

Case Name: Martin McGowan v Springfield Properties Plc

Case Ref No: A270/21

Date of Hearing: Tuesday 20 August 2024 at 10.30 (1 day)

Division and Senators: First Division (Lord President, Lord Malcolm, Lord Armstrong)

Livestreamed Hearing?: Yes No

Agents and Counsel:

Agents / Counsel for the Pursuer and Respondent (*Martin McGowan*):

Party (Mr McGowan will represent himself)

Agents / Counsel for the Defenders and Reclaimers (the appellants) (*Springfield*

Properties Plc):

Davidson Chalmers Stewart LLP

Andrew Webster KC

Link to Judgment Appealed:

<https://www.scotcourts.gov.uk/media/0oxpqddw/court-of-session-martin-mcgowan-against-springfield-properties-plc-14-february-2023.pdf>

Case Description:

This is a reclaiming motion (appeal) against a decision of the Lord Ordinary to allow the respondent's claim for damages against the appellants to proceed to an evidential hearing.

The appellants, Springfield Properties, are house builders. The respondent, Martin McGowan, owns various building companies. In 2012 or 2013, some of these companies were contracted by Springfield to remove material from one of their sites, which was being developed for residential housing, at Milton of Campsie. In 2014, Mr McGowan raised concerns with Springfield regarding the health and safety of his companies' employees. He alleged that the material they had been tasked with removing included asbestos and crude oil, and that working practices at the site had been unsafe. He informed them that several of his companies' employees had contacted the Health and Safety Executive. The HSE investigated and Springfield conducted an asbestos survey of the site. Remediation works were carried out on site during 2015.

On 1 February 2016, Mr McGowan sent an email to Springfield, stating that he was going to send a letter to the owners of the homes which had been built on the site. He stated that this letter would contain a warning that asbestos fibres had been spread all over the site during the demolition of the building which had previously stood on the site, and that asbestos from another site had been buried in the ground at Milton of Campsie. He stated that he would include contact details for the HSE and other relevant public authorities. He would explain that he knew this information because of his companies' involvement in the project. He alleged that his companies' employees' lives had been placed at risk due to a lack

of proper training, safety equipment, or knowledge of the fact that they were working with asbestos. Springfield replied asking Mr McGowan to cease and desist from making the allegations. On 2 February, Mr McGowan responded stating that he could prove all of the allegations.

Springfield Properties sought, and were granted, interim interdict against Mr McGowan on 5 February 2016. The interim interdict prohibited Mr McGowan from making any defamatory statements about Springfield.

In 2020, Springfield pled guilty to health and safety offences in respect of risks Mr McGowan's employees were exposed to onsite, including asbestos exposure. The interim interdict was recalled on 26 May 2021. On 2 November 2021 Mr McGowan raised the present action, in which he alleges that he and his companies were effectively blacklisted by employers in the construction industry as a result of the interdict. He sued Springfield for the resulting losses.

Springfield contend that Mr McGowan had five years from 5 February 2016, when interim interdict was granted, in which to raise an action. Since he did not commence the present action within five years of that date, Springfield argue that it is time-barred and ought to be dismissed. Springfield rely upon sections 6(1) and (3) of the Prescription and Limitation (Scotland) Act 1973 in support of this

contention. Mr McGowan contends that the five years did not commence until interim interdict was recalled. He relies upon section 11(2) of the 1973 Act.

The Lord Ordinary agreed with Mr McGowan's position. She reasoned that a person who sought an interdict was not permitted to wash his hands of responsibility for it simply because the court granted it. The wrong against Mr McGowan continued until the interim interdict was recalled. Section 11(2) therefore applied and the five years had not started until 26 May 2021.

Springfield appeal this decision. The First Division will hear the appeal on Tuesday 20 August 2024.