

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

Delivered: **07/10/2013**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION (COMMERCIAL)**

**LOMBARD NORTH CENTRAL PLC**

**Plaintiff**

**-v-**

**WILLIAM TALBOT  
trading as Mid Ulster Dairy Services**

**and**

**WALTER BEACOM FINANCIAL SERVICES LIMITED**

**Defendants**

**WEATHERUP J**

[1] The plaintiff claims £27,859.67 damages for loss sustained on a finance agreement entered into between the plaintiff finance company and Ashley Morrow a farmer, now bankrupt. The first defendant trading as Mid-Ulster Dairy Services supplied a milking parlour to Mr Morrow, which was the subject of the finance agreement with the plaintiff. The second defendant is a finance broker who arranged the finance between the plaintiff and Mr Morrow. The plaintiff was represented by Mr Simpson QC and Mr Aiken. The first defendant was represented by Mr Park. The second defendant was represented by Mr David Dunlop. I will refer to all concerned by name.

[2] Morrow defaulted on the finance payments and had no funds to meet outstanding liabilities under the finance agreement. The milking parlour was not capable of being sold to meet such losses as may have been sustained by Lombard under the finance agreement. Lombard therefore seeks recovery from the defendants for breach of contract, misrepresentation and fraud.

[3] David Sloan owned a farm in Stewartstown which he bought in 2000. In January 2007 he let the farm to Morrow for four years with an option for one further year. On the farm was an existing Fullwood milking parlour 16/16. The numbers refer to 16 stalls available to milk 16 cows. Morrow and Sloan agreed to an extension of the existing milking parlour. Morrow arranged for the extension to be provided by Talbot and to be financed by Lombard through Beacom.

[4] Talbot's evidence was that the extension of the milking parlour was to be the refurbishment of the existing milking parlour and its extension to a 28/28, which represented 28 units for 28 cows.

[5] Morrow went to Beacom to arrange the finance. Morrow had existing finance with Lombard. On 1 February 2008 Beacom made an on-line proposal to Lombard for finance for Morrow. The information provided for the purposes of the form submitted to Lombard was provided to Beacom by Morrow. Under the heading "Asset" the form described the equipment as manufactured by DeLaval, the model a 14 point (the equivalent of a 28/28), the item was described as a milking parlour, the asset type was described as new, the mileage/usage was stated to be zero, in response to 'Replacement? yes/ no' the answer was 'yes' and the supplier's name was Mid-Ulster Dairy Services. The financial details on the on-line form stated the basic cost at £38,000, with VAT the total cash price was £44,650, the deposit was stated to be £9,650, therefore the required finance was £35,000 and the repayment period was 60 months at £750 per month. The proposal therefore indicated that the equipment was a new milking parlour.

[6] Discussions continued between Beacom and Lombard in relation to the proposed milking parlour and the record of those discussions was typed in by each party in on-line notes. The representative of Lombard was Mr McHugh. Both Beacom and McHugh made entries on-line in the notes. On 1 February 2008 Beacom entered "Client upgrading his parlour from an 8 point to a 14 point parlour. Milks 250 cows. Also contractor. Attached to April 2007 accounts. Spoke to Alan (McHugh) about this one. His accounts don't show income from milk as he only started milking at the end of that financial year. Milk receipts were with last deal. Highly recommended." McHugh's entry of that date was "As discussed, OK in principle. Come back to me with finance figures once the parlour has been commissioned." On 24 April 2008 Beacom recorded that the proposed status changed to underwriting requested. On 25 April 2008 McHugh's entry stated that the proposal status had changed to approved.

[7] The finance agreement entered into by Morrow on 28 April 2008 was a lease purchase agreement between Morrow and Lombard. Beacom visited Morrow on that date and completed the written agreement. The goods were described in the agreement as a Fulwood 28/28 low level milking unit, the serial number was given as MOR28042008MDS and the finance details were stated. The agreement was

signed by Morrow on 28 April 2008 and by a representative of Lombard on 1 May 2008.

[8] On that same day Beacom contacted Talbot in order to obtain an invoice in relation to the milking parlour. An invoice dated 28 April 2008 was forwarded by Talbot to Beacom and in turn was forwarded by Beacom with the lease purchase agreement to Lombard. The invoice referred to a Fulwood 28/28 low level milking unit with fulclean washing unit, quoted the serial number referred to on the lease purchase agreement, stated the deposit paid as being £9,650 and the balance owed as £35,000.

[9] A number of comments may be made about the invoice. First, there is a reference to a Fulwood unit, whereas the proposal had referred to a DeLaval unit. Secondly, it referred to an item which to all appearances on the invoice was a new unit. Thirdly, it referred to a price of £38,000 which was as quoted earlier in the on line proposal. This figure was Talbot's estimate of the price of the work and it appears that at that time he had not provided a quotation for the work. Fourthly, the serial number was made up by Talbot as MOR for 'Morrow', followed by the date, 28 April 2008, followed by the initials of Mid-Ulster Dairy Services, MDS. Fifthly, it referred to the deposit of £9,650 as having been paid, which was not the case.

[10] Technically this was a sale by Talbot to Lombard and a lease by Lombard to Morrow. Title to the items supplied transferred from Talbot to Lombard.

[11] Beacom's evidence was that he believed that the unit which was the subject of the finance agreement was a new milking parlour replacing an old milking parlour. He based this belief on what he said he had been told by Morrow. Beacom's evidence was that he knew that no finance would have been provided by Lombard had it been disclosed to Lombard that the equipment was the refurbishment of an existing unit. This seems to be obvious as Lombard could not hope to recover the asset in default of payment if the items supplied were integrated into an existing unit. It would prove difficult for Lombard to identify the items supplied. Beacom denied that he had been told by Talbot that the arrangement with Morrow was for a refurbishment and not for a new unit.

[12] The evidence from McHugh on behalf of Lombard was that this was new equipment as appeared from the on-line proposal and from the invoice. McHugh, did not actually receive the invoice as this was presented to another department of Lombard.

[13] There was a rescheduling of Morrow's payments in 2010 and again in 2011 as he ran into financial difficulties and eventually there was default on the finance agreement. On 28 October 2011 John Gordon and Noel Lennon who were representatives of the plaintiff from Mid-Ulster Auctions visited Sloan and Talbot to investigate the position in relation to the unit. The report of the visits appears from an e-mail sent by Lennon to McHugh at Lombard on that date in which he stated -

“The milking parlour present is approximately 20 years old and Ashley Morrow did extend the parlour by four cubicles which was done by Mid-Ulster Dairy Services (MUDS). MUDS informed us that they never supplied a new milking parlour to Ashley Morrow, but they did extend the parlour with between new and second-hand parts. The makeup of the invoice totalling £38,000 is new and second-handed parts for the milking parlour plus monies owed for previous work carried out on the farm which William at MUDS stated he was told to do by Ashley Morrow. The serial number provided on the MUDS invoice is only a ‘made up’ number which William states is standard practice in the milking parlour world!! William supplied me with a breakdown of the amount he invoiced to Lombard which is attached.

My conclusion from speaking with William from MUDS is that he has obtained money from Lombard by providing false figures/paperwork - it seems that Lombard has picked up the tab for Ashley Morrow’s debt to MUDS.

When Ashley Morrow then vacated the milking parlour MUDS purchased back the extension they originally fitted for a knock down amount £2,916.67 plus VAT against a further £5,000 debt Ashley Morrow had with them.”

[14] Talbot denies Lennon’s account of the transaction. However he agrees with the account given in relation to the final buy back, although he states that this only involved the recovery of some of the parts which had originally been installed. Talbot produced his account with Morrow in relation to the discharge of debts due to Talbot. That account starts on 19 March 2007 with goods supplied to Morrow in the sum of £1,808.35. There was then a running account with some payments made from time to time up until 29 February 2008 immediately preceding the work to the milking parlour, at which time the debt due by Morrow to Talbot was £2,439.53. The account sets out the supply of the milking parlour to the value of £44,650 and credit for the payment from Lombard of £35,000 leaving a balance then due of £12,215.26. The debt had effectively increased by the amount of the deposit of £9,650, which was not paid.

[15] Over the following year trading continued and there were further goods supplied and further payments made but none in the sum of £9,650 or adding up to £9,650. However by July 2009 the balance due was stated to be £4,761.29. The account continued until 23 February 2011 when there was credit for the buy-back arrangement in the sum of £3,500 leaving a balance due to Talbot of £1,560.70. Talbot relied on that statement of account to indicate that the amount of the debt due at the time of the finance agreement was not significant and therefore did not corroborate the account which was supposed to have been given that this was an arrangement to pay down a debt due to Talbot.

[16] Talbot also produced the make-up of the bill for the milking parlour. He ordered the new parts from Fulwood on 26 January 2008 and the typed list of new parts was valued at £13,000. Handwritten notes on the list of new parts included the

total for new and old parts of £26,185. A labour charge of £7,885 was added. To this was also added a 10% profit margin and after some adjustments this produced a figure of £36,947. On a separate sheet dated 26 June 2008 was a handwritten list of extras and a total of £38,560 plus VAT from which Talbot discounted £560 giving the figure quoted of £38,000.

[17] Talbot's evidence was that the proposed extension to the milking parlour was always going to be a refurbishment. In relation to the final buy back arrangement he took some parts to the value credited and left others. Sloan gave evidence that the condition of machine when he looked at it after Morrow had left was such that there were no extra parts from the original 16/16 milking parlour. Why Talbot left some further parts when he was owed another £1,500 is not clear. It may be that the additional parts were considered to be of no value. I conclude that Talbot took any parts that were of value and may have left some insignificant parts behind. Talbot stated that he took the parts because Morrow told him that he had repaid the finance and therefore he considered that the parts were owned by Morrow and not Lombard and that he was entitled to recover the parts against the amount due by Morrow.

[18] However, the parts that were removed by Talbot were the property of Lombard. The security for Lombard in making the advance to Morrow was in the recovery of the milking parlour which they would sell to meet any liabilities. This became an irrecoverable asset when the parts were absorbed into the existing unit. I consider that all parties must have known that this would be the position. It must also have been known to Talbot that Lombard could not have recovered the asset once it had been absorbed into the milking parlour and I am satisfied that he did know that. The invoice presented the Fulwood parlour as new. Beacom agreed that finance would not have been given for refurbishment and I am satisfied that Talbot knew this was the case. He gave a serial number to present it as a separate and identifiable asset when that was not the case. He noted a deposit paid of £9,650 when that was not the case. It must have been agreed that the deposit would be paid off gradually and it must have been known that Morrow could not pay the deposit or he would have recovered the money at that time. Had Talbot disclosed the non-payment of the deposit to Lombard then the transaction would have been at risk as Lombard would have made further enquiries.

[19] If this invoice amounted to a written offer to Lombard it could only be interpreted as the sale of a new parlour to Lombard. Talbot was in breach of contract for not providing the asset that he contracted to sell to Lombard. Lombard alleges misrepresentation against Talbot. I am satisfied that the invoice was a misrepresentation and that it was relied on by Lombard. McHugh approved the finance from Lombard in principle and another department of Lombard approved the invoice. I am satisfied that McHugh's approval depended on confirmation from Talbot as supplier that the new parlour was going to be provided as proposed and that the invoice was relied on by the plaintiff for the purposes of the advance. It is not necessary to make any further findings in relation to the other allegations against Talbot.

[20] Beacom's evidence was that Morrow gave him the information that he gave to Lombard and that he did not know otherwise. Talbot stated that he told Beacom that the work involved a refurbishment. I do not accept that Talbot notified Beacom that this was a refurbishment. Beacom received commission from Lombard. The terms of engagement between Beacom and Lombard have not been identified. Lombard contends that there was an implied term that Beacom would not act dishonestly. I have no evidence that Beacom acted dishonestly. I find no liability on the part of Beacom.

[21] I find that liability has been established against Talbot. Lombard advanced £35,000 and is entitled to restitution for breach of contract. However Talbot is not the guarantor of Morrow's contract with Lombard and thus Talbot is not liable for the lease purchase interest or expenses of Morrow. Lombard is entitled to recover £35,000, less the total payments received from Morrow, as representing the loss to Lombard. To that sum I award interest at 4% from 24 June 2008. I am mindful, in exercising my discretion to award interest at that rate on the final amount, that there was a reducing balance as periodic payments were made by Morrow.