

Neutral Citation No. [2003] NIQB 70

Ref: **COGC4048**

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

Delivered:

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

JAMES STEPHEN McATEER

Plaintiff/Appellant

and

JOHN GILDEA T/A BUREAU DE CHANGE

Defendant/Respondent

COGHLIN J

[1] This is an appeal by way of case stated pursuant to Article 30(4)(b) and (c) of the County Courts (Northern Ireland) Order 1980 (as amended) by District Judge Collins sitting in the Small Claims Court at Newry in the County of Down. The appeal was presented on behalf of the appellant by Mr Ronan Lavery but the respondent was not represented before this court. I am grateful to Mr Lavery for the extent of his careful research and the clarity of his submissions and I think that it is important to acknowledge that the District Judge does not appear to have had the benefit of either research or submissions by counsel. In the best traditions of the Bar of Northern Ireland, Mr Lavery drew to my attention authorities which appeared to be unfavourable to his submissions as well as those upon which he sought to rely.

THE BACKGROUND FACTS

[2] Relevant background facts may be summarised as follows:

(1) The appellant is a businessman living in Warrenpoint whose commercial interests were pursued both in Northern Ireland and in the Republic of Ireland.

(2) The respondent (“the Bureau”) provides currency exchange facilities including, among other things, banker’s drafts.

(3) On 29 September 2000 the appellant borrowed £3,500 Sterling from the Newry Credit Union which he used to purchase a banker’s draft for IR£4,000 from the respondent. The appellant wished to purchase a house in Dublin and the draft was made out to a firm of Dublin estate agents, Douglas Newman Goode. The appellant delivered this banker’s draft personally to the Dublin estate agents.

(4) The purchase by the appellant of the banker’s draft was a straightforward commercial transaction and the appellant was not provided with any other form of banking service by the Bureau.

(5) On 19 October 2000 the Dublin estate agents informed the Bureau that the banker’s draft had been lost and requested that it should be cancelled. The District Judge found that the nature of the information and the way in which it was communicated by the estate agents to the Bureau led the Bureau to believe that the estate agents were acting under the express instruction of the appellant. The Bureau immediately stopped the draft and held a fund representing the purchase price of the draft for the appellant pending collection or further instruction. The Bureau did not contact the appellant either at the time of cancellation or in the months that followed.

(6) It appears that the appellant did not make any contact with the estate agents in Dublin or with his solicitors in Dundalk for some 7 months. He appears to have been ill for some time but the District Judge found that, on his own admission, the appellant was simply “not in the mood” to deal with this particular matter and permitted it to drift into April/May 2001.

(7) In May of 2001 the appellant demanded the return of his money from the Bureau together with compensation for the interest that he had been paying to the Credit Union on the £3,500 loan and the interest earned by the Bureau on the purchase price of the draft since cancellation.

(8) The Bureau paid the appellant IR£4,000 but refused to pay any compensation or interest.

[3] It seems to me that the transaction between the appellant and the Bureau may be usefully analysed under three legal headings:

(1) Contract

The purchase by the appellant of the banker’s draft constituted a straightforward commercial contract between the appellant and the Bureau with the appellant providing Sterling consideration for the banker’s draft in

Irish Punts. I agree with the District Judge that the Bureau appear to have acted responsibly and reasonably in cancelling the draft as soon as notice was received from the Dublin estate agents and I also agree that the contract does not appear to have included any express or implied term that, in the event of cancellation, the Bureau would take steps to notify the appellant that such an event had occurred.

(2) Tort

Mr Lavery did not seek to rely upon any duty of care owed by the Bureau to the appellant. In so far as the Bureau might have been placed under such a duty upon receipt of the information from the Dublin solicitors, as I have already indicated, it appears to have acted promptly and reasonably at all material times. By acting in such a way, the Bureau effectively prevented the appellant from sustaining any loss but I do not consider that it was under any further duty to notify or otherwise bring to the attention of the appellant the fact that the draft had been cancelled.

(3) Trust

The District Judge held that, subsequent to cancellation, the Bureau held the funds received from the appellant on trust and that the respondent had "... at no time wrongfully withheld the money." At paragraph 7(3) the District Judge then went on to hold as follows:

"In the circumstances, the Respondent was under a duty to account to the applicant for the capital sum but not under a further duty to account to the Applicant for interest which could or should have been earned thereon."

[4] After giving careful consideration to the helpful case stated, it occurs to me that some confusion may have arisen with regard to the implications of the actions taken by the respondent subsequent to cancellation of the banker's draft. The case does not appear to contain a specific finding of fact that, subsequent to cancellation, the sum paid by the applicant was included in funds invested by the respondent. At paragraph 6(8) the District Judge referred to "... the interest monies earned by the Bureau on the IR£4,000 during this time", although, as I have already noted, at a subsequent paragraph she has referred to "interest which could or should have been earned thereon." The question of law for the determination of the High Court at paragraph 12(a) is "Was I correct in law in holding that the respondent did not owe any fiduciary duty to the plaintiff?" While the District Court Judge has held that the appellant's capital sum was the subject of a trust subsequent to cancellation of the banker's draft and, therefore, the respondent became a trustee with fiduciary duties in respect of that sum it is not clear to me

whether she then proceeded to consider the extent to which any sums found to have been earned by the respondent by way interest on the capital sum might also have been the subject of a constructive trust. For example, it has long been established that a trustee must not make a profit from his trust or use his position as a trustee to secure a personal advantage – see Keech v Sandford [1726] 25 ER 223. A more modern analogy might be a constructive trust developed to deal with unjust enrichment recently discussed by the House of Lords in Westdeutsche Landesbank v Islington London Borough Council [1996] AC 669.

[5] As I have earlier recorded, the District Judge did not have the benefit of detailed legal research and argument and, in the circumstances, I propose to remit this case stated back to her jurisdiction so that she may have an opportunity to make a specific finding in relation to any interest earned on the capital sum subsequent to cancellation of the banker's draft, whether, and if so, the extent to which, such interest may have become subject to some form of trust, constructive or otherwise, and whether, in the context of any such findings the respondent should account to the applicant for any such sums in discharge of its fiduciary duties as a trustee together with such other inquiries and consideration as she may feel appropriate.