

Neutral Citation No. [2012] NIQB 16

Ref: WEA8421

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 13/03/2012

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (COMMERCIAL)

BETWEEN:

AIB GROUP (UK) PLC

Plaintiff;

-and-

FERGAL KEENAN

Defendant.

WEATHERUP J

Claims under the Consumer Credit Act 1974

[1] The defendant applied for the proceedings to enforce regulated agreements under the Consumer Credit Act 1974 ("the 1974 Act") to be transferred to the County Court for the Division of Armagh under section 141 of the 1974 Act or alternatively to be remitted to the County Court under section 31 of the Judicature (Northern Ireland) Act 1978. Mr Dowd appeared for the defendant and Mr Smyth for the plaintiff.

[2] By Writ of Summons issued on 13 March 2009 the plaintiff claims against the defendant for £78,344.48 in respect of four agreements, three of which are regulated agreements under the Consumer Credit Act 1974.

The first agreement is a credit agreement of 11 September 2003 concerning a loan of £15,000 repayable by 60 monthly instalments in respect of which the defendant defaulted and on a default notice being issued on 27 May 2005 the outstanding amount was £21,326.38.

The second agreement is a hire purchase agreement dated 1 October 2002 concerning a BMW motor vehicle for a total amount of £48,348.12 repayable by 48 monthly instalments in respect of which the defendant defaulted and on a termination notice being issued on 26 April 2005 and the vehicle being repossessed on 6 March 2009 the balance outstanding was £38,565.29.

The third agreement is a hire purchase agreement dated 10 August 2004 in respect of a further BMW motor vehicle for a sum repayable by 60 monthly instalments in respect of which the defendant defaulted and on a termination notice being issued on 26 April 2005 the balance due was £14,156.60.

The fourth agreement related to a visa card facility provided by the defendant under a credit agreement dated 23 April 2002, the balance due being £4,296.21. The first, third and fourth agreements are regulated agreements.

The second agreement is a non-regulated hire purchase agreement, the amount involved being above the £25,000 limit for regulated agreements under the Consumer Credit Act 1974, which financial limit was abolished by the Consumer Credit Act 2006 in respect of agreements made after 6 April 2008.

[3] The plaintiff contends that the County Court has exclusive jurisdiction in respect of regulated agreements under the Consumer Credit Act 1974 and that proceedings in respect of the three regulated agreements should be transferred to the County Court under section 141 of the 1974 Act.

The Consumer Credit Act 1974.

[4] Section 141 of the 1974 Act provides -

(1) In England and Wales, the county court shall have jurisdiction to hear and determine-

(a) any action by the creditor or owner to enforce a regulated agreement or any security relating to it;

(b) any action to enforce any linked transaction against the debtor or hirer or his relative;

and such an action shall not be brought in any other court.

(2) Where an action or application is brought in the High Court which, by virtue of this Act, ought to have been brought in the county court it shall not be treated as improperly brought, but shall be transferred to the county court.

(3) In Scotland the sheriff court shall have jurisdiction to hear and determine any action referred to in subsection (1) and such an action shall not be brought in any other court.

[(3A) and (3B) were introduced to specify the sheriff court that should hear the case]

(4) In Northern Ireland the county court shall have jurisdiction to hear and determine any action or application falling within subsection (1).

(5) Except as may be provided by rules of court, all the parties to a regulated agreement, and any surety, shall be made parties to any proceedings relating to the agreement.

England and Wales

[5] In respect of England and Wales section 141(1) and (2) provide that in relation to the specified proceedings (i) the County Court shall have jurisdiction and (ii) the action shall not be brought in any other court and (iii) any such action brought in the High Court shall not be treated as improperly brought but shall be transferred to the County Court.

[6] In Sovereign Leasing Plc v Ali [1992] CCLR 1 it was decided that the High Court had no power to dismiss, as an abuse of process, an action to which section 141(1) applied but that the High Court was required by section 141(2) to transfer the action to the County Court.

The plaintiff finance company commenced proceedings in the High Court and the defendant applied to have the case transferred to the County Court. The High Court Registrar did not transfer the action but ordered that it be struck out as an abuse of process of the court. The plaintiff appealed against the striking out. In allowing the appeal and transferring the proceedings to the County Court, Judge Kershaw QC, sitting as a Deputy High Court Judge, stated that the court had no discretion in the matter" the court was required by statute to transfer to the county court an action of this type wrongly started in the High Court".

[7] In Barclays Bank Plc v Brooks [1997] CCLR 60 it was decided that, in addition to the power to transfer a claim from the High Court to the County Court under section 141 of the 1974 Act, the High Court had power to strike out the proceedings by virtue of the County Courts Act 1984 section 40(1) (as substituted by section 2(1) of the Courts and Legal Services Act 1990).

The plaintiff bank brought proceedings in the High Court to enforce an overdraft agreement which was a regulated agreement. The defendant applied to have the proceedings transferred to the County Court and the District Judge ordered the proceedings be struck out. On appeal Judge Crawford QC sitting as a Deputy High Court Judge dismissed the appeal. By section 40(1) of the 1984 Act the High Court, when satisfied that any proceedings are required to be in the County Court, shall (a) order the transfer of the proceedings to a County Court or (b), if the court is

satisfied that the person bringing the proceeding knew or ought to have known of the requirement to proceed in the County Court, order that the proceedings be struck out. The provisions of the Consumer Credit Act 1974 are to be read as subject to the later provisions of the County Courts Act 1984 as amended. The High Court has concurrent jurisdiction to transfer the proceedings to the County Court or to strike out the proceedings. The question then becomes one of discretion. Judge Crawford QC stated that “... a plaintiff who seeks to issue proceedings in the High Court must, if he is to avoid the exercise by the Court of its discretion under section 40(1)(b), offer some reason or justification for that course” No such reason was adduced and none appeared on the face of the proceedings.

[8] Accordingly in England and Wales, when proceedings within section 141(1) of the 1974 Act are commenced in the High Court, the High Court has jurisdiction either to transfer the proceedings to the County Court or to strike out the proceedings.

Scotland

[9] In respect of Scotland section 141(3) provides in relation to such proceedings that (i) the Sheriff Court shall have jurisdiction and (ii) the action shall not be brought in any other court. The amendments to sub-section (3) provide that in Scotland the proceedings shall be brought only in the Sheriff Court for the place where the debtor or hirer is domiciled or where the debtor or hirer carries on business or where moveable property is situated. Thus in Scotland, as in England and Wales in relation to the County Court, section 141 (3) of the 1974 Act grants exclusive jurisdiction to the Sheriff Court.

Northern Ireland

[10] In respect of Northern Ireland section 141(4) provides in relation to such proceedings that the County Court shall have jurisdiction. There is no additional provision such as occurs in England and Wales and in Scotland that “such an action shall not be brought in any other court”. Accordingly the 1974 Act does not state expressly that in Northern Ireland the County Court has exclusive jurisdiction.

[11] The defendant contends that it is implicit in the statutory scheme that the County Court in Northern Ireland has exclusive jurisdiction. However it is to be assumed that a change of wording within the same section indicates a different meaning. That different wording indicates that in Northern Ireland it was not intended that the grant of jurisdiction to the County Court should not mean that the action should not be brought in any other court. The implication is that the High Court and the County Court have concurrent jurisdiction.

[12] The Rules Committee of the Court of Judicature has assumed that the High Court has jurisdiction. Order 83 of the Rules of the Court of Judicature bear the title “The Consumer Credit Act 1974”.

Rule 2 provides that proceedings under the Act shall be assigned to the Queen’s Bench Division, with the exception of proceedings relating to an agreement secured by mortgage which shall be assigned to the Chancery Division.

Rule 3 provides that where proceedings are brought by the creditor or relate to a regulated agreement the originating process shall contain a statement clarifying which claim or claims relate to a regulated agreement.

Section 141 of the 1974 Act has not gone unnoticed by the draftsman of the Rules as it is provided by Rule 4(1)(d), in respect of default of appearance or defence of claims which relate to a regulated agreement, that judgment may not be entered without the leave of the court unless there is confirmation that there has been no breach of the requirement in section 141(5) as to the joinder of parties to the proceedings. Further Rule 5 provides for joinder of parties as required by section 141(5).

[13] The defendant contends that Order 83 is ultra vires as there is no jurisdiction in the High Court in relation to the proceedings specified in section 141 of the 1974 Act.

[14] Section 141 of the 1974 Act must be interpreted to mean that, by virtue of section 141(4), the County Court has jurisdiction in Northern Ireland in relation to the proceedings specified in section 141, although, contrary to the position of the County Court in England and Wales and the Sheriff Court in Scotland, the County Court in Northern Ireland does not have exclusive jurisdiction. Accordingly, in Northern Ireland, the High Court also has jurisdiction in relation of the proceedings specified in section 141 of the 1974 Act.

[15] Section 141(2) does not apply to Northern Ireland and it is not to be implied that it applies to Northern Ireland and there is no statutory power in the 1974 Act to transfer proceedings from the High Court to the County Court in Northern Ireland.

[16] Article 10 of the County Courts (Northern Ireland) Order 1980 provides the general civil jurisdiction of the County Court to hear and determine any action in which the amount claimed does not exceed a monetary limit, currently £15,000. By virtue of section 141(4) of the 1974 Act there is no monetary limit in the County Court in respect of claims to which the section applies.

[17] The 1974 Act contains additional provisions in relation to such proceedings in the County Court. By section 143, the County Court rules may provide that any action or application such as is mentioned in section 141(4) which is brought against the debtor or hirer in the County Court may be brought in the County Court for the

division in which the debtor or hirer resided or carried on business at the date on which he last made a payment under the regulated agreement. Section 144 deals with appeals from a decision in the County Court.

Remittal under the Judicature (Northern Ireland) Act 1978

[18] In the alternative the defendant contends that the proceedings be remitted to the County Court. Section 31 of the Judicature (Northern Ireland) Act 1978 provides for a remittal to the County Court –

(1)The High Court may in accordance with rules of court at any stage remit to a county court the whole or any part of any civil proceedings to which this subsection applies if –

(a)the parties consent to the remittal thereof;

(b)the court is satisfied upon the application of any party to proceedings involving an unliquidated claim that the full amount of that claim is likely to be within the monetary limit of the jurisdiction of the county court;

(c)the court is satisfied, whether upon the application of any party or otherwise, that the subject matter of the proceedings (not being an unliquidated claim) is or is likely to be within the limits of the jurisdiction of the county court; or

(d)the claimant abandons the right to recover any amount in excess of the monetary limit of the jurisdiction of the county court,

and in any such case the court is of the opinion that in all the circumstances the proceedings may properly be heard and determined in the county court.

[19] The relevant requirements for remittal for present purposes are -

first of all “the subject matter of the proceedings (not being an unliquidated claim) is or is likely to be within the limits of the jurisdiction of the County Court” and

secondly, that in any such case the High Court is of the opinion that “in all the circumstances the proceedings may properly be heard and determined in the County Court”.

[20] As the County Court has unlimited jurisdiction in respect of proceedings falling within section 141 the first condition for remittal will be satisfied in all such cases commenced in the High Court. The issue in each case will be whether the

second condition for remittal is satisfied, namely whether the case may properly be heard and determined in the County Court.

[21] The defendant applies for remittal by reason of the risk of higher legal costs to which the defendant would be exposed. Appendix 2 to the County Court Rules (NI) makes provision for claims under the 1974 Act which exceed the County Court monetary limit otherwise applicable, when the costs may be increased by such amounts as the Judge thinks proper having regard to the amount involved or the importance or difficulty of the case. Thus the costs of such proceedings are in the discretion of the County Court Judge but it is assumed that such costs would be lower than those that would be incurred if the same proceedings were completed in the High Court.

[22] The defendant further refers to the policy of the 1974 Act. The Committee on Consumer Credit was appointed in 1968 under the chairmanship of Lord Crowther. The Crowther Report was published in 1971 and led to the introduction of the 1974 Act. The Report had identified serious weaknesses in the existing law, including the failure to distinguish consumer from commercial transactions and inadequate protection for the consumer in credit transactions. The consumer based approach led to the provisions in section 141 that were applied in their various forms in the three jurisdictions of the United Kingdom to enforcement action against a debtor in respect of regulated agreements. In England and Wales and in Scotland this found expression in the requirement to undertake such proceedings in the local County Court/ Sheriff Court where the debtor resided or carried on business. In Northern Ireland this found expression in the expanded jurisdiction of the County Court to undertake such proceedings where the debtor resided or carried on business. As Mr Dowd for the defendant put it, the legislative decision to provide unlimited jurisdiction to the County Court in respect of these proceedings reflects a policy of promoting local hearings, less formal hearings, less expensive hearings and a requirement that the creditor go to the debtor to enforce the agreement.

[23] I accept the above analysis and conclude that in furtherance of the legislative purpose such proceedings should be commenced in the County Court unless there are special reasons that the proceedings may properly be heard and determined in the County Court. Such special reasons may arise, for example, where the case may be unduly complex or raises an issue of general application or involves an exceptionally large amount or is likely to require several days of court time or otherwise may properly be heard and determined in the County Court.

[24] Further the defendant refers to the overriding objective of the Rules of the Court of Judicature in Order 1 Rule 1A namely to enable the Court to deal with cases justly, which includes, so far as is practicable, saving expense, dealing with the case proportionately to the amount involved, the importance of the case, the complexity of the issues and the financial position of each party and ensuring that it is dealt with expeditiously and fairly. The above considerations inform the decision on remittal and all point to the County Court being the most appropriate forum to determine the

issues that would arise in respect of creditor's actions to enforce regulated agreements.

[25] The plaintiff refers to only three of the four agreements that are the subject matter of these proceedings being regulated agreements and that the unregulated agreement does not fall within section 141 of the 1972 Act. Section 31(1) of the 1978 Act empowers the Court to remit "the whole or any part of any civil proceedings". Accordingly the three regulated agreements may be remitted to the County Court but the other agreement will in any event have to be retained in the High Court. This result, the plaintiff contends, will only add to the burden on the defendant by involving him in two sets of proceedings in different places at different times.

[26] It is noted that the reason for the agreement being unregulated will no longer apply to such an agreement entered into after 6 April 2008 as the financial limit has been abolished since that date.

[27] I am satisfied that the financial institutions should, in the general run of cases, commence in the County Court the proceedings to which section 141(4) of the 1974 Act applies. It is not contended that there is any special reason in the present case, beyond the inclusion of an unregulated agreement in the claim, why the proceedings should not have commenced in the County Court. The inclusion of the unregulated agreement constitutes a practical circumstance that must be taken into account. In all the circumstances I am satisfied that the inclusion of an unregulated agreement should not prevent the proceedings in relation to the regulated agreements being properly heard and determined in the County Court.

[28] Accordingly I propose to remit to Armagh County Court the part of the proceedings involving the three regulated agreements, namely the first, third and fourth agreements set out the Writ of Summons endorsed with Statement of Claim.