

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (COMMERCIAL)

BETWEEN

GREGORY MULLAN and PERPETUA MULLAN

Plaintiffs

V

GABRIELLE GIAMBRONE

practising as Giambrone Law, Solicitors and European Lawyers

Defendant

WEATHERUP I

[1] The plaintiffs claim damages by reason of the breach of contract and negligence of the defendant, acting as solicitors for the plaintiffs, in relation to the proposed purchase of properties in Italy. In 2007 the plaintiffs paid €3,000 as a holding deposit and €65,255. 50, being 50% of the purchase price of the property. The funds have been lost by the admitted default of the defendant. The issue concerns the currency in which judgment should be entered for the plaintiffs. Mr O'Donoghue QC and Mr Girvan appeared for the plaintiffs and Mr Good QC and Mr Gibson appeared for the defendants.

[2] In 2007 the purchase price in sterling of the euro deposit was approximately £47,000. In 2013 the sterling value of the euros is approximately £57,000. This difference of course emerges from the fluctuations in the currency exchange rates between the euro and sterling. Those fluctuations correspondingly encourage each party to seek a judgment in the appropriate currency that reflects the greater

financial benefit to that side. Accordingly, the plaintiffs contend for judgment in euros and the defendant contends for judgment in sterling.

[3] Until 1975 judgments in the courts of the United Kingdom were required to be given in sterling and the conversion date for any foreign currency was the date of the defendant's breach (the 'breach-date conversion rule'). That position changed with the decision of the House of Lords in Miliangos v George Frank Textiles Ltd [1976] AC 443. Contracts between a Swiss seller and an English buyer provided for payment in Swiss francs for goods and services delivered. The sellers took action against the buyer claiming payment of the contract price expressed in Swiss francs and seeking judgment in Swiss francs as an alternative to judgment in sterling. It was held by the House of Lords that it was legitimate to depart from the 'breach-date conversion rule' and recognise that the Court was entitled to give judgment for a sum of money expressed in a foreign currency in a case of obligations of a money character to pay foreign currency under a contract, the proper law of which was that of a foreign country, and when the money of account was that of that country or possibly a country other than the UK. Secondly it was held that the claim had to be specifically for foreign currency or its sterling equivalent and conversion of the currency should be at the date when the Court authorised enforcement of the judgment in sterling.

[4] Miliangos was concerned with the Court giving judgment in a foreign currency and with the conversion into sterling of that foreign currency for the purpose of enforcement of the judgment in the UK. However the basis on which damages would be measured in a claim for breach of contract or tort would be a different matter. The House of Lords referred to the principles on which damages are awarded for tort or breach of contract as having no direct relevance to claims for specific foreign currency. Lord Wilberforce stated -

"It is for the courts, or for arbitrators, to work out a solution in each case best adapted to giving the injured plaintiff that amount in damages which will most fairly compensate him for the wrong which he had suffered."

[5] While the Court in Miliangos was dealing with a claim in debt and the seller was suing for the price due in a foreign currency under the contract, it was not long before it was determined that a judgment could be obtained in a foreign currency not only in respect of a claim for a foreign currency debt but also in a claim for damages, whether in tort or for breach of contract. The House of Lords confirmed this position in the joint appeals in The Despina and The Folias reported in [1979] AC 685.

[6] However it remains necessary to give separate consideration to the manner in which compensation is to be determined. That takes us back to first principles and MacGregor on Damages, 18th ed. at paragraph 1-021 states the principle of compensation as being that the object of an award of damages is to give the claimant

compensation for the damage, loss or injury he has suffered. The usual starting point is to refer to Lord Blackburn in Livingston v Rawyards Coal Co [1880] 5 App. Cas. 25 at page 39 where the measure of damages, equally applicable in tort and contract, was the principle of restitution, stated as being -

“... that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.”

[7] Thus when the House of Lords considered whether the Miliangos approach would apply to claims for damages in tort or for breach of contract in The Despina and The Foliass [1979] AC 685 the House considered the issue in the context of the principles applicable to damages in tort and breach of contract.

[8] I refer first of all to The Despina, a claim for damages in tort. The plaintiff and the defendant were Greek shipowners and the ships collided in the Far East. Repairs were carried out in China and in Japan and in the United States and of course payments for the repairs were made in the local currency. The shipowners United States agents were based in New York and used United States dollars to buy the local currencies to pay the repairers, in Chinese currency and Japanese currency and United States dollars. Thus the currencies of direct loss were the Chinese and Japanese currencies and the currency of indirect loss was United States dollars which had been used to purchase the other currencies. Lord Wilberforce considered that the issue could be resolved by applying the normal principles which govern the assessment of damages in tort, being the principles of restitution and reasonable foreseeability of the damage sustained. At page 697 G Lord Wilberforce stated -

“It appears to me that a plaintiff who normally conducts his business through a particular currency, and who, when other currencies are immediately involved, uses his own currency to obtain those currencies, can reasonably say that the loss he sustains is to be measured not by the immediate currencies in which the loss first emerges but by the amount of his own currency, which in the normal course of operation, he uses to obtain those currencies. This is the currency in which his loss is felt, and is the currency which it is reasonably foreseeable he will have to spend.”

[9] Next I refer to The Foliass, a claim for damages for breach of contract. The plaintiff was a French company that had chartered a ship from the Swedish defendant and charter payments were to be made in US dollars. The cargo was damaged on arrival in Brazil and the claim was settled with the cargo owners in cruzeiros, the Brazilian currency. The plaintiff bought the cruzeiros with French francs. Thus the direct loss was in cruzeiros which was the payment made for the

loss of the cargo and the indirect loss was in French francs as the French plaintiff relied on their own currency to buy the cruzeiros to pay the damages. The contract provided that the law of the contract was to be English law and that disputes were to be referred to arbitration in London. The first step was to look to the contract to establish whether it provided for damages to be awarded in a particular currency. There was no such provision. The damages were measured in French francs. Lord Wilberforce at page 701 B and C explained the approach –

“If then the contract fails to provide a decisive interpretation, the damage should be calculated in the currency in which the loss was felt by the plaintiff or “which most truly expresses his loss”. This is not limited to that in which it first and immediately arose. In ascertaining which this currency is, the court must ask what is the currency, payment in which will as nearly as possible compensate the plaintiff in accordance with the principle of restitution, and whether the parties must be taken reasonably to have had this in contemplation.”

[10] The present case is based on the negligence and breach of contract of the defendant. Under the principle of restitution the plaintiffs are entitled to that sum of money which will put them in the same position they would have been in if they had not sustained the wrong. To adopt the approach outlined above in a claim for negligence, the plaintiffs’ loss is to be measured not by the immediate currency in which the loss first emerged but by the amount of their own currency, which in the normal course of operation, would be used to obtain the other currency. This is the currency in which the loss is felt, and is the currency which it is reasonably foreseeable will have to be spent. To adopt the approach outlined above in a claim in contract, the damage should be calculated in the currency in which the loss was felt by the plaintiff or which most truly expresses his loss. This is not limited to that in which it first and immediately arose. In ascertaining which this currency is, the court must ask what is the currency, payment in which will as nearly as possible compensate the plaintiff in accordance with the principle of restitution, and whether the parties must be taken reasonably to have had this in contemplation.

[11] Applying the above approach I am satisfied that the currency of the judgment in the present case should be sterling. It is the currency of indirect loss but nevertheless it is the currency in which the plaintiffs’ loss was felt as it was the currency used to purchase the funds for the deposit in euros. It is the currency which most truly expresses the plaintiffs’ loss as it is the currency in which the plaintiffs operated. It must reasonably have been in the contemplation of the parties to the contract that sterling would be the currency in which the plaintiffs would fund the transaction, being their domestic currency. It would have been reasonably foreseeable that they would do so.

[12] The measure of the plaintiffs’ loss is the amount of their expenditure to purchase the euros to pay the deposit in 2007. There will be judgment for the

plaintiffs in sterling for the cost of acquiring the euros paid to the defendants in 2007 together with interest at 4% per annum from the date of the payment.