

Neutral Citation No: [2024] NIKB 55

Ref: COL12555

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

ICOS No: 19/12742

Delivered: 25/06/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

BETWEEN:

RICHARD LYNCH

Plaintiff

and

REGEN WASTE LTD

Defendant

**Mr Conor Cleland (instructed by JMK Solicitors) appeared for the Plaintiff
Mr Christopher Ringland (instructed by Murphy & O'Rawe Solicitors)
appeared for the Defendant**

COLTON J

Introduction

[1] The plaintiff was formally employed by the defendant as a HGV driver. On 7 November 2016 he was driving a tractor unit connected to a trailer which had just been loaded with recycling waste at premises operated by South Ayrshire Council. As the vehicle proceeded round a roundabout, both the tractor and trailer fell onto their sides, thereby causing the plaintiff to sustain personal injuries, loss and damage, which form the subject matter of this action.

[2] The subject incident was investigated by Police Scotland.

[3] The defendant's solicitor spoke to the investigating officer, PC Eccles, by telephone on 31 July 2019. During that conversation, PC Eccles explained that his recollection was that the plaintiff, Mr Lynch, was unsuccessfully prosecuted for driving offences arising out of the subject incident.

[4] Pursuant to this the defendant's solicitors corresponded with both Police Scotland and the Procurator Fiscal's Office regarding the provision of

documentation pertaining to the police investigation and the subsequent prosecution of Mr Lynch.

[5] The defendant's solicitors have obtained some information from Police Scotland to include the extract of the Road Traffic Collision Report and a copy of the Examiner's Report from the DVSA.

[6] To date they have not received the full police report or the accompanying witness statements and other relevant documentation submitted by Police Scotland to the Procurator Fiscal's Office.

[7] In August 2019 Police Scotland wrote to the defendant's solicitors in the following terms:

"We refer to your previous correspondence regarding the above. I would advise that you contact the Procurator Fiscal at Ayr Sherriff Court quoting their reference AY16005233 in relation to the statements and report which was submitted, as we do not provide copies of these. I trust this assists."

[8] In the absence of any response on 21 September 2022 the defendant's solicitors emailed the Procurator Fiscal's Office seeking the documentation sought under the Freedom of Information (Scotland) Act 2002.

[9] On the same date the Procurator Fiscal's Office responded indicating that:

"In short, we require a court order before releasing any material. We are happy to work with you on that front but I am afraid without a court order, we cannot release the information you seek."

The application

[10] Both parties agree that the documentation which has been sought by the defendant's solicitors is relevant to the issues in dispute in this action.

[11] The application was moved by Mr Ringland with the consent of Mr Cleland.

[12] The application raises an interesting issue as to the correct procedure to obtain the information which is being sought. Mr Ringland suggested that the solution to the dilemma can be found in the provisions of Order 70 of the Rules of the Court of Judicature (Northern Ireland) 1980 in conjunction with section 2(2)(b) of the Evidence (Proceedings in Other Jurisdictions) Act 1975.

[13] He seeks an order that letters of request be forwarded by the High Court of Justice in Northern Ireland to the Court of Sessions in Scotland seeking orders for discovery of the documents enumerated in the schedule attached to the application from Police Scotland and the Procurator Fiscal's Office.

[14] Order 70 relates to:

"Obtaining Evidence for Foreign Courts, Etc."

[42] The Order sets out the procedure for an application under the Evidence (Proceedings in Other Jurisdictions) Act 1975.

[43] Turning to the Act itself Mr Ringland draws the court's attention to the provisions of sections 1 and 2 of the Act.

[44] Section 1 provides:

"Evidence for civil proceedings

1 Application to United Kingdom court for assistance in obtaining evidence for civil proceedings in other court.

Where an application is made to the High Court, the Court of Session or the High Court of Justice in Northern Ireland for an order for evidence to be obtained in the part of the United Kingdom in which it exercises jurisdiction, and the court is satisfied –

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal ('the requesting court') exercising jurisdiction in any other part of the United Kingdom or in a country or territory outside the United Kingdom; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the High Court, Court of Session or High Court of Justice in Northern Ireland, as the case may be, shall have the powers conferred on it by the following provisions of this Act."

[45] Section 2 goes on to provide:

“2 Power of United Kingdom court to give effect to application for assistance.

(1) Subject to the provisions of this section, the High Court, the Court of Session and the High Court of Justice in Northern Ireland shall each have power, on any such application as is mentioned in section 1 above, by order to make such provision for obtaining evidence in the part of the United Kingdom in which it exercises jurisdiction as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.

(2) Without prejudice to the generality of subsection (1) above but subject to the provisions of this section, an order under this section may, in particular, make provision –

(a) ...

(b) for the production of documents;
...”

[46] Finally, Mr Ringland refers to Chapter 70/6/4 of the Supreme Court Practice, 1999 Edition which relates to the then equivalent of Order 70 in England & Wales.

[47] It provides:

“Evidence for civil proceedings

RR.1-6 – Under s1 of the 1975 Act, the High Court has the powers conferred on it by the Act to render assistance to a foreign court to obtain evidence in England and Wales for civil proceedings in that court. Three conditions precedent must be fulfilled before the English Court can exercise the jurisdiction conferred upon it to make any order under the 1975 Act, namely:

(1) There must be an application to the court for an order for evidence to be obtained in England and Wales;

(2) The court must be satisfied that such application is made in pursuance of a request by or on behalf of a court or tribunal described as 'the requesting court' exercising jurisdiction outside England and Wales (s.1(a));

(3) The court must be satisfied that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or where institution before that court is contemplated (s.1(b))."

[48] At the hearing I queried with Mr Ringland whether the appropriate solution was to be found in the provisions of the Judicature (Northern Ireland) Act 1978 which provides at section 67:

"67 Subpoenas in other parts of the United Kingdom.

(1) In connection with any cause or matter in or pending before the High Court, the Court of Appeal or any inferior court or tribunal in aid of which the High Court may act, a judge of the High Court, or (in the case of a cause or matter in or pending before the Court of Appeal) of the Court of Appeal, may, if satisfied that it is proper to compel -

- (a) the personal attendance at any proceedings of any witness not within the jurisdiction of the court; or
- (b) the production by any such witness of any document or exhibit at any proceedings".

[49] The Act provides for a writ of subpoena ad testificandum or a writ of subpoena duces tecum.

Consideration

[50] I am satisfied that the court can issue a request under the 1975 Act.

[51] Returning to the text of the White Book the author, referring to the Act, says that the Act and Order 70 together "provide a comprehensive, self-contained code for obtaining evidence in England for use in proceedings in foreign courts in those cases in which the help of the High Court is invoked."

[52] For the purposes of this application substitute "Scotland" for "England."

[53] The author goes on to say:

“The jurisdiction of the English courts to order persons within its jurisdiction to provide oral or documentary evidence in aid of proceedings in foreign courts has always been exclusively statutory ...; and this jurisdiction and the powers of the High Court to make such orders are now contained in the 1975 Act, as supplemented by this order.”

[54] The general principles for compliance with foreign requests for evidence are described in the following way:

“The general principle which is followed in England in relation to a request from a foreign court for assistance in obtaining evidence for the purpose of proceedings in that court is that the English court will ordinarily give effect to such a request so far as is proper and practicable and to the extent that is permissible under English law. This principle reflects judicial international comity ... and it confers with the spirit of the Hague Convention and the 1975 Act as is conformed with the spirit of the former statutes.”

[55] The provisions under the Judicature Act relate more to the procurement of the attendance of witnesses as opposed to the simple provision of documents.

[56] Therefore, I am satisfied that the court should issue a letter of request to the Court of Session pursuant to the 1975 Act requesting the documents set out in the schedule to the notice of motion in this application.

[57] By analogy with the provisions under the Hague Convention it seems the letter of request should specify:

- (a) That the request is made by the High Court in this jurisdiction and that the Court of Session in Scotland is requested to execute it.
- (b) The names and addresses of the parties to the proceedings.
- (c) The nature of the proceedings for which the documentation is required should provide a summary akin to the introduction to this ruling.
- (d) The documentation which is being sought.

[58] I will liaise further with the parties in relation to the precise drafting of the letter of request.