

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

AIB GROUP UK PLC

-v-

PATRICK STOREY

DEENY J

[1] This is an application by Mr Terry Ringland, counsel for Patrick Storey, to take the action of AIB Group UK Plc against Patrick Storey and Stelfox, Solicitors, out of the list. It is currently listed for four days, 27-30 May, the week after next. The position is an unusual one and I say bluntly at the beginning that I would not normally think of acceding to an application on this ground i.e. that legal aid has initially been refused for briefing senior counsel, but an appeal is pending, and the Legal Services Commission say they will not or cannot deal with it before June.

[2] There are a number of factors against the application. First of all, it is not a question of a level playing field because the bank and the solicitors are represented by junior counsel also. Secondly, though I think this point has not been made it is not at all certain that legal aid will be given for senior counsel. I observe that in the past in this jurisdiction and, I understand, still in the Republic of Ireland, counsel would act in cases either pro bono or without ensuring that there was legal aid in the first place, but accept the brief nevertheless as a favour to the solicitor or the client or because they thought it was proper to do so. Hence the Irish practice of marking the back sheet of a brief at the end of a case rather than agreeing fees at the beginning. Whether that will become more attractive again to the Bar in the coming years remains to be seen. But anyway, it is the second factor against granting this application. Thirdly, as Mr Colmer says, the solicitor's professional conduct is called into question and it is a stressful matter to him to have it adjourned. Fourthly, it is a late application. Fifthly, as Mr Gowdy points out, the bank is owed more than the current value of the security. It is undoubtedly the case that with interest therefore its debt will increase and it may not be matched by any increase in the value of the

security. Finally, although not mentioned expressly again but on checking it seems to me that I cannot list this case before next January, so it is a substantial delay in the matter although we will have a little more manpower in the Autumn. I do not think it is safe to list a four day case involving a vulnerable individual and calling doctors other than as number one on the list when I can be confident that I or somebody else can deal with it. So those are six factors against acceding to Mr Ringland's application.

[3] In favour of it is, it is a complex case. I have just taken a few minutes to look at the pleadings again including the original defence and counterclaim drafted by Mr Paul McLaughlin and there are a number of issues involved. Was this such an unconscionable bargain that the solicitor should have taken that into account also; the query of what relevance has undue influence in the context of the solicitor guarantor relationship. It is a complex matter. Secondly, this man Patrick Storey did not borrow the money himself, people who borrow money and then are asked for it back by banks complain loudly but this unfortunate man just guaranteed his brother's loan and the brother defaulted. Next, he is an exceptionally vulnerable individual and that is obviously an important factor on the merits of the action, but is relevant to this application because he is bound to be a client who will have to be handled with kid gloves and because he is a person of such limited capacity. Indeed he is described by an experienced consultant psychiatrist as mentally handicapped and described by a very experienced consultant psychologist as in the bottom tenth of the bottom 1% of the population. Next, it is of great importance to Patrick Storey. It is the family farm that has apparently been in the family for generations and it is his home. While it is important to the other two parties it is only money to the plaintiff without disrespect to them and it's only money to Mr Stelfox who presumably will not have to meet the whole bill himself if he is found liable, though I have already noted Mr Colmer's argument as to stress.

[4] Furthermore in the course of this application it has emerged that the second defendant's medical report seeking to address the strong case made about the plaintiff's medical condition has not been obtained. Now that is the first defendant's fault for not attending two appointments, but nevertheless that is the case and with the best will in the world this Mr Roach may not get it in until right before the trial. Furthermore, in the course of the application it has become apparent that we should see the files of Mr Brian Stelfox where he dealt with this man before. It occurs to me that it is possible that, first of all, it may be difficult getting them out of storage on time before 27th but also that when they are obtained they may lead to other questions and they may or may not contain medical reports that were obtained. We do not know how full they will be, but they may give important clues as to what Mr Stelfox's state of knowledge about Mr Patrick Storey should have been at the time that he made this representation to the bank and allowed this man to sign a guarantee against what was, it looks fairly clearly, his own interest.

[5] Next, it is the first time in the list, albeit the case is of some duration. Next it is fair to say that in other divisions of this High Court a senior counsel would be instructed. The Chancery Division is a little different from other divisions in as much as junior counsel frequently deal with pretty substantial matters that undoubtedly would have seniors in other divisions. I do not know why the senior should be refused here when they seem to be allowed in the Family Division for quite modest matters so far as I can see and I may be quoted to that effect to the Legal Services Commission. This seems to me a proper case for a senior. I am not saying that the other sides have to get them, particularly not the bank whose case is pretty straightforward and Mr Colmer of course is a very experienced member of the junior Bar practising in this division, but I think the application for a senior is a proper one. So although the application to take out is a finely balanced one to which I have had to give some thought I have concluded that I should take the case out of the list and I do so for the 27 - 30 May 2014. As I have indicated subject to what counsel say I do not really think it is safe to list you as a number 2 or number 3 in the autumn although I hope that Mr Justice Burgess or Mr Justice O'Hara are free to help out that term. Would that be the view of counsel?

Counsel: I think My Lord given the number of doctors here attending My Lord that perhaps is an important factor which may...

Deeny J: I think that too. [His Lordship fixed new trial dates and dealt with costs.]