Neutral Citation No. [2012] NIQB 31 | *Ref:* **WEA8469**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **14/03/2012**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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ULSTER BANK LIMITED

Plaintiff

-v-

ELIZABETH J LAMBE

Defendant

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WEATHERUP J

[1] The plaintiff's Writ of Summons claimed £155,220 as the sum due by the defendant to the plaintiff on 7 April 2010 in respect of three bank accounts that the defendant held with the plaintiff bank, namely a current account on which the principal due was £11,387, a loan account on which the principal due was £67,747 and a guarantee account on which the principal due was £72,000. The defendant had signed a guarantee up to £72,000 for the liabilities to the plaintiff of a company of which she was a director, Silverstream Motors Limited and that guarantee had been called in to the limit of the guarantee. Mr Aiken appeared for the plaintiff and Mr Coyle for the defendant.

[2] The defendant filed an amended defence by which it was pleaded that in December 2006 the plaintiff made an offer of settlement of the debts due by the defendant in the sum of €155,000 (euro) and that the defendant had accepted the offer and accordingly the plaintiff was not entitled to any larger amount. The plaintiff applied for summary judgment and by Order dated 9 February 2011 the defendant was required to pay to the plaintiff the sum of £104,687, being the sterling equivalent of €155,000 (euro) in December 2006. The action proceeded in relation to the balance of the plaintiff's claim, being £54,265.63 principal and interest due on the three accounts to date.

[3] In February 2000, when the plaintiff first called upon the defendant for payment of the debts, the amount due was approximately £170,000. The plaintiff held security for the defendant's debts by the deposit of the title deeds to various properties owned by the defendant. The defendant offered £100,000 in settlement of the debts but that offer was refused by the plaintiff. There followed, over a period of years, exchanges in writing between the plaintiff and the defendant in an attempt to achieve a settlement of the debts of the defendant to the plaintiff.

[4] I take up the story in September 2006. A letter was sent by the defendant on 23 September 2006 offering settlement for the sum of £105,000, an offer refused by the plaintiff. A further letter from the defendant of 9 October 2006 noted that the offer of £105,000 had been rejected and offered the sum of £107,500. This increased offer was also rejected by the plaintiff. The defendant wrote on 11 November 2006 stating that she was in a position to increase her settlement offer to £118,500 and adding "…. this amount will mean that I will be in severe difficulty to repay new lender and live". This offer was refused by the plaintiff. On 5 December 2006 the defendant wrote again expressing disappointment and frustration about the rejection of the offers that had been made and requesting the bank to furnish a settlement figure.

[5] On 11 December 2006 the plaintiff sent a letter to the defendant stating-

"We acknowledge receipt of your letter of 5 December. At present the total debt held on the above accounts is €171,544.75. Our settlement figure in this matter would be €155,000 which is a reduction of almost one third of all interest accrued. This offer is valid for 14 days and will hold any action in abeyance until that time".

[6] The defendant replied by recorded delivery of 12 December 2006 stating-

"I wish to thank you for your settlement figure of €155,000 and confirm that I accept your offer in full and final settlement of the matter".

[7] The letter of 11 December 2006 was written by Sinead Murphy, a Customer Service Manager employed by the plaintiff. The plaintiff says that a mistake was made by Ms Murphy in that the letter stated the figures in euros whereas it is said that the figures should have been stated in sterling. €155,000(euro) at the exchange rate on 11 December 2006 was equivalent to £104,687(sterling).

[8] Ms Murphy gave evidence. She had been employed by the plaintiff for 14 years. In the years before her engagement with the defendant's accounts she had worked in recovery of debts and mortgages in the Republic of Ireland for a period of three years. She had been based in Belfast but had been working in euros during that time. In December 2006 she was transferred to debt recovery in Northern Ireland dealing with sterling accounts. The defendant was the first client she had to deal with after her transfer. The letter that she wrote on 11 December 2006 was the

first correspondence that she had completed in her new role with the recovery team. She remembered the transaction because she had made a mistake.

[9] Ms Murphy had been allocated the defendants letter of 5 December 2006. She had looked at the defendant's accounts and had taken down the figures from the computer system. On the letter written by the defendant on 5 December 2006 Ms Murphy added certain figures in her handwriting. She explained the figure of €70,473.53 as being the amount due by the defendant to the plaintiff on the guarantee account, a figure which was handwritten with the euro sign. She also wrote the figure of €101,071.22 as the amount due on the other accounts, again expressing the figure in euros in her handwritten note. Beside the first figure was written 63K which Ms Murphy stated was the amount she would seek as a settlement figure on the guarantee account. Next to the second figure was written 90K, again as a proposed settlement figure on the other accounts. This gave a total of 153K which was Ms Murphy's proposed total settlement figure.

[10] Ms Murphy had authority to write off up to 50% of the interest which was due in respect of debts. Having arrived at the figure of €153,000 she spoke to a colleague who advised her in relation to the approach. Ms Murphy stated that €153,000 looked an odd figure and she rounded it up to €155,000. Ms Murphy drafted the letter of 11 December 2006 stating the total liabilities of €171,544.75, which Ms Murphy expressed in euros, and her rounded up settlement figure of €155,000 was also expressed in the letter in euros.

[11] Ms Murphy explained that she had become accustomed to working in euros and had done so on this occasion out of habit. She had transferred the figures from the computer on the sterling accounts and expressed them in euros. She typed up the letter of 11 December 2006 and mistakenly worked in euro rather than sterling and used the euro sign rather than the pound sign by mistake. Accordingly Ms Murphy's evidence was that she had intended to offer a settlement figure of £155,000 and had by mistake written €155,000(euro).

[12] The defendant did not give evidence. Mr Coyle for the defendant challenged the plaintiff's contention that the letter of 11 December 2006 had been mistaken in referring to euros. He relied on the correspondence from the plaintiff that followed the letter of 11 December 2006. The effect of that correspondence, according to Mr Coyle, is first of all that the plaintiff considered that a valid offer had been made to the defendant in the sum of €155,000(euro), secondly the plaintiff took the position that the defendant had failed to accept the offer within 14 days and thirdly, when the defendant established that she had indeed accepted the offer within 14 days, the plaintiff took the position that the defendant had failed to make payment within 14 days. The plaintiff's correspondence was said by the defendant to indicate that the plaintiff's letter of 11 December 2006 was not a mistake and was not treated as a mistake by the plaintiff.

[13] On 20 December 2006 the defendant phoned the plaintiff and spoke to Damien Devlin in the Recovery Department. He gave evidence but could not remember his conversation with the defendant, which was hardly surprising. A later letter from the defendant indicated that Mr Devlin had expressed his puzzlement that a letter had been sent to the defendant from Dublin, as appeared to be the case from the letterhead on Ms Murphy's letter of 11 December 2006 offering settlement in euros. The use of the Dublin letterhead was another mistake. However when the defendant called the bank Mr Devlin did not have the defendant's recorded delivery letter of 12 December 2006 accepting the offer. Although this letter was sent and received by recorded delivery it had gone astray. A later letter from the defendant stated the purpose of the call on 20 December as being to enable the defendant to make arrangements for the payment of the sum which she had agreed to pay. No such arrangement was made as Mr Devlin was confused by a letter having gone out under a Dublin letterhead and by not having the defendant's letter of acceptance of 12 December 2006.

[14] By letter from the defendant of 9 January 2007 she asked for a reply from the plaintiff in relation to her letter accepting the offer. On 12 January came the reply from Mr Devlin. His letter stated that the defendants letter of 12 December had not been received; that the plaintiff's letter of 11 December issued on the Dublin letterhead had been a clerical error inadvertently directed to a printer used exclusively in euro cases; that acceptance of a settlement figure was valid for 14 days and the period had expired; that the plaintiff was prepared to accept £150,000 in full and final settlement.

[15] Counsel for the defendant relies on the plaintiff's letter as not stating that the offer contained in the plaintiff's letter of 11 December had been mistaken or was being withdrawn but rather that the settlement figure was valid for 14 days and the time for acceptance had expired.

[16] The defendant's response was to provide the plaintiff with a copy of her letter of 12 December accepting the offer. The plaintiff responded by letter dated 23 January 2007 which stated in relation to the plaintiff's letter of 11 December - "Our acceptance of a settlement figure was valid for 14 days and as the sum mentioned was not received within that timescale this is now null and void. I am prepared to accept £150,000 in full and final settlement."

[17] Counsel for the defendant relies on the plaintiff's letter again as not stating that the offer contained in the plaintiff's letter of 11 December had been mistaken or was being withdrawn. Now that the defendant had confirmed acceptance within the 14 day period the plaintiff changed tack and relied on the defendant not having paid the money within 14 days. This, says Mr Coyle for the defendant, was clear confirmation of the settlement figure with reliance on a defence based on non receipt of payment.

[18] The correspondence moved from the customer services manager to another section of the bank and the same points were repeated in later correspondence. Eventually the defendant referred the issue to the complaints section of the plaintiff bank and it was provided that £300 interest should be waived.

[19] The plaintiff's case is based on a mistake having been made in the letter of 11 December 2006. The plaintiff relied on Shogun Finance and Hudson [2004] 1 AC 919 where Lord Nicholls stated -

> "123. A contract is normally concluded when an offer made by one party ('the offeror') is accepted by the party to whom the offer has been made ('the offeree'). Normally the contract is only concluded when the acceptance is communicated by the offeree to the offeror. A contract will not be concluded unless the parties are agreed as to its material terms. There must be '*consensus ad idem*'. Whether the parties have reached agreement on the terms is not determined by evidence of the subjective intention of each party. It is, in large measure, determined by making an objective appraisal of the exchanges between the parties. If an offeree understands an offer in accordance with its natural meaning and accepts it, the offeror cannot be heard to say that he intended the words of his offer to have a different meaning. The contract stands according to the natural meaning of the words used. There is one important exception to this principle. If the offeree knows that the offeror does not intend the terms of the offer to be those that the natural meaning of the words would suggest, he cannot, by purporting to accept the offer, bind the offeror to a contract - *Hartog v Colin and Shields* [1939] 3 All ER 566; *Smith v Hughes* (1871) LR 6 QB 597. Thus the task of ascertaining whether the parties have reached agreement as to the terms of a contract can involve quite a complex amalgam of the objective and the subjective and involve the application of a principle that bears close comparison with the doctrine of estoppel. Normally, however, the task involves no more than an objective analysis of the words used by the parties. The object of the exercise is to determine what each party *intended,* or must be deemed to have *intended.*
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> 124. The task of ascertaining whether the parties have reached agreement as to the terms of a contract largely overlaps with the task of ascertaining what it is that the parties have agreed. The approach is the same. It requires the construction of the words used by the parties in order to deduce the *intention* of the parties - see *Chitty on Contracts , 28th Ed Volume 1, paragraphs 12-042,3* and the cases there cited. This is true, whether the contract is oral or in writing. The words used fall to be construed having regard to the

> relevant background facts and extrinsic evidence may be admitted to explain or interpret the words used. Equally, extrinsic evidence may be necessary to identify the subject matter of the contract to which the words refer."

[20] The plaintiff contends that the offer of 11 December 2006 should be read as £155,000, either by interpretation of the correspondence or by rectification. Any objective assessment of the relevant background facts leads, according to the plaintiff, to the conclusion that the offer was in pounds sterling. In any event, according to the plaintiff, the defendant knew and must have known that the offer intended to refer to pounds sterling and not to euros and that a mistake was obvious. Chitty on Contract 30th Edition at paragraph 5-074 states that if there has been a mistake, known to the other party, then the normal rule of objective interpretation is displaced in favour of admitting evidence of subjective intention. At paragraph 5-075 Chitty questions the position if the mistake ought to have been known, as opposed to a mistake actually known, although referring to two English cases that support the displacing of objective interpretation where the mistake ought to have been known. Counsel for the defendant contends that there was no mistake on the part of the plaintiff and in any event there is not a basis on which to conclude that a mistake ought to have been apparent to the defendant.

[21] In making an objective assessment one is entitled to take account of the background facts. In matters of objective interpretation account is not taken of what are described as negotiations, a matter limited to cases of rectification. In the interpretation of this correspondence objectively and taking account of the background facts I am satisfied that the accounts being considered and the exchanges that took place prior to 11 December 2006 concerned pounds sterling. Ms Murphy took her figures from the sterling accounts and based her calculations on the sterling figures. She used the euro sign instead of the pound sign out of habit as she had just transferred from three years working in euros. She typed the letter to the defendant using the euro sign out of habit. The figure she was working on was 155,000 pounds sterling although she referred to the figure in euros.

[22] Accordingly I conclude that Ms Murphy made a mistake when she wrote the letter of 11 December 2006. Her mistake was to state the currency in euros rather than pounds. She took the liabilities of the defendant from the sterling accounts and transcribed them on to the defendant's letter but mistakenly wrote the figures in euros rather than pounds, she totalled them up and mistakenly considered the discount in euros rather than pounds and she mistakenly transferred the figures to the typed letter in euros rather than pounds. Further she made a mistake when she used the letterhead from Dublin rather than Belfast. This further mistake was acknowledged in the plaintiff's subsequent correspondence but the initial mistakes in the currency were not acknowledged directly in the correspondence.

[23] Further I am satisfied that Mr Devlin was told by Ms Murphy that she had made the currency mistake when he spoke to her after he had received the

defendant's telephone call. Mr Devlin then understood that a mistake had been made, not only in relation to the use of the letterhead from Dublin but also in relation to the use the euro as the currency rather than pounds sterling.

[24] From the defendant's view of the matter she had three sterling accounts, the exchanges before 11 December 2006 were in sterling, offers had been made by the defendant and refused by the plaintiff in the sterling sums of £105,000, £107,000.50 and £118,500. On 11 December 2006 £104,687 sterling was the equivalent of €155,000 (euro). I am satisfied that the defendant knew and must have known that the plaintiff, having refused to settle for a higher amount, was not now proposing to settle for a lower amount.

[25] The defendant was quick to respond to the letter of 11 December 2006 and sent a recorded delivery letter followed by a telephone call in an attempt to finalise matters. The defendant has not given evidence but I conclude that she knew and must have known that the offer in euros was a mistake and that she sought to accept it in the knowledge that it was a mistake.

[26] There was follow up correspondence from the plaintiff. That correspondence was misleading. It relied on a lack of notice of acceptance of the offer of 11 December 2006 within the 14 day period. That was misleading because the plaintiff, having made a mistake, sought to avoid the mistake by relying on a failure to give notice of acceptance within the specified 14 day period. In reality the defendant had purported to accept the offer within the 14 day period by forwarding the recorded delivery letter, a letter that was lost by the plaintiff. The plaintiff failed to tackle the real point which was that the defendant was required to pay 155,000 pounds sterling rather than euros. Having eventually been persuaded that a letter of acceptance of the offer of 11 December 2006 had been forwarded by the defendant and received by the plaintiff, the plaintiff then sought to rely on a different point, namely that the debt had not been paid with 14 days. The letter of 11 December 2006 did not state that payment had to be made within 14 days. Again the plaintiff did not tackle the real point that the defendant was required to pay 155,000 pounds sterling rather than euros. These matters do not undermines the mistake having been made but they have certainly added to the dispute between the parties.

[27] Mr Aiken for the plaintiff referred to Hartog v Colin and Shields [1939] 3 All ER 566 where the defendants contracted to sell to the plaintiff 30,000 Argentine hairskins but by an alleged mistake the defendants offered the goods at a price per pound weight instead of a price per piece. The value of a piece was approximately one third that of the value at pound weight. Previous discussions had been on the usual trade practice of a price per piece. It was held that the plaintiff could not reasonably have supposed that the offer expressed the real intention of the persons making it and must have known that it would have been made by mistake and that the plaintiff did not by his acceptance of the offer make a binding contract with the defendants.

[28] I interpret the letter of 11 December 2006 as being an offer of £155,000 (sterling) mistakenly expressed as euros. Insofar as it is necessary to do so I order rectification of the terms of the letter of 11 December 2006 to specify 155,000 pounds sterling and not 155,000 euros. Mr Coyle in his skeleton argument refers to there being no pleading about rectification. That is correct. However the plaintiff's written opening refers to rectification of the letter but no application was made to amend the plaintiff's pleadings to include rectification. I do not consider it to be necessary to rely on rectification because the letter must be interpreted as offering to settle for a payment of £155,000 (sterling). Were it necessary for the plaintiff to rely on rectification I would give leave at this late stage for the plaintiff to amend the pleadings to include rectification of the terms of the latter of 11 December 2006. Rectification was relied on by Mr Aiken for the plaintiff at the opening of the case and there was no objection made about the absence of a pleading of rectification until the case had closed.

[29] There will be judgment for the plaintiff against the defendant for £54,265.63. This sum includes interest. I would not have allowed all the interest included in that total because of the conduct of the plaintiff after the dispute arose about the letter of 11 December 2006. However I have stepped away from the issue of interest because in the resolution of the defendant's complaint the interest was reduced by the most modest amount of £300.00. It would not be appropriate to interfere with the interest calculation.

[30] The costs have to be considered. The plaintiff's mistake led to the dispute and the defendant of course sought to rely on what I have found to be a known mistake and hence the plaintiff has judgment. The plaintiff compounded the grounds of dispute by the later correspondence. The terms of that later correspondence were carried through to the hearing and formed the basis for the defendant's challenge, for which I offer no criticism. On 9 February 2011 the defendant was ordered to pay £104,000 and costs on the application for summary judgment. On 8 September 2011 the plaintiff obtained an Order for possession and sale of the lands held as security for the defendant's debts together with costs of the application. There remains the matter of the costs of recovery of the balance. The normal rule is that costs follow the event, which in this case is the plaintiff's recovery of the balance now found due by the defendant. By reason of the plaintiff's later correspondence I propose to order that the plaintiff recovers 40% of the costs of securing the present judgment, such costs to be taxed by the Taxing Master in default of agreement.