Neutral Citation No: [2025] NICA 67	*Ref:* **McC12879**
	ICOS No: **2019/7075**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **24/10/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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BETWEEN:

ROBERT BUNTING

&

EXCEL–A-RATE BUSINESS SERVICES LIMITED

Plaintiffs/Respondents

-and-

EAMON BLANEY

First Defendant

-and-

CARMEL BLANEY

Second Defendant/Appellant

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Representation

Plaintiffs/Respondents (Excel): Mr Joseph Aiken KC and Ms Maria Mulholland, of counsel (instructed by Diamond Heron Solicitors)

Plaintiff/Respondent (Robert Bunting): Mr Alistair Fletcher, of counsel (instructed by Mills Selig Solicitors)

Eamon Blaney: unrepresented and non-participating

Carmel Blaney: self–representing and participating

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JUDGMENT No 2: Best Practice

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Before: McCloskey LJ, McBride J and Huddleston J

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McCLOSKEY LJ (*delivering the judgment of the court*)

Preface

This judgment is associated with the main substantive judgment and partly dissenting substantive judgment in these appeals, handed down on 18 December 2025.

Introduction

[1] There are before this court a notice of appeal and a respondent's notice under Order 59, Rule 6 of The Rules of the Court of Judicature (NI) 1980 (RCJ). Thus, there are in substance, two inter-related appeals to be determined. Each arises out of the judgment delivered in the Commercial Court on 13 December 2024 and two corresponding orders, the first and second being of the same date, while the third is dated 14 March 2025.

[2] The parties to these appeals are (in no particular hierarchy):

(a) Excel–A–Rate Business Services Limited ("Excel").

(b) Robert Bunting ("Mr Bunting")

(c) Eamon Blaney ("EB").

(d) Carmel Blaney ("CB").

Following the judgment and the two associated orders of 13 December 2024, there occurred, in succession, two steps generating the proceedings before this court. First, CB served a notice of appeal. Second, a respondent's notice on behalf of Excel followed.

The first instance proceedings

[3] There were four separate cases at first instance. In chronological sequence:

(i) By a Writ of Summons endorsed with Statement of Claim, issued on 31 January 2019 (2019/9691 – the "first case"), Excel sued EB and CB for liquidated damages of £24,861.21 "…on foot of personal guarantees provided by the defendants to the plaintiff for lending facilities supplied to Ardcarmon Limited…"

(ii) By an originating summons issued on the same date (2019/9696 - the "second case") Excel applied under RCJ Order 88 for an order requiring EB and CB to deliver to Excel possession of 35 Ardenlee Avenue, Belfast, a dwelling house (the "premises").

(iii) By a further Writ of Summons endorsed with Statement of Claim, issued on 11 November 2020 (2020/78504 - the "third case"), Excel sued CB for £163,329.35 "…being monies due and owing on foot of the guarantees and

indemnities between the plaintiff and the defendant in respect of the liabilities owed to the plaintiff by Ardcarmon Limited (in liquidation)."

(iv) By a further originating summons dated 23 January 2019 (2019/7075 - the "fourth case") Mr Bunting sought an order against EB, pursuant to RCJ Order 88, requiring delivery of the premises pursuant to a charge dated 21 October 2016 the parties whereto were Mr Bunting and EB (2019/7075).

[4] The four cases specified above were brought in different divisions of the High Court. Ultimately, all proceeded in the Commercial list, where they progressed and were determined in consolidated fashion, culminating in a single, unified judgment. As the foregoing resume indicates, two of the three parties concerned, namely Excel and CB, are dissatisfied with this judgment. In the fourth case (2019/7075), brought by Mr Bunting against EB, in which CB was added as second defendant, there is no notice of appeal and no respondent's notice.

[5] In the notice of appeal on behalf of CB dated 23 January 2025, all of the above four cases are identified. The single respondent's notice, which is on behalf of Excel, is in respect of three of the four cases only. It excludes the fourth case (2019/7075), in which Excel was not a party.

Notice of appeal

[6] As noted, there is a single notice of appeal and a single respondent's notice. In CB's notice of appeal there are three grounds. These are embraced by the averment that the trial judge was "in error." The three grounds are:

(i) The finding that CB had only a 35% beneficial interest in the premises "…was unsupported by the evidence"; CB's true interest was 50% or such proportion as the court deems equitable in all the circumstances.

(ii) The order for possession and sale of the premises subject to a stay of execution of eight weeks only is unsustainable: "...the court should in all the circumstances have stayed the order for possession permanently, in order to do justice, having held that the plaintiffs were negligent in their dealings with the appellant."

(iii) "The appellant made a number of applications to join Logan and Corry solicitors as a third party to both action [sic] on the grounds that they conspired with [EB] to conceal transactions from the appellant, resulting in the loss of the appellant's family home. Despite promising to consider these applications, the judge ignored them, resulting in loss to the appellant."

[7] The notice of appeal requests this court to make the following orders:

(a) That "…both plaintiffs' claims be struck out on the basis of **ex turpi causa non oritur action**."

(b) That the appellant has a 50% equitable interest in the premises or "…such portion that the court deems equitable in all the circumstances."

(c) That "…any order for possession against [sic] the premises be stayed, pursuant to the powers available to the court in Article 49 of the Property (NI) Order 1997."

The respondent's notice

[8] It is appropriate to preface consideration of the respondent's notice on behalf of Excel with the relevant procedural rule. RCJ Order 59, Rule 6(1) provides:

> "(1) A respondent who, having been served with a Notice of Appeal, desires –
>
> (a) To contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or
>
> (b) To contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or
>
> (c) To contend by way of cross-appeal that the decision of the court below was wrong in whole or in part.
>
> (d) Must give notice to that effect, specifying the grounds of his contention and, in a case to which paragraph (a) or (c) relates, the precise form of the order which he proposes to ask the Court to make."

[9] The two forms of relief which Excel seeks via the first incarnation of its respondent's notice were:

(i) An order that any beneficial interest of CB in the premises is subject to the mortgage of Excel.

(ii) Judgment in favour of Excel against CB in the amount of £162,648.91 due and owing pursuant to ten personal guarantees given by CB to Excel.

The notice is in two parts. The first contains 19 grounds of appeal. The second contains 12 "further grounds…to the extent necessary." Careful analysis of the content of both is required.

[10] Of the 19 grounds comprising the first part of the respondent's notice:

(i) 13 are formulated in the terms of a contention that the trial judge "erred in fact and law" in making specified findings (see grounds 1–3 and 5–12).

(ii) The fourth ground contends that the judge "…erred on the facts and law…by failing to distinguish [specified] facts and circumstances…"

(iii) The 13th ground contends that the judge "…erred in law…" in making the conclusion contained in para [91] of his judgment.

(iv) The 14th and 16th grounds contend that the judge "erred in law" in specified respects.

(i) The 17th ground contends that the judge failed to take into account a specified piece of the sworn evidence of CB.

(ii) The 19th ground contends that the judge "…failed to take account of, and the judgment is silent on, …" a specified instrument.

[11] As already noted, the second part of the respondent's notice, consisting of 12 grounds, employs the somewhat unusual linguistic formula of "to the extent necessary", without explanation or elaboration. The breakdown of these grounds is the following:

(i) Ground 20 complains that the trial judge "…failed to give a ruling" on whether Excel is entitled to a money judgment against CB in respect of ten personal guarantees executed by her.

(ii) The 21st ground contends that the judge "…failed to address [specified] questions necessary for determining the aforementioned money judgment claim."

(iii) The 22nd ground contends that the judge "…failed to take account of…" specified "undisputed facts."

(iv) Grounds 23–26 contend that the judge "…failed to take account of, and the judgment is silent on, …" specified items of documentary evidence.

(v) While ground 26 begins with the contention that the judge '…has erred in law in failing to give account to …' a specified "fact", this bulky pleading is of the omnibus and rolled – up variety, it later embodies the contention "the learned

judge erred in failing to find…" and ends with the quite separate contention "… the judgment does not address these points." Confusion and conflation abound.

(vi) Grounds 27 – 30 contend that the judge "…failed to take account of, and the judgment is silent on, …" certain specified pieces of sworn evidence and certain specified documentary evidence.

(vii) Ground 31 contends that the judge "…failed to address and rule on…" specified "arguments" on behalf of Excel.

(viii) Ground 31 contends that the judge "…failed to address and rule on…" two further "arguments" on behalf of Excel.

[12] At the time when the respondent's notice was first compiled the judgment of the Commercial Court had been promulgated in draft, the final order of the court was awaited, a further listing before the judge was contemplated and CB had served her notice of appeal. Furthermore, a procedural time limit had to be observed. Summarising, there was at that stage a possibility that, in certain eventualities, it might not be "necessary" for Excel to pursue any or all of the 12 grounds of appeal contained in the second part of the respondent's notice. In the event, nothing further materialised. As a result, all 32 grounds in the notice were initially live.

[13] The adjournment order of 13 June 2025 stated that a separate order addressing the Respondent's Notice and core propositions would be required: this course was intimated and taken because the deficiencies in the foregoing were so extensive. The further case management order (dated 19 June 2025) was the fourth within a period of 14 days. This court ordered that an amended respondent's notice and Excel's propositions be provided. This order was pronounced by the court at the conclusion of a lengthy case management hearing during which the court had exhaustively outlined, paragraph by paragraph, the deficiencies in the original respondent's notice. These deficiencies were the major cause of the first allocated substantive hearing date being vacated, with costs reserved.

[14] Excel's legal representatives, in purported compliance with the ensuing order of 19 June 2025, filed an amended respondent's notice, in enlarged terms. This was received during the court vacation. The judicial panel's first opportunity to consider together the amended Respondent's Notice materialised following the next review listing, on 04 September 2025 (when two panel members were unavailable). Regrettably, yet another procedural ruling of the court was required, on the morning of the first of the two days allocated for the substantive hearing, 15 September 2025. The court was driven to rule that this revised pleading continued to suffer from the vices of obfuscation, repetition, evasiveness, verbiage and a failure to include cross–references to the appeal bundles, in particular the core bundle (compiled at the direction of the court, but sadly inadequate) and the transcripts bundle. The golden

rule for every pleading of every species, namely good communication, had been sadly neglected.

[15] Yet another adjournment of the hearing became necessary. The submissions made to this court on these issues failed to engage with the overriding duties of lawyers to the court. Furthermore, this was a situation of some gravity, with possible strike out and contempt of court implications. There was an evident failure to appreciate these considerations. Counsel's suggestion that the hearing could proceed in the teeth of these egregious problems was wholly unrealistic. An adjournment of the hearing to facilitate yet another iteration of the Respondent's Notice, hopefully enlightened by a still further judicial exposition of the fundamental inadequacies of the pleading was the only feasible option. By this stage, the court had invested a wholly disproportionate quantity of judicial and administrative time and resources in case management.

[16] Excel's legal representatives were given one further opportunity. Following a full wasted day, a third incarnation of the Respondent's Notice eventuated. There was a notable improvement.

Grounds of appeal: Recurring mischiefs

[17] In practice, much of the business of the Northern Ireland Court of Appeal concerns unsatisfactorily formulated grounds of appeal prepared by both represented and unrepresented litigants alike. It is exceedingly time consuming and wasteful of judicial and administrative resources. The mischiefs range from the vague and obscure to the unparticularised. Lack of particularisation of the judicial error said to have occurred in the lower court is, by some measure, the most frequently encountered infirmity. Incoherence is another vice frequently experienced. In cases where a notice of appeal or respondent's notice suffers, in whole or in part, from any of these defects it is open to this court to make a strike out order. The exercise of this power does not require an application by any party. The power, rather, is exercisable of the court's own motion. In practice, the approach of this court is a generous one, in most cases extending an opportunity to the defaulting party to rectify the defects by the provision of an amended notice.

[18] In light of the alarming frequency of defective notices of appeal and respondent's notices, the aforementioned magnanimity of this court will have to be reconsidered. It is this court's understanding that a much stricter approach to these matters is taken in neighbouring jurisdictions. Furthermore, there may be adverse legal aid implications.

Grounds of appeal: Guidance

[19] We take cognisance of the absence of any prescriptive provisions in either Part III (particularly section 35) of the Judicature (NI) Act 1978 or Order 59 of RCJ. In the context of the present appeal and having regard to this court's experience in multiple

other appeals, it is necessary to formulate guidance with regard to the formulation of grounds of appeal generally.

[20] The following guidance is intentionally framed in general terms. It is not confined to appeals to this court under RCJ Order 59, Rule 1 or respondent's notices under Order 59, Rule 6(1). It applies to all appeals of every species at every tier of the Northern Ireland legal system:

(i) The word "finding" and its derivatives and associates in the notice of appeal ("NOA") are much favoured by legal practitioners. This language is vague, non-specific and a recipe for misunderstanding and confusion. It is best avoided.

(ii) "Findings of fact", in sharp contrast, is an unequivocal linguistic formulation, entirely apposite in appropriate contexts.

(iii) In any case where there is a challenge to a first instance court or tribunal's findings of fact, recitations of evidence are inappropriate.

(iv) A first instance court or tribunal's findings of fact are to be distinguished from its conclusions. The latter will not invariably be located at the end of the judgment and sometimes are scattered throughout.

(v) Evaluative judgments, or assessments, are not findings of fact.

(vi) In every notice of appeal where there is a challenge to a finding of fact in the first instance decision/judgment, the relevant finding of fact must be spelled out clearly and accurately.

(vii) A ground of appeal may, in principle, properly complain that a specified finding of fact is vitiated by error of law: in every such instance care must be taken in how the suggested error of law is crafted.

(viii) The recitation of a mere disagreement, or quarrel, with the decision of the first instance court or tribunal is inappropriate.

(ix) In every case where a notice of appeal canvases an error of law, the relevant ground must be accompanied by the essential particulars.

(x) Purely by way of illustration, where it is contended that the decision under challenge is vitiated by an error of law consisting of a misconstruction of a statutory provision or a misunderstanding, misapplication or neglect of a binding precedent decision or recognised legal rule or principle, this should be clearly stated. As a pre-requisite, a proper understanding of the doctrine of precedent is essential in formulating a ground of appeal of this kind.

(xi) Any ground of appeal which recites that the lower court or tribunal "erred" in whatever way suggested is meaningless.

(xii) So too is the linguistic formula "was in error" (as repeatedly employed in the notice of appeal in the present case).

(xiii) Equally inappropriate is the formulation "erred in fact and law" and its close relatives, such as "erred on the facts and law" and "erred in law and on the facts" (all of which dominated the initial incarnations of the respondent's notice in this appeal). All of these expressions are meaningless.

(xiv) Every ground of appeal should in compact terms cross-refer to the appropriate passage (normally a numbered paragraph) in the judgment/decision under challenge.

(xv) Legal argument has no place in grounds of appeal: this finds its place in the skeleton argument and oral submissions

[21] To summarise, in every notice of appeal of whatever kind, the grounds of appeal must be formulated in terms which are clear, coherent, comprehensible and concise (the four "c's"). The norms highlighted above must be observed. Trespass into the territory of argument is impermissible. Obfuscation, verbosity and duplication are positive vices. Where the requirements and standards highlighted above and in this paragraph are not observed, lengthy and costly case management enquiries and measures (as in the present case), pre-eminently avoidable, are inevitable and may well have adverse costs consequences for the defaulting litigant or their legal representative.

Conclusion

[22] The golden rule for every pleading of every species is good communication.

Postscript

The response of Excel's legal representatives following the handing down of this judgment in draft was not in accordance with the court's directions and was in conflict with the strictures of the UK Supreme Court in ***R (Edwards) v Environment Agency*** [2008] UKHL 22, at paras [66] and [73].