

Neutral Citation No. [2012] NIQB 33

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

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (COMMERCIAL)

BETWEEN:

DANIEL McATEER

Plaintiff;

-and-

THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

Defendant.

WEATHERUP J

[1] This is the defendant's application pursuant to Order 12 rule 8 to set aside the writ of summons and stay the plaintiff's action pursuant to the inherent jurisdiction of the Court on the basis that the Court has no jurisdiction to hear the plaintiff's claim. Mr Humphries QC appeared for the defendant and Mr Downey, solicitor, on behalf of the plaintiff.

[2] The plaintiff's claim as set out in the Statement of Claim is as follows. The plaintiff is an accountant and a business consultant with a shareholding and directorship in several private companies operating in different sectors in the UK and in the Republic of Ireland. The defendant is a global body for accountants set up to offer professional qualifications and to maintain professional standards and ethics and is based in Lincoln Inn Fields in London.

[3] On 20 January 2011 the plaintiff attended a disciplinary committee of the defendant in respect of a complaint made by a third party, a complaint that was strenuously denied by the plaintiff. The disciplinary committee adjourned the hearing and decided that the plaintiff's membership should not be suspended but that his practising certificate should be suspended with immediate effect until the

hearing of the adjourned disciplinary hearing. Directions given by the disciplinary committee included that there would be publicity of the case on the defendant's website but that it would not refer to the plaintiff by name.

[4] On 19 April 2011 a bundle of documents was received by post by auditors in the Republic of Ireland who acted for a registered company of which the plaintiff was a shareholder and the details of the decision of the disciplinary committee and the identification of the plaintiff appeared in those documents.

[5] Similarly on 25 April 2011 an identical bundle was received by post by a business associate of the plaintiff in a business venture in the Republic and this bundle of documents also included the papers in relation to the disciplinary committee and included the identification of the plaintiff.

[6] The plaintiff's complaint against the defendant is that despite assurances given to him by the defendant the decision of the disciplinary committee in relation to the plaintiff was made available to persons with access to the internet. Further the plaintiff says that the material that was furnished to his associates on 19 April and 25 April 2011 was material that had been downloaded from the defendant's website.

[7] On 28 April 2011 the plaintiff's solicitor raised concerns with the defendant and on 10 May 2011 the defendant confirmed that procedures had changed to ensure that the anonymity of the plaintiff would be preserved in future.

[8] As a result of the disclosure of the plaintiff's identity in connection with the disciplinary committee the plaintiff claims to have suffered loss and damage. A schedule of loss sets out four respects in which the plaintiff claims to have suffered loss. First of all the plaintiff claims £60,000 in respect of lost billable hours in his work as an accountant. Secondly, he claims interference with a business venture in the Republic which he values at €500,000. Thirdly, he claims loss arising in respect of a company of which he is a shareholder in the Republic which he values between €25,000 and €100,000. Fourthly he claims loss of new business, which appears to relate to his business as an accountant, at £30,000 per annum.

[9] The plaintiff's causes of action are stated to be negligence, breach of duty, breach of statutory duty, namely the Data Protection Act 1998, breach of confidence, negligent misstatement, negligent disclosure, breach of contract and breach of terms and conditions. The essence of the plaintiff's claim appears to be the negligence of the defendant in the publication of the information which identified the plaintiff, as a result of which the plaintiff claims to have suffered economic loss. There was a claim in the writ of summons for defamation but the plaintiff now makes clear that no claim for defamation is made against the defendant.

[10] The grounding affidavits on the defendant's application were first of all by James Turner, solicitor for the defendant, who set out the history of the matter and

indicated that the defendant is a company incorporated by Royal Charter, has its registered office, headquarters and central management and control at Lincoln Inns Fields in London and is and claims to be domiciled in England and Wales. A further affidavit on behalf of the defendant was sworn by Chadwada Hussein, an employee of the defendant since November 2010 as the committee administration officer. He states that a former colleague was the relevant officer who drafted and completed the news release for the hearing of the disciplinary committee which took place in relation to the plaintiff on 20 January 2011. That officer no longer works for the defendant but Mr Hussein confirms from his own investigations of the publication of the news release of the hearing that the officer uploaded the news release to the website of the defendant's London headquarters. He states that the defendant's standard procedure when preparing a news release was followed after the disciplinary committee and the uploading to the defendant's website is always carried out and created in London.

[11] The defendant contends that by virtue of the Civil Jurisdiction and Judgments Acts 1982 the courts in Northern Ireland have no jurisdiction to hear the plaintiff's claim and that these proceedings ought to be heard before the courts in England and Wales.

[12] The Civil Jurisdiction and Judgments Acts 1982 makes provision for the jurisdiction of courts and tribunals in the United Kingdom. Section 16 provides that the allocation within the UK of jurisdiction in certain civil proceedings is provided for in Schedule 4.

Paragraph 1 of Schedule 4 provides that, subject to the rules of the Schedule, persons domiciled in a part of the United Kingdom shall be sued in the courts of that part.

Paragraph 2 of Schedule 4 provides that persons domiciled in a part of the United Kingdom may be sued in the courts of another part of the United Kingdom only by virtue of rules 3 to 13 of the Schedule.

Rule 3 provides for 'special jurisdiction' -

"A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, be sued -

(c) in matters relating to tort, delict or quasi delict, in the courts of the place where the harmful event occurred or may occur."

[13] The argument on this application centred round rule 3(c) and the meaning of "the place where the harmful event occurred". The harmful event may be either the event causing the damage or the damage itself. In relation to the publication of

information constituting a tort, the place where the event causing the damage occurs will be where the defendant's publication originates. The place where the damage occurs will be where the initial damage is directly produced and not where subsequent and consequential damage occurs.

[14] In Domicrest Ltd v. Swiss Bank Corporation [1998] 3 All ER 557 Rix J stated the basic proposition established by the ECJ in relation to the equivalent European Convention provisions and noted the qualifications emerging from three subsequent decisions of the ECJ.

- "It is clear that the expression 'the harmful event' refers either to the event giving rise to the damage or to the damage itself", per Rix J citing Handelswekerij GJ Bier BV v Mines de Potasse d'Alsace SA [1976] ECR 1735.
- "... although ...the expression 'place where the harmful event occurred' .... may refer to the place where the damage occurred, the latter concept can be understood only as indicating the place where the event giving rise to the damage, and entailing tortious delictual or quasi delictual liability, directly produced its harmful effects upon the person who is the immediate victim of the event" -

(per the ECJ in Dumez France v Hessische Landesbank (Helaba) [1990] ECR 1-49 where the plaintiff contractors sued in France for the withdrawal of financial support for a building project in Germany, with the loss having been incurred in France after the collapse of subsidiaries in Germany. The event and the damage were held to have arisen in Germany.)

- "In the case of a libel by a newspaper article distributed in several contracting states, the place of the event giving rise to the damage .... can only be the place where the publisher of the newspaper in question is established, since that is the place where the harmful event originated and from which the libel was issued and put into circulation" -

(per the ECJ in Shevill v Presse Alliance SA [1995] ECR 1-415 where the place of the harmful event, the

libel, was the place where the publication originated while the damage may occur in other states where the libel is published.)

- “Whilst it is recognised that the term ‘place where the harmful event occurred’ .... may cover both the place where the damage occurred and the place of the event giving rise to it, that that term cannot, however, be construed so extensively as to encompass any place where the adverse consequences of an event that had already caused actual damage elsewhere can be felt.

Consequently that term cannot be construed as including the place where, as in the present case, the victim claims to have suffered financial damage consequent on initial damage arising and suffering by him in another contracting state” -

(per the ECJ in Marinari v Lloyds Bank plc [1995 1-2719 where the plaintiff was an Italian who sued in Italy upon the seizure of promissory notes in England, claiming that the damage occurred in Italy. It was held that the event and the damage occurred in England. The initial damage had occurred in England and the plaintiff could not rely on consequential damage occurring in Italy.)

[15] In Domicrest Ltd the plaintiff was an English company based in England which supplied electronic consumer goods to a group of associated Swiss companies which maintained accounts with the defendant bank in Switzerland. The plaintiff received a payment order by fax from the bank in respect of the invoiced price of goods. The plaintiff was informed by the defendant that transmission of a copy payment order from the bank constituted an assurance by the bank that payment would be made as referred to in the order and that the payment referred to was guaranteed by the bank and that it was accordingly safe to release the goods to the buyer upon receipt of such an order. Accordingly the plaintiff released the goods but did not receive payment as there were insufficient funds in the buyer’s account to meet the payment and the bank refused to honour the payment orders. The plaintiff commenced proceedings in England for damages in tort for negligent misstatement. The defendant applied to challenge the jurisdiction of the English court contending that the proceedings could only be commenced in Switzerland where the defendant was domiciled. It was held that the English court did not have jurisdiction. The negligent advice originated in Switzerland and on the facts of the case it was held

that the damage occurred in Switzerland and Italy where the goods were released without prior payment. The English court did not have jurisdiction.

[16] The place where the harmful event giving rise to the damage occurs in a case of negligent misstatement was held to be, by analogy with the tort of defamation, where the misstatement originates. It is of note that in relation to negligent misstatement the tort comprises the negligence of the defendant and also the reliance by the plaintiff on the negligent advice, with such reliance usually occurring in the place where the plaintiff is domiciled. Nevertheless the place where the harmful event giving rise to the damage occurs is the place where the misstatement originates. Further, with negligent misstatement causing economic loss, the place where the damage occurs may be elsewhere than the place of the event giving rise to the damage and is quite likely to be the place where the misstatement is heard and relied on.

[17] In words that apply to publication on the worldwide web Rix J stated –

“For these purposes it seems to me there is no difference between a written document and an oral or other instantaneous communication sufficient to distinguish between such cases. Although it may be argued that in the case of instantaneous communications and perhaps especially in the case of telephone conversations the misstatement occurs as much where it is heard as where it is spoken, nevertheless it remains true as it seems to me that it is the representor’s negligent speech rather than the hearer’s receipt of it which best identifies the harmful event which sets the tort in motion.”

[18] Equally in the world of the worldwide web it is the representor’s speech rather than the hearer’s/recipient’s receipt that best identifies the harmful event and the place of the harmful event is therefore the place where the material originates, which in the present case is London, and not the place where the material is received, being where the recipient of the information logs on to the web.

[19] In Future Investments SA v FIFA [2010] EWHC 1019 the plaintiff company was domiciled in Switzerland and sued in England claiming exclusive rights to the production and exploitation of television rights in respect of the 1998 football world cup, based on warranties contained in a chain of agreements concluded with FIFA in Switzerland. The defendant was the governing body of football, FIFA, and was domiciled in Switzerland. In conflict with the rights claimed by the plaintiff, FIFA entered into contractual arrangements with an English third party, signed by FIFA in Switzerland, to provide televised football for world cup 1998. It was held that the harmful event occurred where FIFA signed the agreement which the plaintiff claimed was a breach of the warranties. The damage occurred where the contract with the

plaintiff would have been made, namely where it was based in Switzerland. The English court did not have jurisdiction.

[20] Floyd J expressed a note of caution –

“One has to be somewhat cautious about claims in jurisdictional challenges .... that the claimant suffers loss in the state of its domicile because that is the place where it ultimately suffers loss to its bottom line .... the claimant will ultimately suffer all economic loss at the place where its books are made up, which is likely to be the place of its domicile. If this were sufficient to establish that the loss occurred there it would create a very large exception to the principle that a defendant should be sued in the state of *his* domicile. The special jurisdiction .... must accordingly be interpreted more strictly than this ....”

[21] Floyd J asked where the event giving rise to damage and entailing tortious liability directly produced its harmful effects on the claimant. The event giving rise to tortious liability was the warranty that FIFA had the right to license in respect of the world cup. Two further questions remained. What was the harmful effect of the tortious conduct complained of and where did that effect occur. The harmful effect was the alleged interference with the freedom to deal with the plaintiff in respect of rights to the world cup. The place where the harmful effect occurred was where the contract with the plaintiff would have been made, which was Switzerland where the plaintiff was based.

[22] In asking, in the present case, where the event giving rise to damage and entailing tortious liability directly produced its harmful effects on the plaintiff the questions are, first what is the harmful event, second, what is the harmful effect and third, where is the place where the harmful effect occurred.

[23] What is the harmful event? The harmful event is the publication of the information about the plaintiff and in particular the identification of the plaintiff. Where is the place of publication? The plaintiff says that the material is on the worldwide web and publication occurs everywhere, including Northern Ireland. I do not accept that submission. The publication occurs where it originates, not where it is received. It originated in London and that is the place of publication and the place of the harmful event.

[24] The other publication is the dissemination of the hard copies posted in Northern Ireland. The envelope shows postage in Northern Ireland. It is said that the posting must have arisen after it was downloaded from the web in Northern Ireland. There is no evidence of the actual downloading but I assume that as it was posted in Northern Ireland it was downloaded in Northern Ireland. However the

dissemination from Northern Ireland is not the action of the defendant but rather that of a third party who downloaded this information and distributed it, albeit that the third party obtained the information from the defendant's website. The dissemination by hard copy to persons in the Republic of Ireland was not the action of the defendant. The relevant event, the publication of the information about the plaintiff, occurred in London.

[25] What is the harmful effect? The plaintiff claims economic loss under the four categories in the schedule of loss. The first relates to fees as an accountant, the second to a business venture in the Republic of Ireland, the third to a company of which he is a shareholder and which is registered in the Republic of Ireland and the fourth to his future business as an accountant. The accountancy business is based in Northern Ireland where fees will be received and accounted for.

[26] The Republic of Ireland business loss appears to have been caused by a third party who disseminated the hard copy to the plaintiff's business associate in the Republic. The basis on which any loss was occasioned to the plaintiff is unclear. Equally, in relation to the Republic of Ireland company of which the plaintiff is a shareholder, the nature of and manner in which any loss was occasioned to the plaintiff is unclear although it appears that the loss may have occurred in the Republic. Again however it appears that any loss will have been occasioned by the third party who disseminated the hard copy of the information.

[27] Where is the place of the harmful effect? The place of harmful effect to the accountancy business, past and future, is Northern Ireland where the accountancy practice is based. As far as the Republic of Ireland business and the Republic of Ireland company are concerned, the place of harmful effect may be the Republic of Ireland or Northern Ireland.

[28] I dismiss the defendant's application on the basis that the plaintiff is entitled to undertake these proceedings in Northern Ireland in respect of his accountancy losses in Northern Ireland as the place where the harmful event occurred in the sense of being the place where the damage occurred. To the extent that the claims in respect of the other items of loss were occasioned by the actions of the defendant in publishing the material in London, although those other items of loss emanate from the actions of a third party in Northern Ireland, the harmful effects to the plaintiff occurred in Northern Ireland or the Republic and the plaintiff may undertake the proceedings in Northern Ireland to the extent that he establishes that the losses occurred in Northern Ireland.