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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **ex tempore, 12/11/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

DANIEL McATEER

v

DECLAN MAGEE & OTHERS

REPRESENTATION

Mr McAteer: self -representing

Respondents: Mr Coghlin KC and Mr Dunlop, of counsel, instructed by Carson McDowell Solicitors

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Before: McCloskey LJ and Horner LJ

McCLOSKEY LJ (*delivering the judgment of the court ex tempore)*

Introduction

[1] The starting point in this appeal is the notice of motion dated 24 January 2024. That was an application brought in proceedings in which Daniel McAteer is the appellant and the defendants are Declan Magee and Carson McDowell LLP and Joseph McElhinney and others, practising as McElhinney McDaid and Hegarty Solicitors come Clarendon Legal.

[2] By that application Mr McAteer sought the following relief: an order pursuant to Order 11 Rule 1(b) of the Rules of the Court of Judicature, Order 29 Rule 1 of the Rules and Section 91 of the Judicature Act and/or the inherent jurisdiction of the court for an injunction restraining the defendants whether by themselves, their servants and agents or otherwise howsoever from participating in ongoing actions against Mr McAteer and others in the High Court of Northern Ireland, including, but not limited to, the following matters. There follows a list of four (presumably live) cases, namely:

(i) Guram v McAteer;

(ii) McAteer v The Solicitors' Disciplinary Tribunal;

(iii) McAteer & another v McElhinney & others; and

(iv) The taxation of two identified Bills of Costs.

[3] This application gave rise to a hearing in the High Court and an ex tempore adjudication by Mr Justice McAlinden. Having received the parties' respective submissions, the judge stated according to the transcript, in somewhat colourful language:

> "*This is an absolutely nonsense of an application. It is a collateral challenge against the decisions of other judges in respect of the entitlement of the named defendants in this application to defend themselves or to make representations in legal proceedings which are already extant.*"

The judge then referred to certain of the cases in question. He continued:

> "*There is no basis for such an application in law. This is an abuse of process of the court, this is a waste of everybody's time, it is a waste of court time, this is an absolute abuse of the process of the court. I am dismissing the application for an interim injunction in this case because it does not get off the ground at all.*"

The judge next augmented his reasoning with the reference to, in particular, the issue of a serious question to be tried i.e. one of the well-known *American Cyanamid* principles.

[4] McAlinden J then highlighted the factor of assertion: "*… they are allegations no more than that.*" He reiterated that the court would not entertain the application because it was considered, in his words, "*a plain and utter abuse of court process.*" The judge dismissed the application. He also made a ruling on costs, which was that bearing in mind what he described as the "*absolutely groundless basis of the application*" costs would be awarded in favour of the defendants and on an indemnity basis.

[5] There has followed an appeal to this court by Mr McAteer, the plaintiff. The appeal is prima facie out of time by approximately two months and I shall revert to that issue. The processing of this appeal has been orthodox. There have been case management listings, case management orders, written submissions of an extensive nature from both parties and the compilation of good quality bundles. Those steps have enabled the judicial panel to absorb the most important materials and to

consider at their leisure, in advance, the arguments of both parties and to proceed accordingly.

[6] The process I have just described has culminated in the hearing before this court today. While time limits for oral submissions were prescribed in the case management of the appeal, we did not, in the event, strictly enforce the time allocation to Mr McAteer, who took the opportunity to speak fully to his speaking note, which is a clear and comprehensible digest of his longer skeleton argument. In addition, he highlighted various portions of the bundles compiled for the court and he further made reference to certain aspects of decided cases and, latterly, a leading text in his identification of the principles to be applied.

[7] The calculation regarding the time issue is quite straightforward and, by virtue of the court's exchanges with both parties, ultimately uncontroversial. There are a couple of material dates only. First, there is the date upon which the orders of Mr Justice McAlinden were filed. That date is 7 March 2024. The second material date is the date when the appeal was filed, that is 27 May 2024. One interposes between those two dates the applicable rule of court, that is Order 59 Rule 4(1). This prescribes a time limit of 21 days from the date of filing of the order of the lower court. If one ignores the day on which the order was made, that gives rise to the calculation that the time for appealing to this court expired on 29 March 2024. We are not ignoring another date urged upon us by the appellant and that is 22 April 2024 (when he says he received the orders). We take into account all that the appellant has said about the period elapsing between the date on which the order was filed and the date when the notice of appeal was served and filed.

[8] The appellant has highlighted, in particular, that he did not receive the orders under appeal until 22 April 2024. The second matter he has stressed is that during the intervening period he was not inactive: he was rather asking about the orders. Furthermore, he was engaged in an exercise of attempting to obtain the transcript of the hearing at first instance to enable him, in particular, to evaluate whether there should be a complaint of an unfair hearing based on bias on the part of the trial judge (see para [20] infra)

[9] It is appropriate to add, for the avoidance of any doubt, that we are adopting the stance that the appeal before this court did not require the leave of either the High Court or this court. The governing provision is section 35 of the Judicature (Northern Ireland) Act 1978. As a general rule, section 35 requires the prior permission of either the High Court or this court to bring before this court an appeal against an interlocutory order. This is plainly an interlocutory order. However, that general rule does not apply in cases where the order under challenge determined an application for an injunction. Accordingly, no prior leave to bring the appeal was required.

[10] That brings us logically to the governing principles and their application to what is before this court. They are rehearsed in *Davis v Northern Ireland Carriers*. We

mention, very much in passing, that in the four decades which have elapsed since *Davis* was decided, the jurisprudence of this court has developed. There have been further decisions (see in particular *Re Mahmud* [2023] NICA 4). We do not need to refer to them because nothing turns upon what those decisions add to the jurisprudence in the particular circumstances of this case and, furthermore, the seven principles rehearsed in the judgment of the Lord Chief Justice remain unchanged.

[11] The application of the first five principles to the application before this court to extend time is the following:

(i) The court will look more favourably on an application made before the time is up. That favourable gaze is not available in the present case because the application to extend time has been made following the expiry of the governing time limit.

(ii) Next we take into account the extent to which the appellant is in default. It is common case that the default here is approximately two months. This we view without undue definition or particularisation as a default of moderate dimensions.

(iii) The effect on the opposing party of granting the application, in particular, whether the opposing party can be compensated by costs, must next be considered. We are not really equipped to address any of those issues. Our approach to them, therefore, is entirely neutral and we do not identify anything in the application of that principle adverse to the appellant Mr McAteer.

(iv) The fourth principle requires the court to consider whether a hearing on the merits has taken place. The answer to that is affirmative. There was before the High Court a hearing on the merits of the application. It follows that the second part of that principle, namely whether a hearing on the merits would be denied by refusing to extend time, does not arise.

(v) Fifth, we are enjoined to consider whether there is a point of substance to be made which could not otherwise be put forward. We resolve this principle in favour of the respondents without any hesitation. We are of the view that the appeal to this court, in common with the application to Mr Justice McAlinden, did not entail any point of substance. At first instance, the judge concluded that the *American Cyanamid* criterion of whether there was a serious issue to be tried was not satisfied. This court concurs fully with the judge's assessment of that issue.

[12] Before considering the final two *Davis* principles, it is appropriate to interpose the following. This court does not conduct a full-blown review of the merits of the decision of the High Court in interlocutory appeals. That is an elementary principle upon which we do not need to elaborate. That said, we have expressed our unequivocal view.

[13] We must also add the following. The judge, in terms, questioned whether the application was properly before the High Court at all. In substance he asked rhetorically whether the High Court had jurisdiction to make the injunctive order that was sought. We have assumed in favour of the appellant that the High Court did, indeed, have such jurisdiction. The judge, again in substance and in effect, made that assumption. It is, however, necessary to express the view of this appellate court that if and insofar as the High Court in the exercise of its inherent jurisdiction is empowered to grant injunctive relief of the kind sought by the appellant, relief of that kind would properly be granted only in highly exceptional circumstances and where compelling grounds for taking that course are established. The judge identified nothing of that kind and this court concurs fully with his assessment.

[14] The sixth *Davis* principle requires this court to consider whether there is any point of general and not merely particular significance. it rests upon a favourable resolution of the fifth. In the abstract, the point that is identified in the sixth principle is the point of substance that the court has identified in its application of the fifth. We have been quite unable to diagnose any point of substance in the appeal, per the fifth principle. It follows that the sixth principle does not arise. However, insofar as that analysis may in any way be flawed we add that we are unable to identify in the purported appeal to this court any point of general significance – none whatsoever.

[15] Finally, the seventh *Davis* principle states emphatically that the rules of court are there to be observed. This discrete principle will invariably be applied to the detriment of any party who is in default. The present case is a paradigm instance of default on the part of the putative appellant, a highly experienced litigant.

[16] Considering everything in the round, for the reasons given there is no basis upon which this court should exercise its discretionary power to extend time, and we refuse that application.

[17] As our judgment has made clear there is overlap between the fifth of the *Davis* principles and the issue considered by Mr Justice McAlinden, namely whether the application had any merit or, as it is put in *American Cyanamid,* whether the appellant had demonstrated any point of substance in his application.

[18] That, therefore, leads to the following alternative analysis. If we are wrong to refuse to extend time or, alternatively, if we had extended time we would unhesitatingly have concluded that the appeal must be dismissed for, in particular, though not exhaustively, the reasons already given.

[19] Accordingly, the order of this court will be one refusing to extend time for appealing. That leaves but one issue that we can readily identify and that is the issue of the costs of the application to this court. As the parties will note we are alert to the costs order made at first instance. We are proposing to deal with the issue of costs now.

ADDENDUM

[20] Having given the above judgment ex parte and prior to the court adjourning it was, properly, brought to our attention by Mr Coghlin KC that the application to this court includes an allegation of bias on the part of McAlinden J. The appellant, in his speaking notes and detailed oral presentation, did not mention, much less develop, this ground: hence its absence from our oral decision. In his lengthy skeleton argument this complaint occupied two lines only, entirely unparticularised. In his subsequent speaking note it did not feature at all. We consider it abundantly clear from the transcript of the hearing in the High Court and having considered all of the materials before this court that this complaint is a makeweight and is manifestly devoid of merit.