

Neutral Citation No. [2012] NIQB 58

Ref: WEA8542

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

Delivered: 22/6/2012

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

**QUEEN'S BENCH DIVISION (COMMERCIAL)**

2011/096121

**JAMES ANTHONY CRAVEN and CAROLINE CRAVEN  
& OTHERS**

**Plaintiffs;**

**-v-**

**ALESSANDRA BELLANCA  
ANNA CINZIA D'ASPRA  
GABRIELE GIAMBRONE  
p/a GIAMBRONE & LAW, SOLICITORS and EUROPEAN LAWYERS**

**Defendants.**

2012/030273

**ROBERT GORDON MARTIN and HEATHER ELAINE MARTIN  
& OTHERS**

**Plaintiffs;**

**v.**

**ALESSANDRA BELLANCA  
ANNA CINIZIA D'ARPA  
GABRIELE GIAMBRONE  
p/a GIAMBRONE & LAW, SOLICITORS and EUROPEAN LAWYERS**

## WEATHERUP I

[1] The plaintiffs applied for a determination that this Court has jurisdiction to hear both actions. Mr O'Donoghue QC and Mr Girvan appeared for the plaintiffs and Mr Gibson for the defendants.

[2] The Craven action is a group action by 22 plaintiffs who purchased holiday apartments at a development known as El Caribe at Calabria in Italy. The apartments were never built and the plaintiffs have been unable to recover their investments. The defendants are said to be solicitors authorised to practise in law in Italy and in England and Wales. The defendants acted as solicitors for each of the plaintiffs in handling the conveyancing in connection with the properties and in each instance the claim relates to the loss of a deposit paid to the defendants for onward payment to the builder or agent in Italy. The defendants were introduced to each plaintiff by the promoter of the development in the United Kingdom and Ireland and in each instance the plaintiff's contact was by correspondence or by telephone from the defendants. In no instance did a plaintiff visit the offices of the defendants either in Italy or in London. It is alleged that the defendants were in breach of contract and were negligent. It is stated that the defendants continue to practise as solicitors as Giambrone and Law from offices in Greenwich in London.

[3] The investors were brought together by the solicitors on record for the plaintiffs and by 2011 the solicitors had instructions from a total of 26 investors, of whom 16 were domiciled in Northern Ireland, 7 in England, 2 in Scotland and 1 in the Republic of Ireland. On 6 December 2010 a Writ of Summons was issued in Northern Ireland against the defendants on behalf of a Joseph and Patricia Plant who were domiciled in Northern Ireland. The Writ was served outside the jurisdiction on the defendants' legal representatives in Bristol, England, who had authority to accept service of proceedings. Unconditional appearances were entered on behalf of the defendants and the claim was settled in full by the defendants.

[4] Thereafter the present proceedings were issued in Northern Ireland on 10 August 2011 on behalf of the remaining investors in the El Caribe development and the same solicitors in Bristol confirmed that they had authority to accept service of proceedings and entered unconditional appearances on behalf of the defendants. A Statement of Claim was served but a Defence has not been delivered.

[5] The Martin action is a group action by 101 plaintiffs who purchased holiday apartments in a development known as the Jewel of the Sea in Calabria in Italy. 61 plaintiffs are domiciled in Northern Ireland, 11 in England, 2 in Scotland, 26 in the Republic of Ireland and 1 domiciled in England presently lives and works in Hong Kong. Earlier proceedings were brought in respect of another plaintiff William Baxter, domiciled in Northern Ireland, which proceedings were settled by the

defendants. The present proceedings were then issued and the solicitors in Bristol, on behalf of the defendants, wrote to the plaintiffs' solicitors asking for an explanation as to the plaintiffs' right to bring the claims in Northern Ireland and hence raising this jurisdiction issue. No appearances have been entered in the Martin action.

[6] The defendants filed an affidavit by their solicitor which indicates that at the time of the transactions with which all the plaintiffs are concerned the defendants practised as a partnership known as Giambrone and Law. This partnership was dissolved when the defendants founded Giambrone and Law LLP on 5 April 2008 and the LLP itself ceased trading as an SRA regulated law firm on 5 April 2009 and was eventually dissolved in January 2010. It is therefore stated that it is incorrect for the plaintiff to say that the defendants continue to practise as solicitors as Giambrone Law LLP at Greenwich, London. However it is conceded that the correct defendants in any proceedings are the partnership and the LLP.

[7] Unconditional appearances have been entered in the Craven action. The plaintiffs say that the defendants thereby submit to the jurisdiction and waive any issue as to jurisdiction. The defendants say that the plaintiffs have nevertheless to establish that the Court has jurisdiction to hear the actions. Reference was made to Wilkinson v Barking Corporation [1948] 1 KB 721 where an unconditional appearance was entered to a claim for a superannuation payment and a Defence pleaded that under the relevant legislation any question as to the plaintiff's right to superannuation was to be determined by the Minister of Health. It was held by the Court of Appeal that the Court did not have jurisdiction. The judgment of Asquith LJ stated -

“No act of the parties can create in the courts a jurisdiction which Parliament has said shall vest, not in the courts, but exclusively in some other body. Nor again can a party submit to, so as to make effective, a jurisdiction which does not exist.”

[8] Reference was also made to Rothmans of Pall Mall v. Saudi Arabian Airlines Corporation [1981] QB 368. By contracts made with the first plaintiffs at Amsterdam the defendant airline agreed to carry a consignment of cigarettes from Amsterdam to Jeddah for delivery to the second plaintiffs. Some of the cigarettes were lost and the plaintiffs issued a writ which was served on one of the defendants branch offices in England claiming damages against the defendant. The defendant entered an unconditional appearance but then sought leave to withdraw that unconditional appearance. The Court of Appeal ordered the proceedings to be set aside under Article 28(1) of the Schedule 1 to the Carriage by Air Act 1961 as this was a self contained code dealing with jurisdiction. Proceedings were only to be taken before the court having jurisdiction where the carrier was ordinarily resident or had his principal place of business or had an establishment by which the contract had been

made or before the court having jurisdiction at the place of destination. The plaintiff could not satisfy the jurisdiction requirements.

[9] In the Craven proceedings the plaintiffs must establish that the Court in Northern Ireland has jurisdiction in respect of the proceedings. Unconditional appearances entered by defendants cannot vest in the Court a jurisdiction that does not otherwise exist.

[10] In both sets of proceedings the defendants accept that there is jurisdiction in respect of the plaintiffs domiciled in Northern Ireland. Therefore the issue concerns the inclusion in the proceedings of the plaintiffs domiciled in England and Scotland and the Republic of Ireland. The defendants are an Italian law firm and I proceed on the basis that the offices in London are a branch office of the defendants firm.

[11] The international obligations are contained in Council Regulation EC 44/2001 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters.

Article 2 provides that, subject to the Regulations, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

Section 2 deals with 'Special Jurisdiction' and contains a number of exceptions to jurisdiction based on the defendants domicile. Article 5 states that a person domiciled in a Member State may, in another Member State, be sued in matters relating to contract '*in the courts for the place of performance of the obligation in question*' and in matters relating to tort may be sued '*in the courts of the place where the harmful event occurred or may occur*'.

Provision is made for consumer contracts and it is agreed that the present plaintiffs are 'consumers'. Article 15(2) states that where a consumer enters into a contract with a party who is not domiciled in the Member State but has a branch agency or other establishment in a Member State that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State. Thus the defendants, having a branch office in London, are deemed to be domiciled in the UK.

Article 16 provides that a consumer may bring proceedings against the other party to a contract *either in the courts of the Member State in which the party is domiciled or in the courts of the place where the consumer is domiciled*. Thus the plaintiffs as consumers have a choice between the Member State of their domicile and the domicile of the defendants. The domicile of the defendants is deemed to be the UK under Article 15(2). The domicile of all plaintiffs is either in the UK or the Republic of Ireland.

[12] As far as the plaintiffs domiciled in the UK are concerned it is necessary to determine where, within the three jurisdictions of the UK, the plaintiffs may sue or the defendants may be sued. The defendants domicile within the UK is in England where its London office is based.

[13] The provisions in relation to intra-UK jurisdiction are contained in the Civil Jurisdiction and Judgments Act 1982.

Section 16 deals with the allocation within the UK of jurisdiction in certain civil proceedings. Schedule 4 has effect in determining for each part of the UK whether the courts of that part or any particular court of law in that part have or has jurisdiction in proceedings where the defendant is domiciled in the UK.

Schedule 4 rule 1 states the general rule that persons domiciled in a part of the UK shall be sued in that part.

Rule 3 provides that a person domiciled in a part may be sued in another part in matters relating to contract '*in the place of performance of the obligation in question*' and in matters relating to tort '*in the courts of the place where the harmful event occurred or may occur*'.

Rule 8 provides that a consumer may bring proceedings against the other party to a contract either *in the courts of the part of the UK in which the party is domiciled or in the courts in the part of the UK in which the consumer is domiciled*.

[14] With the plaintiffs being domiciled in England or Scotland or in the Republic of Ireland the place of performance of the obligations under the contracts or the place of the harmful event in claims for tort will not be in Northern Ireland. Rule 8 deals with the domicile of the consumer or the defendant, which establishes Northern Ireland jurisdiction for Northern Ireland plaintiffs, but does not establish jurisdiction for the other plaintiffs.

[15] Rule 5 provides (and it is not this case) that a person domiciled in a part of the UK may be sued in another part where he is one of a number of defendants in the courts of the place where any one of them is domiciled provided that the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. Rule 5 refers to multiple defendants but it does not refer to multiple plaintiffs.

[16] Accordingly the non-Northern Ireland plaintiffs turn to section 49 of the 1982 Act as a basis for jurisdiction in Northern Ireland. Section 49 provides that nothing in the Act shall prevent any Court in the UK from staying, sisting, striking out or dismissing any proceedings before it, on the grounds of forum non conveniens or otherwise, where to do so would not be inconsistent with [the European Conventions].

[17] First of all this is a provision granting the Court the power to stay, strike out or dismiss proceedings. It is not a provision which permits the Court to add additional parties to the proceedings. The plaintiffs emphasise the forum conveniens for all plaintiffs and not just the Northern Ireland plaintiffs as being the group action underway in Northern Ireland. That may make practical sense even though the additional plaintiffs are domiciled in Scotland, England or the Republic of Ireland. However the Court in Northern Ireland must have jurisdiction to deal with the claims of the additional plaintiffs. The connection to Northern Ireland that is said to establish jurisdiction is that all the plaintiffs pursue identical causes of action in Northern Ireland. I am satisfied that that is not a basis on which to establish that jurisdiction exists in respect of those plaintiffs who are not domiciled within Northern Ireland. The plaintiffs may sue in the domicile of the plaintiffs or the domicile of the defendant. The domicile of the defendants is England. The non-Northern Ireland plaintiffs have no connection with Northern Ireland other than the identity of interest that all plaintiffs have in a successful outcome to these proceedings. I decline jurisdiction in respect of the non Northern Ireland plaintiffs.