

Neutral Citation No: [2020] NIQB 66

Ref: HOR11022

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

Delivered: 13/0220

2014/100303

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between:

ANDRONICS COMMUNICATIONS LTD

Plaintiff

and

AIB GROUP (UK) TRADING AS FIRST TRUST BANK

Defendant

HORNER J

Introduction

[1] Robert Andrews ("RA") complains that Andronics Communications Ltd ("Andronics"), a company he set up and which commenced operations in 1998, has been the subject of a fraud perpetrated by a US company and its UK subsidiary. Andronics blames the First Trust Bank ("the Bank") for contributing to the financial loss they suffered as a consequence of that fraud. On 9 October 2014 Andronics issued a writ claiming damages for loss and damage alleged to have been caused to it by the defendant by reason of the negligence, breach of contract and breach of statutory duty in respect of its "management, care, control, provision and administration of banking service at or about its premises at Meadowbank, Londonderry, in or about 10 October 2008".

[2] This court is not in any position to make any judgment about the merits of this claim because it does not have sufficient information. What is not disputed is that Andronics was wound up on 20 November 2008 when the Official Receiver became its liquidator. On 23 January 2009 Ronan Duffy of McCambridge Duffy was appointed liquidator. On 7 July 2010 Ronan Duffy vacated the Office of Liquidator and the Official Receiver became liquidator in his stead. On 20 October 2010 Andronics was dissolved on the conclusion of the winding up.

[3] More than 3 years later on 31 January 2014 Andronics was restored to the Register of Companies following an application by RA. As I have said, on 9 October 2014, Andronics commenced legal proceedings against the bank claiming damages for breach of contract, negligence and breach of statutory duty. On 5 April 2016 Andronics was again dissolved for failure to submit returns. On 29 June 2016 the defendant applied to strike out the proceedings which had been issued by RA on the basis that they were frivolous, vexatious or an abuse of the court and on the ground that **the said action was not properly authorised by Andronics**. On 8 September 2016 Andronics is again restored to the Register.

[4] On 16 March 2017 Kenneth Pattulo is appointed liquidator of Andronics. Six months later on 5 September 2017 he disclaims the Andronics claim against the bank and this is filed on 19 September 2017 in court. On 16 November 2017 RA applies to set aside the appointment of Kenneth Pattulo as liquidator for the plaintiff and to set aside the disclaimer of the cause of action against the bank. Nearly one year later on 25 October 2018 RA withdraws the application to set aside the appointment of Kenneth Pattulo and to set aside the disclaimer of the cause of action. On 22 February 2019 Master Bell strikes out the claim brought by Andronics against the bank but awards costs against RA personally.

[5] RA then appeals the Order that he should pay costs personally. He does not appeal the Order itself initially. He then decides to appeal the entirety of the Master's Order on 22 March 2019 but did not serve the notice of appeal on the bank or its solicitors. There was then a further appeal dated 29 March 2019 by RA against the Order that he was personally liable for the bank's costs.

[6] So that is a brief factual background of this appeal which raises the following issues:

- (i) The appeal is out of time. Under Order 58 Rule 1(3) RA and Andronics had 5 days to appeal after the day on which the Order was made. This has to be served not less than two clear days before the date of the hearing. The appeal against the whole order of Master Bell was made 30 days outside the window for an appeal and it was not served at all on the bank in advance of the hearing on 12 April 2019. Accordingly, Andronics require the court to extend time for any appeal.
- (ii) Order 5 Rule 6 of the Rules of the Court of Judicature provides that a body corporate may not begin or carry on any legal proceedings otherwise than by a solicitor unless:
 - “(a) the employee has been authorised by the body corporate to begin and carry on proceedings on its behalf; and

(b) the court grants leave for the employee to do so.”

The bank claim that RA is not a solicitor and that he has not been authorised by Andronics to carry on proceedings on its behalf. In other words, he does not have any locus standi.

- (iii) The cause of action having been disclaimed by the liquidator cannot now be revived by RA or Andronics in any event.
- (iv) Did RA have authority to commence the proceedings in any event on behalf of Andronics given that the effect of the restoration, it is claimed by the bank, was not to reinstate RA as Director, but to return Andronics to the control of the Official Receiver?

Discussion

[7] The appeal against the entire order of Master Bell is out of time. I appreciate that RA is a personal litigant but he purports to be acting on behalf of the company. In any event the Rules of the Court of Judicature apply just as much to him as a personal litigant as they do if he were represented by lawyers. There is no dispute that for Andronics to be able to appeal the court will have to extend time.

[8] The proper approach to the application to extend time was set out by the Court of Appeal in *Davis v Northern Ireland Carriers* [1979] NI 19. Lowry LCJ giving the judgment of the court said:

“Where the time is imposed by Rules of Court which embody a dispensing power, such as that found in Order 64 Rule 7, the court must exercise its discretion in each case, and for that purpose the relevant principles are:

- (i) whether the time is spent: a court will, where the reason is a good one, look more favourably on an application made before the time is up;
- (ii) when the time limit has expired, the extent to which the party applying is in default;
- (iii) the effect on the opposite party of granting the application and, in particular, whether he can be compensated by costs;
- (iv) whether a hearing on the merits has taken place or would be denied by refusing an extension;

- (v) whether there is a point of substance (which in effect means a legal point of substance when dealing with cases stated) to be made which could not otherwise be put forward; and
- (vi) whether the point is of general, not merely particular, significance.

To these I add the important principle:

- (vii) that the Rules of Court are there to be observed.”

[9] An objective view of the factors suggests that time to appeal should be refused. However, it will be premature to refuse such an application to extend without looking at whether or not there is a point of substance to be made.

[10] The High Court has inherent jurisdiction to remove from its records any material improperly placed thereon and to strike out proceedings as an abuse of process: see *Valentine on Civil Proceedings: Supreme Court* at 11.178. This can be done on a number of grounds which includes:

- (a) The pleadings disclose no reasonable cause of action.
- (b) It is scandalous, frivolous or vexatious.
- (c) It is otherwise an abuse of process.

[11] In the instant case it is asserted that the plaintiff has no legal standing. In determining whether the pleadings disclose no reasonable cause of action, the test is whether the cause pleaded is “unarguable or almost uncontestably bad”.

[12] Mr Gowdy on behalf of the bank says that RA’s position as Director was terminated when Andronics went into liquidation. There is no doubt that the compulsory liquidation of a company determines all that company’s contracts of employment: see *Rose v Dodd* [2005] ICR 1776 at [25]. However, in the instant case Andronics was restored. RA argues that that restoration restores the company and his contract of employment. Mr Gowdy argues that the restoration only returned the company to its position before it was struck off. In other words, Andronics returned to being a company in liquidation under the control of the Official Receiver.

[13] Mr Gowdy also submits that the effect of the disclaimer by the liquidator is that Andronics no longer has any right or interest in the cause of action and therefore can no longer pursue it. As a cause of action is no longer invested in the plaintiff, the plaintiff can no longer pursue it and the action should be struck out.

[14] Mr Gowdy, as I would expect, has done his level best to present the case fairly given that there is an unrepresented litigant on the other side but these are difficult issues and some of them do not appear to have been the subject of a previous judicial determination even at first instance. The Court must give weight to the following:

- (a) The test under Order 18 Rule 19(2) must be unarguable.
- (b) My researches indicate that some of these propositions have not been the subject of any judicial determination.
- (c) Leave to extend time is unlikely to be granted unless there is a point of substance to be made by RA.

[15] RA does not have a legal representative and has some personal difficulties which have made his position more difficult. It seems to me looking at the matter as a whole and given the issues that are raised in these proceedings it would be preferable to both sides, and in particular, to Mr Gowdy who has acted in the most professional manner to date, that a legitimus contradictor should argue the case on behalf of Andronics and RA. I therefore propose to send this preliminary judgment to the Bar Pro Bono Unit to ask them to appoint someone experienced in this area of law to argue these difficult points on behalf of RA and Andronics. I am free to hear further argument in the week commencing 19 August. If not, then the case will have to be listed for a mutually convenient date after the start of term. Regardless, of what date is chosen I would expect RA and Andronics through his counsel should submit a skeleton 7 days before any hearing. The bank's skeleton has already been submitted. A joint bundle of authorities should be submitted at least 3 days before the hearing.

[16] Nothing further occurs in the meantime.