

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

Pantridge's (Frank) Application (Leave Stage) [2011] NIQB 9

**IN THE MATTER of an Application by Frank Pantridge
for Leave to Apply for Judicial Review**

McCLOSKEY J

[1] This is an application for leave to apply for judicial review by Mr. Pantridge, who represents himself.

[2] The story of this litigation is readily ascertained by reference to the following documents appended to this short judgment:

- (a) "Small Claim Application Form" [Appendix 1].
- (b) The Applicant's letter dated 5th January 2010 to the Society of Motor Auctions [Appendix 2].
- (c) The order of District Judge Wells, dated 11th June 2010 [Appendix 3].
- (d) The written decision of Judge Burgess, the Recorder of Belfast, dated 22nd September 2010 [Appendix 4].
- (e) The Applicant's Order 53 Statement, dated 21st December 2010 [Appendix 5].

[3] In short, the Applicant brought proceedings in the Small Claims Court against Wilsons Auctions Mallusk ("*the auctioneers*" - Appendix 1). His complaint was that the auctioneers had sold his vehicle by private treaty (not by auction) at a significant under value, the alleged shortfall being some £1,400. The auctioneers disputed this claim. According to the evidence, following four failed auction attempts during which the reserve price of the vehicle was reduced by agreement of the parties, the auctioneers secured an offer to purchase by private treaty for the sum of £5,500, to which the Applicant agreed. That the Applicant signified his consent to this sale is

confirmed by the terms of his letter dated 5th January 2010 to the Society of Motor Auctions [Appendix 2]:

“The auctioneer then called me back later in the afternoon to say that he had found someone who was prepared to pay £5,500 for the car and he advised me to accept the offer ...

I agreed to sell the car at that price ...”.

This letter was a prelude to a mediation decision, dated 19th March 2010. The mediator was Mr. Reeves LLB, a solicitor attached to the National Conciliation Service. He found in favour of the auctioneers. His mediation decision includes the following material passages:

“As the vehicle was not sold at auction the private treaty bid was put to Mr. Pantridge which he accepted ...

Further it is accepted by both parties that Mr. Pantridge agreed that his vehicle should be sold for £5,500 ...

Conclusion

I do not find that Wilsons Auctions have breached their duty to Mr. Pantridge ...

If Mr. Pantridge was not happy with the price offered he always had the option of withdrawing the vehicle from the auction and selling it elsewhere. I do not conclude therefore that Mr. Pantridge’s claim succeeds.”

[4] The Applicant then initiated proceedings in the Small Claims Court [Appendix 1]. In the formulation of his claim, the essential complaint advanced was that the auctioneers had provided him with *“misleading price information”*. Subsequently, he informed the court in writing that the causes of action which he was invoking were breach of duty of care, misrepresentation and professional negligence. On 11th June 2010, District Judge Wells dismissed his claim [Appendix 3]. Following this, the Recorder of Belfast became seized of the matter. The precise route whereby this occurred is unclear. However, it would *appear* that the Applicant attempted to appeal against the order of District Judge Wells on a point of law (see the Recorder’s decision, paragraph 4 – Appendix 4). In dismissing this appeal the Recorder stated, *inter alia*:

“I am more than satisfied that all issues of law, whether contractual, statute or common law were ventilated in the documents prior to the hearing and that the District Judge would have had them before him in order to consider his decision ...

This court's jurisdiction is confined to appeals on points of law ...

I have looked at this matter anxiously, but have had to conclude that nothing has been disclosed or shown to me to allow me to conclude that I have jurisdiction under the legislation to hear this appeal".

[5] In his Order 53 Statement [Appendix 5], the Applicant seeks the following relief:

"The remedy of setting aside the decision of the District Judge and an order that the matter be referred back to the District Judge's Court for a fresh hearing".

At the hearing in this court (on 11th February 2011), the Applicant confirmed that he wished to challenge also the decision of the Recorder. It is unnecessary to rehearse the grounds of challenge, as these are appended hereto. The first two grounds of challenge enshrine complaints about the conduct of the auctioneers and have no judicial review dimension. I construe the third (and final) ground to resolve to a contention that the decisions of the first and second instance courts who have determined the Applicant's claim against the auctioneers are vitiated by irrationality.

[6] The test to be applied to this court, at this stage, is whether the Applicant has overcome the modest hurdle of establishing an arguable case. I conclude without hesitation that he has not. The evidence before this court fails to disclose any vestige of arguable irrationality or illegality or any other public law misdemeanour in the decisions of either District Judge Wells or the Recorder. This is an undisguised attempt to mount an appeal on the merits, an impermissible exercise in this court of supervisory jurisdiction. This is not an appellate tribunal. The application for leave to apply for judicial review is dismissed accordingly.

[7] For the record, I add that this application was determined by the court *ex parte*, at an oral hearing attended by the Applicant. The court did not consider it necessary for either of the tribunals concerned to be represented at this stage. There will be no order as to costs.

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[Appendix 1]

10/045501
Unliquidated

Form 125
Order 26, Rule 4

SMALL CLAIM APPLICATION FORM

Applicant(s):
Frank Pantridge

[REDACTED]
[REDACTED]
[REDACTED]

Respondent(s):
WILSONS AUCTIONS MALLUSK

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Take notice that the above applicant(s), intend to apply to the Small Claims Court at LAGANSIDE COURTS for a decree in respect of:-

My Claim for:	£	2000.00
*Interest:	£	33.00
The Court Fee:	£	100.00
Total:	£	2133.00

*Only include a figure if you wish to claim interest and have given details of the rate and the period covered within your claim description.

Claim Description

I recently engaged Wilsons Auctions Mallusk to sell my car. I telephoned the company regularly for four weeks to learn if the car had been sold. Each time the reply was no - despite my having lowered the reserve price from £7,500 to £6,900. After four weeks had gone by the auctioneer, Mr John Ardill, telephoned me and informed me that he had received a 'private treaty bid' for the car of £5,500.

When I informed the auctioneer, Mr Ardill, that Charles Hurst had offered me £6,900 for the car just four weeks before, he replied that that was because I was buying a new car from Charles Hurst. This misleading price information led me to wrongly conclude that £5,500 was an acceptable price for the car - and thus to agree to its sale at this price. I now know that £5,500 was some £2000 below its market value.

Wilson's website indicates an obligation on the part of Mr Ardill to provide free valuations and consultations to buyers and sellers: 'Buying or Selling? Contact John Ardill or Michael Blair on 02890 [REDACTED] for a free valuation or consultation.' <http://wilsonsauctions.com/malluskcarstues.asp> I had a consultation with him on the day that I agreed to sell the car.

Mr Johnston, Wilson's Groups Operations Director, has stated in writing that: 'It is generally accepted in the trade that a part exchange price against another vehicle is £1000 to £1500 more

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than a stand alone price or straight sale price. Therefore Charles Hurst straight sale price could have been £5417 to £5,917. Both Charles Hurst and Olass have confirmed this to be nonsense.

Interest = 5% of £2000 over 4 months.

Statement of Truth

I believe that the facts stated in this form are true.

Signed by: Frank Pontillo

Company/Position held: Not applicable

Date: 10/04/2010

[Appendix 2]

29663 '5'

05 January 2010

The Society of Motor Auctions
2nd floor
9, North Street
Rugby
Warwickshire
CV21 2AB

Dear Sir or Madam

I recently sold my car through a firm of auctioneers known as Wilson's Auctions, who purport to be members of your association. Their address is [REDACTED]

The car was a Honda Civic 1.4. It was over 3 years and a half years old, but it only had 10,000 miles on the clock. Glass ascribed to it an average trade-in price of £7,190.00 (Please see the valuation enclosed).

When I phoned the auctioneer to find out whether the car had sold - I had placed a reserve price of £6,900 on the car - the auctioneer asked me how much I was looking for the car. I thought that it was a strange question for an auctioneer to ask a seller. I replied that I was looking for what the market would pay for the car. Is that not the whole idea of an auction? And surely he must have had an idea of the value of the car himself?

The auctioneer then called me back later in the afternoon to say that he had found somebody who was prepared to pay £5,500 for the car and he advised me to accept the offer. I should point out that this was not occurring during a live auction.

I agreed to sell the car at that price - what other option did I have? Unless I attempted to sell the car myself - but the experience has continued to perplex me. I suppose one question I ask myself is how did the auctioneer know that somebody would not bid more for the car in the actual auction scheduled for that evening (10/12/2009)?

I should be obliged if you would advise me as to whether this experience conforms to how you believe auctioneering should be conducted and whether you think I received a fair price for the car?

Yours faithfully

Frank Pantridge



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[Appendix 3]

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SMALL CLAIMS COURT RECORD

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Venue Laganside Courthouse

Date 11 June 2010

Case Num 10/045501

Time 10:00 AM Mr Frank Pantridge 21.12.10

Applicant Mr FRANK PANTRIDGE
Respondent WILSONS AUCTIONS MALLUSK

Claim Amount £ 2000.00

Court Fee £ 100.00

Claim Type: Unliquidated

Claim Details:

Hearing Type DISPUTED SMALL CLAIMS

Post Date 16 April 2010

Witnesses

A ✓
R *[Signature]*

Court Order

[Signature]

Stay of execution of the within award providing the respondent pays the amount of £
1 week/month commencing on the

Signed

[Signature]

DISTRICT JUDGE/WBLLS
11 June 2010

[Appendix 4]

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UL 11/11/10
Plaintiff Frank Pantridge 21.12.10
SMALL CLAIMS
10/45501/AU1

FRANK PANTRIDGE
APPELLANT/PLAINTIFF
AND
WILSON AUCTIONS LIMITED
RESPONDENT/DEFENDANT

- [1] The plaintiff issued proceedings against the defendant in respect of the sale of a car by the defendant belonging to the plaintiff. The car was to be sold by auction and the parties entered into a contract setting out the terms and conditions under which the sale by auction would take place. Therefore part and parcel of the action taken by Mr Pantridge is grounded on that contract. Other grounds were raised by him and I will come to those shortly.
- [2] A reserve price was placed on the car and the defendants in their evidence stated that attempts were made to sell it at auction. Their evidence was that when this was not successful it was sold by way of private tender at a price which was not insubstantially lower than the reserve price (which had already been adjusted from the original price). Evidence was given to the District Judge by both parties as to the progress of events to that point of the sale of the car by private treaty. ~~Evidence included that given by the defendants' representative who stated that he had advised Mr Pantridge of the offer, which was available to him to refuse or to withdraw the car from the auction. In the event Mr Pantridge accepted the offer in and around 10 December 2009.~~
- [3] Mr Pantridge was aggrieved at the price obtained and the process by which he came to accept that price. He took the present proceedings before the District Judge and I believe it fair to say that he put before that court a considerable amount of evidence by way of documentation prior to the hearing, setting out what he believed to be all the legal issues and the relevant factual background involved. These included the contractual relationship to which I have referred, and also other claims that the defendants were in breach of a professional duty of care owed to him in terms of advice as to the value of the car; a claim that there had been misrepresentation on their part; and a claim that there was no evidence that any attempt had been made by the defendants to sell the car by auction – a very serious allegation indeed. Also before

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the court was evidence from the defendant's General Practitioner as to his health at the time of the transaction. This would appear to have been lodged with a view to arguing that he could not have been in a proper medical condition properly to enter into the agreement to sell.

[4] ~~The matter was determined by the District Judge in June 2010 when the plaintiff's claim was dismissed. He now appeals against that decision.~~

[5] Every case involves principles of law, and also the obligation of the court to establish facts as the court determines them to be. I am more than satisfied that all issues of law, whether contractual, statute or common law, were ventilated in the documents prior to the hearing, and that the District Judge would have had them before him in order to consider his decision. I am also satisfied that all facts were before the judge to establish a factual matrix which would then have been subjected to the legal principles to which I have just referred.

[6] ~~This court's jurisdiction is confined to appeals on points of law.~~ From that a number of scenarios arise with certain consequences.

- (1) If a principle of law was not addressed, then arguably that could form the basis of an appeal;
- (2) If all the principles of law were addressed, but the decision reached by the court is totally unreasoned and defies logic, the remedy lies, not to this court, but to the Divisional Court by way of Judicial review - seeking the remedy of setting aside the decision of the District Judge and an Order that the matter be referred back to the District Judge's court for a fresh hearing;
- (3) What I may have decided what did or didn't happen, based on my view of the evidence, is not an exercise which is within the powers given to this court by Statute; and
- (4) How I may have applied the principles of law involved in the matter to the facts as I may have determined them is not a course of action available to me. In saying this I must make it clear I am making no comment on what result may have been arrived at if indeed I had that power.

[7] Mr Pantridge clearly is extremely exercised by this matter, and believes that he has been wronged. His view therefore is that there

has to be a remedy. However any determination of a case and any determination of what, if any, remedy is available to any complainant is provided for by a system of determination established by statute. In this case the procedure is that taken through the District Judge's court by way of the small claims process. Parliament concluded that in such a procedure, while an appeal on a point of law would be available, no provision should be made for a re-hearing. I am satisfied that the District Judge had all of the issues opened to him through the previous documentation, all of which I have read, and which I have also read in the context of the basis of the appeal made by Mr Pantridge. I am reinforced in that view by the certainty that all of Mr Pantridge's points would have been ventilated by him, Mr Pantridge, at the hearing.

[8] I have looked at this matter anxiously, but have had to conclude that nothing has been disclosed or shown to me to allow me to conclude that I have jurisdiction under the legislation to hear this appeal.

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[Appendix 5]

1997 No 106

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER of an application by Frank Pantridge for Leave to apply for Judicial Review

STATEMENT PURSUANT TO THE RULES OF THE SUPREME COURT (NI) 1980
ORDER 53 RULE 3(2)(A)

1/ The applicant is Frank Pantridge of [REDACTED]

2/ The relief sought is --

- (a) the remedy of setting aside the decision of the District Judge and an order that the matter be referred back to the District Judge's court for a fresh hearing.
- (b) such further and other relief as may be just

3/ The grounds on which the said relief is sought are as follows-

- (a) Mr Johnston of Wilsons Auctions has failed to accede to my request to view the recordings of the auctions through which the car passed, in opposition to his written declaration of 22 January 2010 to the Society of Motor Auctions.
- (b) Wilsons Auctions have acted contrary to natural justice and have not discharged their duty of acting fairly and providing best advice by orchestrating the market failure that occurred. I define a reasonable market price for my car with reference to Glass's guide. The guide is trusted by the motor industry and is indeed relied on by trading standards.
- (c) On 2nd July 2010, I submitted an application to appeal District Judge Wells' decision of 11th June 2010 to dismiss the case. Point 2, of section 6, of the Appeal Judge's finding - dated the 1st October 2010 - states that: "If all the principles of law were addressed, but the decision reached by the court is totally unreasoned and defies logic then the remedy lies to the Divisional Court by way of judicial review -- seeking the remedy of setting aside the decision of the District Judge and an Order that the matter be referred back to the District Judge's court for a fresh hearing." I believe that in the face of the "factual matrix" the decision to dismiss the case was unreasonable; that the case requires a more meticulous examination of the facts than it was afforded at the initial hearing.

Dated this 21st day of December 2010

Signed... *Frank Pantridge*
Applicant

