Neutral Citation no. [2012] NICty 3 | *Ref:*

*Judgment: approved by the Court for handing down (subject to editorial corrections 3/9/12)** | *Delivered:* **3/09/12**

IN THE COUNTY COURT FOR THE DIVISION OF ARMAGH

IN THE MATTER OF A PRELIMINARY ISSUE IN RELATION TO THE VALIDITY OF SERVICE UPON THE APPELLANT COMPANY OF A NOTICE OF DECISION PURSUANT TO ARTICLE 15 of THE CRIMINAL DAMAGE (COMPENSATION) (NI) ORDER 1977

BETWEEN

BROOKFIELD PROPERTIES IRELAND LTD

APPELLANT

AND

DEPARTMENT OF JUSTICE

RESPONDENT

Her Honour Judge McReynolds

[1] This case was listed at Armagh on 13 June 2012 for determination of a preliminary issue in relation to the validity of service of a Notice of Determination dated 5 September 2011 refusing the prospective Appellant Company compensation pursuant to Article 15(1) of the Criminal Damage (Compensation) (NI) Order 1977. The case involves a relatively novel point of a kind which may arise more frequently as solicitors are less involved in processing applications for compensation arising out of alleged incidents of criminal damage.

BACKGROUND

[2] Maynard Hamilton is a Shareholder and Director of the Appellant Company which owns premises known as 'Brookfield House' in Banbridge. These premises were damaged by fire on 23 May 2011. The damage was substantial. The cost of making good the damage is estimated by an expert witness as being in the region of £800,000. On 20 June 2011 Mr Hamilton completed and lodged, on behalf of the company, a Notice of Intention to Apply for Compensation. The registered office for the company is the office of the company accountant, namely 6 Mandeville Mews, Portadown. The Notice of Intention form states (in small print) "If Appellant is a company please give registered office address." Maynard Hamilton did not insert the company's registered office address in this box on the form. He inserted his own residential address at Chestnut Manor, Waringstown. It is not clear whether this is registered as a Director's residential address pursuant to the Companies Act 2006.

[3] The Compensation Agency forwarded an Application for Compensation form to the Chestnut Manor address in Waringstown and used this address for other correspondence. The company had the assistance of loss adjusters but did not take legal advice. It is not clear whether either Maynard Hamilton or his Co- Director had any training as a Company Officer.

[4] On 3 August 2011 the Agency received a completed Application for Compensation. This form describes as 'Applicants' "M Hamilton and A Aiken (Brookfield Properties Ltd)". The form continues "of" and the insert reads "Unit 3 The Village Centre, 4 Banbridge Road, Waringstown". It is clear that Maynard Hamilton at all relevant times used these premises as an office and that his son, who was also involved in property dealings, shared them. Mr Hamilton's son, Neil Hamilton, was neither a Director nor shareholder of the Appellant Company and he was not employed by it. He had an involvement with a separate property company and did work for it from the shared office in the Village Centre.

[5] On 5 September 2011 a letter was despatched by Recorded Delivery Post enclosing a Notice of Decision pursuant to Article 15(1) of the Criminal Damage (Compensation) (NI) Order 1977, refusing compensation. At the bottom of the Notice is a standard note confirming that any person aggrieved by the decision may within six weeks from service of the Notice appeal to the County Court, continuing "but unless he appeals within that time such decision shall become in all respects final and binding." The envelope was

addressed to the Appellant Company at the Chestnut Manor residential address of Maynard Hamilton.

[6] Royal Mail attempted to deliver the envelope at the Chestnut Manor address on 6 September 2011 but, as Maynard Hamilton was on holiday, there was no-one to sign for it and it was returned to the postal depot. On 19 September 2011 a postal worker, who presumably had local knowledge, brought the envelope to the office unit habitually used by Maynard Hamilton and his son, Neil Hamilton. Neil Hamilton signed for it on 19 September 2011 and the Respondent argues that at this point in time good or valid service was effected so as to commence the six week period for purposes of Article 15(1). Six weeks from 19 September 2011 would have elapsed on 30 October 2011.

[7] The unchallenged evidence on behalf of the Appellant is that Maynard Hamilton received the envelope and its contents on 17 October 2011 when he returned to work after his holiday. At that stage 13 days of the time limited for lodgement of the Notice remained. It appears solicitors were instructed on 2 November and the Notice of Appeal was filed the following day, four days beyond the deadline.

[8] It was established in the Court of Appeal decision in ***Tansey-v-Secretary of State [1981] NI 193*** that where an applicant fails to serve a notice of intention to apply for compensation within the time limited for such notices by the Criminal Damage (Compensation) (Northern Ireland) Order 1977, the court does not have any power under Article 15(1) of the Order to extend the time limit. The question whether or not the handing to Neil Hamilton on 19 September 2011 of the letter and enclosure amounts to valid service upon the prospective Appellant Company is therefore the key issue at this stage.

THE ARGUMENTS AND LAW

[9] Counsel for the Appellant Company argues that because Article 15 is a strict provision involving a severe sanction for a prospective Appellant who fails to file Notice of Intention in time, so the prism of sanction must operate to impose upon the Respondent a strict requirement in respect of the compliance with the appropriate place for service/mode for effecting service of the Notice of Decision. It is argued on behalf of the Appellant Company that the requirements of Order 6 of the County Court Rules Northern Ireland 1980 apply. The Appellant Company argues that Order 6 Rule 3 (applicable to service of Civil Bills) is relevant. This states that *"except where otherwise directed or permitted under this Order"* service of a Civil Bill shall be effected by:

a) Delivering a copy of the Civil Bill to the Defendant personally; or

b) By leaving a copy of the Civil Bill at the Defendant's residence or place or business with the wife or husband of the Defendant, or with some relative of the Defendant or of the husband or wife of the Defendant or with an employee of the Defendant, the relative or employee being apparently over the age of 16 years.

However, this Rule is subject to Order 6 Rule 7 which expressly states that:

> "*Nothing in paragraphs (5) and (6) shall affect the method of serving documents on a company provided by Section 385 of the Companies Act (NI) 1960*"

Order 6 Rule 4(9) states that if the business is closed or temporarily abandoned, so as to prevent the ordinary service of a Civil Bill, it would be sufficient to post a copy of the Civil Bill on the door or other conspicuous part of the residence or place of business.

[10] The Companies Act (NI) 1960 has now been superseded by the Companies Act 2006. This Act was implemented in stages and by October 2009 governed Company Law throughout the entire United Kingdom, effecting some radical changes. These included altering the hitherto strict provisions in respect of requirements for the conduct of Annual General Meetings and appointment of a Company Secretary. Despite the relaxation of some important requirements, Part 6 Section 87 states a company "*must at all times have a registered office to which all communication and notices may be addressed*". Pursuant to Section 87 a company may only change the address of its registered office by giving notice to the Registrar. Section 1139 provides for service of documents upon a company. Section 1139(1) states:

> "*A document may be served on a company registered under this Act by leaving it at, or sending it by post to, the company's registered office…*"

[11] Counsel for the Respondent argues that Order 6 of the County Court Rules does not apply in these circumstances. He referred the court to Order 6 Rule 10 which states:

"Application of this Order

10-(1) Except where otherwise provided by an enactment and subject to paragraph (2), the foregoing Rules of this Order shall apply mutatis

mutandis to the service of petitions, summonses, notices or any other document required or authorised to be served for the purposes of initiating any proceedings in the County Court.

(2) Rule 2 (5)(a),(6)and (7) shall not apply to the service of a petition and such service shall be proved by affidavit of the process server or, where service is by post, by production of the solicitor's certificate of posting."

[12] He pointed out that Order 54 of the Rules makes specific provision for appeals pursuant to Article 15 of the 1977 Order and that the "originating process" for the purpose of such proceedings is, in fact, the Notice of Appeal and not the Notice of Decision.

[13] Having considered both arguments in respect of the applicability of Order 6 of the County Court Rules, I consider the Respondent's argument on this point to be well founded. I am satisfied that Order 6 does not apply to service of the Notice of Decision. Nonetheless, I am satisfied that such a Notice is a legal document which has considerable significance in respect of the property rights of those affected by the Decision.

[14] Counsel for the Respondent referred the Court to section 24 of the Interpretation Act 1954:-

24 Service of documents.

(1) Where an enactment authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver" or "send" or any other word is used, the service of the document may be effected by prepaying, registering and posting an envelope addressed to the person on whom the document is to be served at his usual or last known place of abode or business and containing such document; and, unless the contrary is proved, the document shall be deemed to have been served at the time at which such envelope would have been delivered in the ordinary course of post.

(2) Where an enactment authorises or requires a document to be served on any person without directing it to be served in a particular manner the service of that document may be effected either –

(a) by personal service; or

(b) by post in accordance with sub-section (1); or

(c) by leaving it for him with some person apparently over the age of sixteen at his usual or last known place of abode or business; or

> (d) *in the case of a corporate body or of any association of persons (whether incorporated or not), by delivering it to the secretary or clerk of the body or association at the registered or principal office of the body or association or serving it by post on such secretary or clerk at such office; or*
>
> (e) *if it is not practicable after reasonable enquiry to ascertain the name or address of an owner, lessee, or occupier of premises on whom the document should be served, by addressing the document to him by the description of "owner" or "lessee" or "occupier" of the premises (naming them) to which the document relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.*

It is suggested that the Section be read with Section 37 'person' to include a corporate body and with section 7 of the Interpretation Act 1978, so that 'send' or 'serve' should include posting.

[15] Counsel for the Respondent argued that since Rule 6 of the County Court Rules is inapplicable, Section 24(2) of the 1954 Act applies to service of the Notice of determination under Article 15 of the 1977 Order. This assertion is clearly correct and Section 24(2)(d) has to be read in conjunction with Section 1139 of The Companies Act 2006. Counsel for the Respondent further argued that service at the Registered Office is not mandatory, relying on the Scottish Outer House decision in the tax case of ***Spring Salmon and Seafood Ltd-v-Advocate General for Scotland [2004] S.L.T.501***. In that case the Petitioning Company sought to argue that service by the Inland Revenue of a Notice of Enquiry at its Reading business address, as opposed to its Edinburgh registered office, was invalid. The court interpreted Section 115 of the Taxes Management Act 1970 and, more pertinently, Section 725 of the Companies Act 1985 (which was worded as Section 1139(1) of the Companies Act 2006) as being non prescriptive and as facilitative rather than mandatory in respect of the use of the words "A document ***may be served*** on a company registered under this Act by leaving it at, or sending it by post to, the company's registered office."

[16] At Paragraph 29 of the judgment of Lady Smith in interpreting Section 725 of the Companies Act 1985, she states:

> *"I agree with the submission on behalf of the respondent that s 725 is not mandatory. Central to the petitioners' approach was the argument that the statutory provisions under consideration should be read as mandatory rather than permissive because they contained a list of options for service. Hence the*

reliance on the Goodfellow case. That was, however, a case concerning the provisions of the Agricultural Holdings (Scotland) Act 1923 whereby notice of intention to bring a tenancy to an end, to be valid, required to have been served in the form and manner prescribed by the Sheriff Courts (Scotland) Act 1907 . The latter provided, in terms of rule 113, that a landlord "may" serve removal notices in one of three specified methods. The court held that failure to adopt one of those three methods when serving such a notice rendered it invalid."

[17] Referring to the case of Department of Agriculture for Scotland-*v*- Goodfellow [1931 SLT388, she continued:-

"[30] The petitioners sought to liken the provisions of s 115 of TMA to those which were under consideration in that case by referring to the fact that whilst the word "may" rather than "shall" is used in both of its subsections, provision is made for service to be effected under s 115 in various different ways. Thus, a list of options was, it was submitted, provided and the Inland Revenue could not effect service by a means outwith that list.

[31] It is, however, notable that the court was careful to indicate in the Goodfellow case that the use of the term "shall" in the underlying provisions of the Agricultural Holdings Act affected the interpretation of the available list of options for service so as to make it clear that they were the only options that could be used. As Lord Anderson said that the effect of reading the statutes together was that: "The term 'may' of the rule is designed to give a choice, but a choice which is limited to the three categories therein mentioned." Further, the word "shall" does not appear in s 115 of TMA and s 725 of the Companies Act 1985 contains no list of options. The only means of service mentioned in that section is service at a company's registered office. I am not persuaded that the reasoning in the Goodfellow case requires me to read s 725 of the Companies Act 1985 as providing that the only way of serving a document on a company is to do so."

[18] The ***Spring Salmon and Seafood Ltd*** case turns on quite particular facts, not least because the Petitioner had taken advice in respect of the service point and its advisors had engaged in an exchange in respect of the Notice a considerable time before it began to challenge the validity of service of the Notice. Furthermore, the Notice itself did not have to be in written form.

[19] More significant, however, is the fact that although the wording of Section 725 of the Companies Act 1985 corresponds to that of Section 1139(1) of the Companies Act 2006, the Act which comes 20 years later(following the huge changes effected by the introduction of Email and in respect of postal service) contains a further relevant provision. Schedule 4 is entitled "Documents and

Information sent or supplied to a Company." This schedule does not apply to documents emanating from another company. Schedule 4, Part 2 refers to "Communications in Hard Copy Form". The Introduction at Schedule 4, Part 2, Paragraph 2 reads:-

> *"A document or information is validly sent or supplied to a company if it is sent or supplied in hard copy form in accordance with this Part of the Schedule."*

Reasonable interpretation of this provision is suggestive of the list of options provided thereafter being an exclusive list of the kind referred to in *Goodfellow*. Schedule 4, Part 2 continues:

> *"Method of communication in hard copy form*
>
> *3 (1) A document or information in hard copy form may be sent or supplied by hand or by post to an address (in accordance with paragraph 4).*
>
> *(2) For the purposes of this Schedule, a person sends a document or information by post if he posts it a prepaid* envelope *containing the document or information."*

Paragraph 4 specifies;

> *"Address for communications in hard copy form*

4 A document or information in hard copy form may be sent or supplied-

(a) to an address specified by the company for the purpose;

(b) to the company's registered office;

(c) to the address to which any provision of the Companies Acts authorises the document or information to be sent or supplied."

Part 3 of the provision refers to electronic communication and so is not relevant and Part4 refers to alternative means of sending or supplying documents and information where there is a specific agreed alternative arrangement in existence between the despatching party and the company.

[20] The 2006 legislation clearly permits service of documents on companies at addresses other than their registered offices, by prior agreement. In drafting the legislation account was taken of the development of electronic communication and of the need to consolidate Company Law provisions applicable throughout the entire UK in the context of developments in European Commercial Law and International Conventions.

CONCLUSION

[21] The question whether the delivery of the envelope on 19 September to Neil Hamilton amounted to good service upon the prospective Appellant Company has to be approached against the backcloth of the current legislative framework and of the operation of modern commercial communication methods.

[22] I take account of the fact that the delivery on 19 September 2011 was not effected at the address which appeared on the envelope, namely that which had been provided in the Notice of Intention to apply for Compensation dated 20 June 2011,and so might arguably be an 'agreed' alternative to the registered office. It was delivered at an address referred to after the word 'of' on the form entitled "Application for Compensation" dated 1st August 2011. This appears to have been a happy coincidence which arose mainly because the postman was conscientious and had some local knowledge. The Agency itself had meantime sent a further enquiry dated 23 August 2011 to the Chestnut Manor address to which the Notice was addressed. I regard as significant the fact that Neil Hamilton was not a Company Officer. In fact he was neither a shareholder nor employee. The Companies Act 2006 establishes a system for service either at a registered office or by agreement elsewhere but does not extend to delivery into the hands of any unauthorised individuals who are not connected to the company. Service upon a company of a document of this gravity cannot be validly effected in the manner which would suffice for delivery of a package containing online shopping.

[23] In all the circumstances I do not consider valid service of the Notice of Determination was effected until the envelope came into the possession of Maynard Hamilton.