

**Neutral Citation No. [2013] NIQB 71**

Ref: **MCCL8939**

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

Delivered: **20/06/13 and  
27/06/13**

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

**QUEEN'S BENCH DIVISION**

**THE ULSTER BANK/TAGGARTS LITIGATION**

**RULING RE KHANNA SUBPOENA**

**McCLOSKEY J**

**INTRODUCTION**

[1] The background to this ruling can be gauged from the previous judgments, rulings and orders of this Court, to which I refer. This ruling is concerned with an issue which has arisen between the Ulster Bank Limited ("*the Banks*"), one of the principal parties to these proceedings and a non-party, the firm of Tughans Solicitors.

[2] The context in which these two entities find themselves in dispute is shaped by a Khanna subpoena served by the Banks' solicitors on Tughans, dated 24<sup>th</sup> April 2013. This was one of ten such subpoenae issued more or less simultaneously, on 24<sup>th</sup> and 25<sup>th</sup> April 2013, with the permission of the Court. In total there are five recipients of these subpoenae: Tughans, PWC, KPMG, the First Trust Bank and the Bank of Scotland.

[3] The affidavit grounding the application to issue the Khanna subpoena was sworn by Ms Gibson, a partner in the firm of solicitors representing the Banks. She avers that, in substance, the case made by the Taggarts against the Banks is that the conduct of the latter was responsible for the demise of the Taggarts' business. Allegations made by the Taggarts include failures by the Banks to communicate their concerns, to facilitate available remedial steps and measures which would have reduced indebtedness and altered strategies and, generally, to deal transparently with the Taggarts. It is further claimed that the Banks' acts and omissions frustrated the Taggarts' ability to secure financing from other sources and, ultimately, to continue trading. For present purposes, the key averment in the affidavit is the following:

“The Defendants intend to defend these proceedings on the grounds appearing in the Defence. However, to assist the Defendants with their case they need to consider and analyse what actually brought about the demise of the Taggarts’ business and to do this they will require sight of documents not within their possession, power or control.”

The deponent further avers that since Tughans were the solicitors acting on behalf of and advising the Taggarts at certain material times [cf the main judgment delivered previously, in the Order 14 appeals], it is likely that relevant documents are in their possession, custody or power. The next material averment is the following:

“The Defendants’ request is for the entirety of the documents, files, records and papers held by Tughans relating to the Taggart Group .... for the period 2006 onwards .....

The Defendants need to examine all documents which may help to explain the reasons for the demise of the Taggart Group.”

For convenience of reference, the Court’s distillation of the case made by the Taggarts against the Banks is set out in paragraph [6] of my ruling dated 25 April 2013.

[4] The contentious subpoena has stimulated certain correspondence exchanged between the Banks’ solicitors and Tughans and their solicitors (C&H Jefferson). As a starting point, I observe that the core averment in the affidavits sworn by the Bank’s solicitor is not challenged. Thus there is no dispute that Tughans hold documents of possible relevance to the issues in these proceedings. However, Tughans and their solicitors have advanced certain assertions and contentions, which may be reduced to the following:

- (a) The documents to which the subpoena is directed consists of 17,000 emails (excluding attachments), 5,000 other documents and 43 boxes of files.
- (b) In light of a refinement of the Bank’s request, some 12,000 emails (excluding attachments), 2,500 documents and 30 boxes of files will have to be analysed.

- (c) This exercise will require a period of some three to four weeks and, making due allowance for necessary attention and supervision of senior members of staff, the estimated cost is £25,000 - £30,000, plus VAT and outlays.
- (d) There will inevitably be "*considerable overlap*" in the compliance exercises being undertaken by Tughans and other recipients of Khanna subpoenas, in particular PWC and the Administrators of the Taggart companies.
- (e) In any event, a reasonable period of time will be required in order to undertake the necessary exercise of obtaining consent to disclose documents containing information of a privileged or confidential nature. This will entail conferring with the persons and agencies concerned and, where necessary, affording them facilities to inspect documents.

I have distilled these assertions and contentions from the detailed letters of 10<sup>th</sup> and 11<sup>th</sup> June 2013 written by Tughans and their solicitors respectively.

[5] The Banks' solicitors replied by letter dated 12<sup>th</sup> June 2013. In substance, their rejoinder is to the effect that a substantial period has elapsed since service of the subpoena (some seven weeks); no documents of any kind have been provided to date; the provision of legally privileged documents is not sought; and a refined request for provision of documents has been made. Their response to the sequencing suggestion made by Tughans is the following:

"Fourthly, your client has suggested that a sensible approach would be for us to review the documents provided by PWC before your client embarks on the exercise of collating the documents covered by the Khanna Subpoena in order to avoid duplication. This is not what the Khanna Subpoena ordered. In any event we will not be able to advise your client what is or may be missing as we do not know what documents they have in their possession."

The letter does not engage with the issue of Tughan's expense in complying with the subpoena.

[6] I remain mindful of the delays in this litigation to date (articulated by the Court in previous rulings and judgments) and am particularly alert to the revised trial date of 9<sup>th</sup> September 2013, which looms large. The discrete dispute to which this ruling is directed raises considerations of

reasonableness, proportionality, good sense, cordial professional co-operation between solicitors and case management. The twin issues in dispute concern the sequencing proposed by Tughans and their compliance expenses. On the basis of the correspondence, I consider that these issues have not been properly and fully explored and considered by the Banks' solicitors. The correspondence and the most recent review hearings impel to this assessment. In the interests of promoting the various values and standards enshrined in the overriding objective and the specific considerations listed above, the Court will afford a further period of one week during which these two parties must devote sufficient time, energy and attention to meetings (not emails or letters) designed to discuss and explore fully these two issues, with a view to finding a sensible, pragmatic, cost minimising and reasonable consensual mechanism. I add that the Court would be surprised if this process were to prove unproductive.

[7] I record that, as matters stand at present, the time limit for compliance by Tughans with the Khanna subpoena was previously extended by the Court to 21<sup>st</sup> June 2013. The Court has scheduled a review hearing for 27<sup>th</sup> June 2013 and I hereby extend time further to this date. It is appropriate to record that having regard to the Court's interventions to date, Tughans have at no time been in default in complying with the subpoena. In the event that a sensible and practical accommodation cannot be achieved consensually, the parties should communicate their respective positions in writing to the Court Office: **not to exceed two A4 pages**. This will require strict observance of a time limit of 4pm on 26<sup>th</sup> June 2013.

[8] This ruling resolves to a case management direction and exhortation to the parties concerned. No formal order of the Court, other than one extending time in the terms specified above, will issue at this stage.

### **Postscript**

[9] I am gratified to record that, in the event, a mechanism for resolution of the disputed Khanna Subpoena issues was found. No intervention of the Court is required and I commend the parties concerned accordingly.

### **Further Order of the Court**

[10] Following the final pre-trial case management hearing, the Court orders:

- (a) The compliance date in respect of the disputed Khanna Subpoena is extended to 5<sup>th</sup> July 2013, with any third party representations concerning privilege or any other issue to be made by 15<sup>th</sup> July 2013.

- (b) Any application by any party or non party seeking any kind of relief arising out of any of the Khanna Subpoenae will be made to this Court by 15<sup>th</sup> July 2013.
- (c) At the trial, the evidence of the Taggarts, addressing comprehensively all of the issues raised in the two conjoined actions, will precede that of the Banks' witnesses. This is subject to the two qualifications of (a) the discretion of the trial judge in the conduct of the trial and (b) liberty to apply.
- (d) The trial bundles will consist of the extant bundles, duly augmented by such additional materials as may be generated by the Khanna Subpoenae, to be prepared jointly by both parties' solicitors and lodged in Court by 30<sup>th</sup> August 2013.
- (e) Any additional witness statement on behalf of the Banks will be served by 23<sup>rd</sup> August 2013, with any rejoinder by the Taggarts by 2<sup>nd</sup> September 2013.
- (f) The parties will submit either an agreed list of issues to be determined by the Court **or** their competing drafts by 2<sup>nd</sup> September 2013.
- (g) The first day of the trial, 9<sup>th</sup> September 2013, will be confined to such case management, interlocutory, preliminary and like issues as may require consideration and determination by the Court. Subject to anything unexpected, the Taggarts' case will be opened to the Court on this date also, to be followed immediately by the Bank's opening statement. Both opening statements to be served and filed by 4<sup>th</sup> September 2013 at latest.
- (h) Any issue to be raised by any party on the first day of trial will be notified to the Court Office by 4pm on 5<sup>th</sup> September 2013.