Neutral Citation No. [2005] NIQB 53 | *Ref:* **MORF5324**

Judgment: approved by the Court for handing down | *Delivered:* **28/06/2005**

(subject to editorial corrections)

BRESLIN AND OTHERS

-v-

MCKENNA AND OTHERS

APPLICATION BY FIFTH AND SIXTH NAMED DEFENDANTS TO SET ASIDE WRIT AND STAY ACTION

MORGAN J

[1] On 20 June 2005 the fifth and sixth named defendants issued a summons seeking the striking out of the plaintiffs' claims on the ground that no valid Writ had been issued so that the proceedings were a nullity. At the hearing the defendants sought to amend the summons to make it clear that they were proceeding under Order 2 Rule 2 and Order 18 Rule 19 of the Rules of the Supreme Court.

[2] The Writ of Summons in this case was issued on 13 August 2001. The plaintiffs claim damages against the defendants on the basis of their alleged involvement in the Omagh bomb. A Statement of Claim was served thereafter and the defendants entered an unconditional appearance on 7 March 2005. A Defence on behalf of the fifth and sixth named defendants was served on 28 April 2005. Thereafter those defendants resisted an application for discovery and appealed the Order to the Court of Appeal before serving lists of documents on 23 and 24 May 2005.

[3] The background to this application is that the plaintiffs approached a firm of solicitors in England who practised under the style of H2O to represent their interests. That firm agreed to become involved and one of the partners, Jason McCue, entered into correspondence with the Law Society to establish the basis upon which the plaintiffs could be represented. He was advised in correspondence dated 6 June 2001 that it would be necessary for at least one of the principals to seek admission to the Roll of Solicitors in Northern Ireland and to apply for a practising certificate. He was further advised by the Society that it was not necessary for a solicitor holding a

Practising Certificate to be physically established in Northern Ireland but there was a requirement at common law to have an address for service.

[4] On foot of this advice Mr McCue was duly admitted to the Roll of Solicitors in Northern Ireland and obtained a Practising Certificate. He submitted a letterhead to the Society for approval which referred to "Henry Hepworth Organisation H2O" at the top. In smaller letters at the middle were the words "H2O Northern Ireland" with a London address and telephone number just below. Below this was a box headed "Address for Service in Northern Ireland" and below that an address given as c/o a solicitors firm in High Street Belfast. Finally there is a reference to the only "partner" Jason McCue. The Law Society has noted the firm name as H2O Northern Ireland.

[5] The Writ is signed by the plaintiffs' solicitor "H2O Northern Ireland" and is endorsed with a statement that it was issued by H2O Northern Ireland c/o Imperial Building, 72 High Street, Belfast. These defendants object that this does not comply with Order 6 Rule 4 which provides:

> "*Indorsement as to solicitor and address*
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> 4. – (1) Before a writ is issued it must be indorsed-
>
> (a) where the plaintiff sues by a solicitor, with the plaintiffs address and the solicitor's name or firm add a business address of his within the jurisdiction;
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> (b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent.
>
> (2) The address for service of a plaintiff shall be-
>
> (a) where he sues by a solicitor, the business address of the solicitor indorsed on the writ;
>
> (b) where he sues in person, the address within the jurisdiction indorsed on the writ.
>
> (3) Where a solicitor's name is indorsed on a writ, he must, if any defendant who has been served with or who has entered an appearance to the writ requests him in writing so to do, declare in writing whether

> the writ was issued, by him or with his authority or privity.
>
> (4) If a solicitor whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has entered an appearance to the writ, stay all proceedings in the action begun by the writ."

[6] Firstly they say that Mr McCue cannot indorse as a firm because a solicitor in sole practice is not a firm: Oswald Hickson Collier & Co (a firm) v Carter Ruck [1984] 2 All ER 15. Since "H2ONorthern Ireland" is clearly not his name the Rule has not been observed. Secondly they say that in any event a "care of" address cannot be a business address within the meaning of the Rules.

[7] In order to establish the obligation imposed by the Rules it is necessary to examine the words used in their context and to determine the purpose for which they have been so used. In this context the requirement on a solicitor to sign the Writ is connected to Order 6 Rule 4 (3) and (4) above. In the case of a firm it is not necessary to identify the individual members. Consequently one can deduce that the purpose is not to identify individual solicitors. Rather it is to ensure that there is a readily recognisable representative whose entitlement to act can be the subject of enquiry. Where a solicitor in sole practice practises under a style it seems to me likely, therefore, that the style can be his name for the purpose of the Rule.

[8] In respect of the requirement for an address it appears that this is for the purpose of effecting service. This is demonstrated by the provisions of Order 6 Rule 4(1)(b) in respect of someone suing in person and Order 65 Rule 5 in respect of a solicitor. I consider that the reference to a document exchange in that Rule lends considerable support to the view that the interpretation of business address in Order 6 should be given a wide meaning and only requires the provision of an address for the service of documents or the receipt of business communications. In those circumstances I would have been inclined to hold that a "care of" address in this case would have satisfied the requirements of the Rule.

[9] I consider, however, that these objections are caught by the terms of Order 2:

> "N*on-compliance with Rules*
>
> 1. – (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection

with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1) and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

Application to set aside for irregularity

2. - (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before party applying has taken any fresh step after becoming aware of the irregularity.
(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion."

[10] Even if I had accepted the submissions of the fifth and sixth named defendants the matters of which complaint is made are irregularities. This is not a case where there is any concern that the proceedings were issued without the approval of the plaintiffs. The solicitor in this case engaged in careful correspondence with the Law Society. Mr McCue's affidavit demonstrates a concern to ensure that he acted in an entirely appropriate manner. There is no suggestion that anyone was misled as to the nature of the proceedings or the wish and intent of the plaintiffs to pursue them. This is an entirely technical objection. In those circumstances I would have exercised my discretion under the Rule to refuse the application under Order 2 Rule 2 even

if it had been made expeditiously and I had been minded to accede to the defendants' submissions on the name and address of the solicitor.

[11] The Rule requires that an application of this kind must be made in a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity. Those may well have proved insuperable obstacles to the defendants but I do not consider it necessary to deal with them because of the firm view I have formed on the merits of the application under Order 2 Rule 2.

[12] In support of the submission that the prosecution of this case is an abuse of the process of the court the defendants rely on criticisms of the relationship between H2O Northern Ireland ("NI") and H2O. It is common case that NI was established to enable H2O to assist in the prosecution of the plaintiffs case. NI accepts that H2O is its agent and carries out much of the work on the case. Whatever the legal relationship between NI and H2O there is no doubt that this action is being pursued on the formal court papers by a solicitor holding a practising certificate and that he is conducting the case with the authority of his clients. There is in my view no evidence of oppression or any of the other features which might cause the court to prevent a litigant pursuing his remedy. I do not consider that in this case there is any reason for me to conduct an enquiry into the solicitor/client or solicitor/solicitor relationship. If there is some complaint about these matters that can be taken up in the appropriate professional arena but I want to make it clear that I am not inviting or encouraging such a course.

[13] For the reasons set out above I do not consider that defendants have a sustainable case on either of the grounds whether with or without amendment of the summons. Accordingly I refuse leave to amend and I refuse the application also.

[14] Finally the plaintiffs have invited me to consider a wasted costs order. In this case the solicitors for the fifth and sixth named defendants have recently come on record. This application was apparently prompted by an invitation to inspect documents in London. It was pursued expeditiously once the defendant's legal team raised the issue. For my part I was anxious to ensure that any concerns were addressed and determined before the long vacation. In those circumstances the opportunity to investigate and reflect may not have been as extensive as it might otherwise have been. In the circumstances I do not consider that I should depart from the usual order on costs.