking merely to join a defendant. The relevant question is whether the claim against the intended defendant is "*clearly and manifestly statute barred*". If there is "*any real doubt*" on that issue, then the intended defendant should be joined and the limitation issue determined in the ordinary way thereafter.

11. In summary, a court will generally refuse joinder by reference to the limitation period only where it is clear or manifest that the proposed claim against the intended defendant is statute-barred, such that joinder would be futile. Where the position is arguable or depends upon the resolution of disputed facts, the limitation issue should ordinarily be determined subsequently, either at the trial of the action or by way of a court-directed trial of a preliminary issue.

PROCEDURAL HISTORY

12. These proceedings were commenced in November 2013. The claim arises out of the plaintiff's former employment with Murphys Garage Headford Ltd ("*Old Co*"). The events giving rise to the original claim are alleged to have occurred principally between the years 2010 and 2013. The statement of claim was delivered in February 2014, and a defence and counterclaim were delivered in March 2017.

13. The existing defendants issued a motion in May 2023 seeking to dismiss the proceedings for delay. The application was refused on 3 July 2024, and the proceedings were transferred to the Non-Jury Case Management List. A trial date was subsequently fixed for 22 July 2025.

14. By letter dated 20 June 2025, the existing defendants' solicitors notified the plaintiff's solicitors that a receiver had been appointed over Old Co. On 10 July 2025, the trial date was vacated, and the case was adjourned, for mention only, to 16 October 2025.

15. Following the June 2025 notification of the receivership, the plaintiff's solicitors carried out inquiries into Old Co's financial position and into its relationship with Murphy Agri Machinery Ltd ("*New Co*"). Those inquiries led the plaintiff

to contend that New Co had the same registered office and principal place of business as Old Co, carried on the same or substantially the same business, and had engaged in significant inter-company transactions with Old Co.

16. By letter dated 19 September 2025, the plaintiff's solicitors wrote to the existing defendants' solicitors alleging that New Co had been established as a "*phoenix entity*" to take over the business and assets of Old Co with a view to defeating its creditors, including the plaintiff. The response received on 23 September 2025 was to the effect that Old Co and New Co were separate and distinct entities engaged in an arm's-length trading relationship.

17. New Co has the same registered office and principal place of business as Old Co, namely Horsevalley, Headford, Galway. The directors of New Co are Cathal Murphy and Trevor Murphy, whom the plaintiff believes to be John Murphy's sons. The shareholders include Trevor Murphy, Cathal Murphy, and Marian Murphy, whom the plaintiff believes to be John Murphy's wife. Marian Murphy is also company secretary. The plaintiff relies on these matters as suggesting that the two companies are not operating as genuinely independent commercial entities.

18. New Co was incorporated in October 2015, some six months after Old Co is said to have lost its *John Deere* franchise in April 2015 and at a time when Old Co's accounts recorded an intention to wind down the company in an orderly fashion. The plaintiff relies on the proximity in time as supporting the inference that New Co was created to take over the business of Old Co.

19. The plaintiff issued a motion on 28 October 2025 seeking an order joining New Co as a co-defendant. The joinder application is grounded on the plaintiff's affidavit sworn on the same date. The plaintiff subsequently swore a

supplemental affidavit on 26 February 2026 exhibiting draft amended pleadings which seek to assert, among other matters, that New Co was established as a vehicle to take over Old Co's business and assets and thereby circumvent or defeat the claims of creditors, including the plaintiff.

20. The joinder application came on for hearing before me on 22 June 2026 and judgment was reserved to today's date.

OPPOSITION TO THE PROPOSED JOINDER

21. The grounds of opposition have been set out on affidavit and in written legal submissions dated 18 June 2026. These grounds were elaborated upon at the hearing before me on 22 June 2026.

22. The existing defendants oppose the joinder of New Co on the grounds that no stateable claim is disclosed against the company; that New Co is not a necessary party; that the joinder application is an impermissible attempt to reach the assets of a separate company; and that joinder would cause delay, prejudice and extra cost. It is also contended that any claim against New Co is manifestly statute-barred.

23. It is submitted that joinder would require new pleadings, discovery, and, likely, expert accountancy evidence, thereby further delaying what has already been protracted litigation. The prejudice is said to be especially acute given that the action was commenced as long ago as 2013.

24. It is submitted that the proposed joinder would impermissibly introduce new and collateral claims, including conspiracy and intentional interference with the plaintiff's economic interests, into long-running proceedings. The joinder

application is characterised by the existing defendants as an attempt to graft a post-2015 commercial dispute onto a 2013 employment-related action.

25. It is submitted that any claim against New Co is manifestly statute-barred having regard to the fact that any proceedings against that company would be deemed to have begun only on the making of the joinder order. It is said that any supposed cause of action would have accrued in or about 2015. This is the year in which New Co was incorporated and first began its trading relationship with Old Co. It is said that New Co is a separate corporate entity, incorporated for legitimate commercial reasons after Old Co lost its *John Deere* dealership. New Co secured the *Deutz-Fahr* dealership, performed a distinct role, and traded with Old Co on an arm's-length basis.

26. The existing defendants assert that it is not credible for the plaintiff to contend that he only became aware of New Co and its role after the receivership was notified in June 2025. It is submitted that New Co's existence, incorporation and trading activities were known to the plaintiff, or at least ought to have been known to him, from 2015. The existing defendants rely in this regard on the fact that New Co had obtained a major agricultural dealership and traded on-site alongside Old Co, and on the suggestion that this would have been apparent in the context of a rural family-run enterprise.

27. One of the principal arguments advanced is that the plaintiff must have known, or ought to have known, of the transfers of stock, assets or value between the two companies. The plaintiff is said to have remained a shareholder in Old Co, and it is submitted that the annual accounts of the companies referred to inter-company transactions.

28. The plaintiff's supposed knowledge of the existence of New Co from as early as 2015 is said to militate against the proposed joinder in two respects. First, it is said to be relevant to the Statute of Limitations 1957 and to preclude any reliance upon the concealed fraud exception under section 71. Second, it is said that the plaintiff cannot justify having waited until October 2025 to seek joinder in circumstances where, or so it is said, the factual basis for the proposed claim was available to him approximately a decade earlier. The court is invited to take this supposed culpable delay into account in the exercise of its discretion.

DISCUSSION AND DECISION

Connection with existing controversy

29. Order 15, rule 13 provides, relevantly, that the court may at any stage of the proceedings order the joinder of parties, whether plaintiffs or defendants, whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter.

30. A plaintiff cannot manufacture a necessity for joinder by circular reasoning; that is, by pleading a new and disconnected claim against a stranger to the proceedings and then asserting that the stranger must be joined because that newly pleaded claim cannot be determined in their absence. Rather, the "*cause or matter*" for the purpose of Order 15, rule 13 is the action as it stands between the existing parties. The proper question is, therefore, whether the proposed claim against New Co is sufficiently connected with the existing controversy to justify the joinder of the company to the proceedings.

31. I am satisfied that a sufficient connection exists in the present case. The extant proceedings entail a substantial claim for damages against Old Co. The proposed claim against New Co is not advanced as a freestanding commercial dispute, unrelated to that claim. It is advanced, instead, on the basis that New Co has allegedly been used to take over the business and assets of Old Co with a view to defeating or frustrating creditor claims, including the plaintiff's claim in these proceedings. On the plaintiff's analysis, the alleged conduct of New Co bears directly upon the practical efficacy of the claim already made against Old Co and upon the ability of the court effectually to adjudicate upon the controversy between the existing parties.

32. A stateable allegation that an existing or intended defendant is conspiring to frustrate the enforcement of any judgment which the court might ultimately deliver in favour of the plaintiff goes to the very core of the court's ability to adjudicate upon the existing controversy. The conspiracy, if successful, would drain the proceedings of any practical effect. Where a stateable case is advanced that a corporate structure is being used for this precise purpose, the proper administration of justice requires that the allegation be examined at trial rather than excluded at the threshold as a disconnected or merely collateral claim.

33. I address under the next series of headings below the question of whether the plaintiff has established a stateable case that New Co is engaged in such conduct.

Whether there is a stateable case against New Co

34. In ruling upon the joinder application, the court is not required to determine whether the plaintiff will ultimately succeed against New Co. The proper question, at this interlocutory stage, is whether the plaintiff has demonstrated a stateable case against New Co. See paragraphs 7 to 11 above.

35. The plaintiff has exhibited financial records in relation to both companies. This material discloses substantial and recurring inter-company transactions between Old Co and New Co. Whilst the net transfers between the companies in 2016 were modest (approximately €9,201), the scale of transfers has accelerated in more recent years. On the exhibited accounts, the net transfers from Old Co to New Co were approximately €534,000 in each of the years 2023 and 2024.

36. The significance of those figures is said to lie not only in their scale, but also in their apparent timing. The transactions occurred during a period when Old Co is said to have been experiencing serious financial difficulty and after it had lost the *John Deere* dealership which had historically formed the core of its business.

37. The accounts also disclose a striking divergence in the financial position of the two companies. The plaintiff relies upon figures indicating that Old Co's liabilities exceeded its assets by approximately €380,000, whereas New Co reported net assets of approximately €497,597 as of 30 September 2024.

38. Of course, the mere fact that a financially distressed company is trading extensively with a connected company whose financial position appears significantly stronger does not, *without more*, establish wrongdoing. It is, however, a fact that is capable of being relied upon for the purpose of the lower threshold of a stateable case.

39. These features assume greater significance when taken in conjunction with the plaintiff's contention that both companies operate from the same premises, carry on the same or substantially similar business, and are connected through members of the Murphy family.

40. I am satisfied that all of the foregoing features, when considered in the round, are sufficient to support a finding that the plaintiff has a stateable claim against

New Co. The plaintiff has done enough, for the purpose of a joinder application, to substantiate his claim that the relationship between the two companies is not an arm's-length trading relationship.

41. In particular, the timing of the incorporation of New Co, the unusual scale of the transactions between the two companies, and the dramatic contrast in their balance sheets are capable of supporting an inference that assets are being transferred from Old Co to New Co with a view to putting those assets out of the plaintiff's reach in the event that he were to succeed in his underlying action. Whether that inference is ultimately justified is a matter for the court of trial. For present purposes, the evidence provides an adequate foundation for the proposed claim against New Co.

Adequacy of the proposed pleadings

42. The plaintiff has exhibited, in his supplemental affidavit of 26 February 2026, the draft amended pleadings which set out the claim he proposes to pursue against New Co. The existing defendants submit that the proposed claim is so vague or unsupported that it fails at the threshold for joinder.

43. I cannot agree with that submission. The draft amended statement of claim pleads, in substance, that New Co was incorporated in October 2015; that it has the same registered office and principal place of business as Old Co; that the financial records disclose a history of transactions between the two companies; and that those matters indicate that New Co was established as a vehicle to take over the business and assets of Old Co with a view to circumventing or defeating creditor claims, including the plaintiff's claim. The draft pleading then characterises that alleged conduct as giving rise to claims in conspiracy and intentional interference with the plaintiff's economic interests. Those are causes

of action well known to the law. The issue at this stage is not whether those claims will ultimately succeed, or whether further particulars may be required, but whether the proposed pleading, read together with the affidavit evidence, sufficiently identifies a stateable case against New Co. I am satisfied that it does.

44. It is correct to say that a joinder application cannot be deployed to add a solvent corporate entity merely for the purpose of improving the prospects of recovery against a related company which is insolvent. Nor can a joinder application be deployed in an attempt to pierce the corporate veil by disregarding the separate legal personality of companies merely because they are connected by family ownership, shared premises, or commercial dealings. In this regard, the existing defendants place considerable reliance upon *Allied Irish Coal Supplies Ltd v. Powell Duffryn International Fuels Ltd*.

45. The present case is entirely distinguishable. In *Allied Irish Coal Supplies Ltd*, the relevant plaintiff sought, in substance, to join a parent company in order to obtain a determination as to whether the assets of that company might ultimately be available to satisfy any judgment obtained against its subsidiary. The Supreme Court held that such a question formed no part of the cause of action between the existing parties and that it would be inappropriate to add a defendant solely for the purpose of determining the assets available to meet a judgment.

46. By contrast, the plaintiff here seeks to advance a cause of action against New Co itself. The claim is not simply that New Co has assets which might satisfy any judgment entered against Old Co. Rather, it is alleged that New Co participated in a *conspiracy* whereby the business and assets of Old Co were transferred to it with a view to defeating or frustrating the plaintiff's claim. This represents a cause of action against New Co directly. Whether that cause of action is

ultimately successful remains to be determined by the court of trial. However, the joinder application cannot fairly be characterised as an attempt merely to identify a more attractive "*mark*" within a group of companies against whom a future judgment in favour of the plaintiff might be enforced.

Plaintiff's date of knowledge

47. The existing defendants have sought to make much of the plaintiff's supposed knowledge of events. As summarised at paragraphs 26 to 27 above, it is said that New Co's existence, incorporation, and trading activities were all known to the plaintiff, or at least ought to have been known to him, from as long ago as the year 2015.

48. The factual dispute as to the plaintiff's date of knowledge cannot properly be resolved on the joinder application. The affidavit evidence does not contain a direct averment that the plaintiff had actual knowledge in 2015 of the alleged transfer of business or assets. Rather, the argument depends substantially on *inference* from surrounding circumstances, including the plaintiff's status as a director and businessman, the public availability of company records, the shared premises and the asserted openness of New Co's trading activities.

49. The plaintiff's own evidence is that the matters now relied upon emerged only *after* Old Co's receivership was notified in June 2025 and *after* inquiries were then made into the relationship between Old Co and New Co. John Murphy's evidence is that New Co was incorporated and operated openly from 2015 as a separate commercial entity, carrying on a distinct function and trading with Old Co on an arm's-length basis. That dispute involves contested factual inferences and competing characterisations of the relationship between the companies. It is not appropriate to decide it finally on this motion.

50. In the absence of a finding of fact on this issue, it is not possible to say that it is "*clear*" or "*manifest*" that the proposed claim against New Co is statute-barred, such that joinder would be futile. This is because it cannot be ruled out, at this interlocutory stage, that the plaintiff may be able to rely on the concealed fraud exception under section 71 of the Statute of Limitations 1957.

51. The case law discussed at paragraphs 7 to 11 above confirms that a court should be very slow to enter into an inquiry as to whether a claim may or may not be statute-barred when hearing a procedural motion seeking merely to join a defendant. If there is "*any real doubt*" on that issue, then the intended defendant should be joined and the limitation issue determined in the ordinary way thereafter.

52. The financial reports indicate that the scale of transfers between the two companies increased dramatically in more recent years. It would be open to the plaintiff to argue either that those later transactions gave rise to fresh or continuing causes of action, or that, by reason of section 71 of the Statute of Limitations 1957, time did not begin to run until the alleged fraud was, or could with reasonable diligence have been, discovered. In all the circumstances, if New Co wishes to rely on the Statute of Limitations 1957, the defence will have to be pleaded and determined in the ordinary way. It cannot safely be determined at this interlocutory stage.

Delay

53. It is correct to say that the joinder will cause further delay in what has already been protracted litigation. This is regrettable. These proceedings have their origin in events said to have occurred more than thirteen years ago. It will be possible, however, to minimise any further delay by subjecting the proceedings

to rigorous case management. In particular, directions can be made for the prompt delivery of the amended pleadings, for any necessary discovery to be confined to the issues raised by the amendment, and for the proceedings to be assigned a priority hearing date.

54. The existing defendants place reliance on *Kirwan v. Connors* [2025] IESC 21 in support of their argument on delay. The Supreme Court judgment underscores the seriousness with which the courts must approach delay in litigation, and the importance of ensuring that proceedings are prosecuted with reasonable expedition. It does not, however, follow that every application which has the effect of prolonging existing proceedings must be refused. The question remains one of context. In the present case, the court is not dealing with an application to dismiss for want of prosecution, but with an application to join a party in circumstances where the plaintiff says that a new issue emerged only following notification of Old Co's receivership.

55. Crucially, the existing defendants previously sought to have these proceedings dismissed on the grounds of delay and that application was refused on 3 July 2024. The proceedings were thereafter placed in the Non-Jury Case Management List, and a trial date was fixed for 22 July 2025.

56. Having regard to this procedural history, it would be inappropriate for this court, in determining the joinder application, to characterise the reckonable period of delay as running from 2013. This is because the proceedings had been put back on track in July 2024. But for the intervention of the receivership and the inquiries which followed, the proceedings would have been heard in full in July 2025. The passage of time from the date of issuance of the motion in October 2025 to the hearing on 22 June 2026 is a function of the pressure on the courts'

lists, rather than as the result of any culpable delay by the parties. It cannot be said that the plaintiff has delayed in pursuing the joinder application.

57. There is a further, more fundamental consideration. The court must be astute to protect the integrity of its own process. Where a stateable case is advanced that a corporate structure has been used, or is being used, to place assets beyond the reach of a claimant, and thereby potentially to frustrate the practical effect of any judgment which this court may ultimately render, the court should be slow to shut out that case at the threshold by reference to delay alone. This is not because the court assumes the allegation to be well founded. It is because, if such an allegation is stateable and supported by some objective material, the administration of justice may require that it be examined rather than excluded on a purely procedural basis.

58. The delay objection is a serious one. It may well have consequences for case management, costs, and any limitation defence which New Co may wish to plead. It does not, however, justify refusing joinder at this stage. The plaintiff has advanced a stateable case that New Co was established as a vehicle to take over the business and assets of Old Co with a view to defeating or frustrating creditor claims, including his own. To refuse joinder now would risk allowing a serious allegation concerning the frustration of the court's eventual process to go unexamined, not because it has been shown to be unsustainable, but because it is said to have been raised belatedly. That is not an appropriate basis on which to refuse to join the intended defendant.

CONCLUSION AND PROPOSED FORM OF ORDER

59. For the reasons explained, I have concluded that Murphy Agri Machinery Ltd ("*New Co*") should be joined as a co-defendant. This conclusion involves no finding that the intended defendant is a "*phoenix entity*" (as is alleged by the plaintiff) nor that assets have been improperly transferred from Old Co to New Co. Those remain matters to be determined, if pursued, at the trial of the action.

60. The present decision is narrower: it goes no further than saying that the plaintiff has advanced a stateable case against New Co which cannot be dismissed as plainly futile or manifestly statute-barred, and that the presence of New Co is necessary to enable the court effectually and completely to adjudicate upon and settle the questions involved in the cause or matter.

61. For the avoidance of doubt, I should record that I do not regard the mere fact of Old Co having entered receivership as indicative of any wrongdoing on the part of Old Co, New Co or any other person. Its relevance for present purposes is more limited. The notification of the receivership in June 2025 prompted the inquiries which led the plaintiff to examine the relationship between Old Co and New Co and to pursue the joinder application.

62. I also propose to make an order permitting the plaintiff to amend his plenary summons and statement of claim in accordance with the draft amended pleadings exhibited. The amended pleadings are to be delivered and served within fourteen days of this judgment.

63. As to legal costs, my *provisional* view is that the plaintiff, having been entirely successful in his application to join the intended defendant, is entitled to recover the costs of the motion as against the existing defendants, such costs to be

adjudicated in default of agreement, subject to a stay on execution pending the determination of the substantive proceedings at the level of the High Court.

64. I will list the matter for further case management directions on 31 July 2026. I will hear any submissions on the proposed form of costs order on that date.

Appearances

Brian Conroy SC and Nathan Reilly for the plaintiff instructed by Damien Tansey Solicitors LLP
Michael O'Connor SC and Kevin Kelly for the defendants instructed by O'Dwyer Solicitors LLP