

Neutral Citation No. [2014] NIQB 121

Ref: **STE9442**

Judgment: approved by the Court for handing down

Delivered: **10/10/14**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN;

NORTHERN BANK LIMITED

Plaintiff:

-and-

JOHN McHUGH

Defendant:

STEPHENS J

[1] The plaintiff, the Northern Bank Limited, brings this action claiming the repayment of a loan of £336,432.67 plus interest from the defendant, John McHugh.

[2] The writ of summons, indorsed with a statement of claim, was issued on 29 November 2013. The defence was served on 20 March 2014 and it alleges that the plaintiff "was guilty of irresponsible lending to the defendant". The action was set down on 28 May 2014. On 2 June 2014 the parties were notified by the Central Office that as they had not indicated an agreed date between them for the hearing of the matter the case was to be reviewed by the judge on 12 September 2014. The parties were invited to attempt to agree proposed directions in relation to the future conduct of the action and by 12 noon on the date prior to the hearing of the review send to the court office agreed proposed directions together with an agreed date for hearing.

[3] At the review hearing on 12 September 2014 the court enquired as to why the action was not in the commercial list. In response it was suggested on behalf of the plaintiff that as the writ was for monies due and owing on foot of a loan that the action was not a commercial action unless and until it acquired that character upon the defence being served. Further that the plaintiff did not wish to incur the

additional fee payable of £150 on a transfer to the commercial list in relation to every action that it commenced seeking repayment of loans. Directions were given by the court in relation to matters such as expert evidence but in addition it was directed that the matter be listed again for review on 10 October 2014 so that further consideration could be given to the question as to whether the plaintiff had complied with the provisions of Order 72 of the Rules of the Court of Judicature (Northern Ireland) 1980.

[4] Whether an action is a commercial action does not depend on whether there is a dispute. Order 72 provides that a commercial action includes, amongst other causes, any cause relating to commercial transactions and this in turn includes any cause relating to banking. This action was a commercial action quite irrespective as to whether there was any dispute on behalf of the defendant and quite irrespective as to the terms upon which the defendant disputed the plaintiff's claim.

[5] Accordingly there should have been:-

- (a) Adherence to the pre-action protocol for commercial actions dated 21 December 2012 and which took effect on 1 January 2013.
- (b) Adherence to the Commercial Practice Note dated 21 December 2012 which also took effect on 1 January 2013.

[6] The Commercial Practice Note provides that in respect of all writs of summons issued in the Queen's Bench Division where the plaintiff's solicitor or the plaintiff (if not represented by a solicitor) considers the action to be a "commercial action", the plaintiff's solicitor or the plaintiff (if not represented by a solicitor) shall add to the writ, after the indorsement of claim, the words:-

"In the opinion of the plaintiff's solicitor/plaintiff this is a commercial action."

The writ of summons in this action was not so endorsed. If it had been then it would have been referred to the Commercial Judge.

[7] Furthermore Order 72, Rule 3(1)-(2) states:-

"3(1) On the commencement of proceedings in a commercial action the plaintiff's solicitor shall request the registrar in charge of the commercial list to have the action entered in the commercial list.

3(2) Any party to a commercial action may at any stage of the proceedings request the registrar to have the action entered in the commercial list."

[8] Commercial actions should be identified at an early stage. The obligation to do so is primarily on the plaintiff but it is also an obligation on all the parties to the action. As soon as party identifies that the matter should be in the commercial list then the case should be brought to the attention of the Commercial Judge who may require that the plaintiff makes an application to transfer the case and pay the appropriate fee. The plaintiff in this case and in every commercial action has an obligation to pay the appropriate fees for commercial actions to the Courts and Tribunals Service. The fee in this case ought to have been paid in November 2013. I will order that the action is brought to the attention of the Commercial Judge and that the plaintiff pays the requisite fee.