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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**08/12/2021**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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IN THE MATTER OF AN APPLICATION BY JP MURPHY LIMITED FOR AN ORDER DIRECTING A JUDGE OF THE HIGH COURT TO STATE A CASE FOR THE OPINION OF THE COURT OF APPEAL

AND IN THE MATTER OF COUNTY COURT PROCEEDINGS

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BETWEEN:

THE REGISTRAR OF COMPANIES

Plaintiff:

-and-

JP MURPHY LIMITED

Defendant:

_____

Representation

Plaintiff: Mr Nicholas Hanna QC and Mr Robert Hermon, of counsel, instructed by Wilson Nesbitt solicitors
Defendant: represented by its Director John Paul Murphy

_____

Before: Keegan LCJ and McCloskey LJ

_____

McCloskey LJ (delivering the judgment of the court)

Introduction

[1] JP Murphy Limited ("*the defendant*") is the defendant in county court proceedings brought by The Registrar of Companies ("*the plaintiff*"). John Paul Murphy is a director of the company and its representative before this court. The defendant seeks the adjudication of this court in respect of the following, as specified in its notice of motion dated 13 August 2021:

> "… an Order directing the High [sic] Judge to state a case for the opinion of the Court of Appeal."

This, therefore, is a purported challenge to a decision and order of a judge of the High Court.

[2] Following a pre-trial review listing Mr Murphy agreed in writing to the mechanism of paper determination of his application. Notwithstanding, the court received oral submissions from both parties on 1 December and, subsequently, further materials of a formal nature from the plaintiff and Mr Murphy's rejoinder. On the eve of promulgating this judgment the defendant suggested in writing that the judicial panel should withdraw. No coherent or sustainable ground for doing so was put forward. If and insofar as there was any hint of apparent bias in the suggestion, the court considered this to have no semblance of substance.

History

[3] The civil bill, which is dated 22 January 2019, claims £9,000 said to be due and owing by the defendant to the plaintiff pursuant to section 441 of the Companies Act 2006 arising out of the defendant's alleged failure to file with the plaintiff copies of its annual accounts, Director's Report for the year and auditor's report in respect of the three successive years 2013, 2014 and 2015. The amount claimed is described as a "civil penalty."

[4] The initiation of the county court proceedings was preceded by a prosecution of Mr Murphy who on 26 January 2016 was convicted of the offence of failing to file company accounts for the year ending 31 October 2013 in circumstances where those accounts ought to have been filed no later than 31 July 2014 contrary to sections 441 and 451 of the Companies Act 2006. The punishment was a fine of £80. Mr Murphy's subsequent challenges to this conviction in the county court and this court were unsuccessful. It appears that an attempt to bring the case before the United Kingdom Supreme Court may be pending.

[5] The application by the defendant requiring adjudication by this court materialises by the following somewhat convoluted route:

(i) The proceedings in the county court were initiated on 13 February 2019.

(ii) The defendant served a notice of intention to defend, dated 4 April 2019.

(iii) On 16 April 2019 the plaintiff served a notice requiring particulars of the defence, a notice requiring discovery and a notice to produce.

(iv) Next the defendant served a rather bare list of documents, dated 18 October 2019.

(v) On 19 August 2020 the plaintiff served a notice giving intention of its application for an interlocutory order arising out of the defendant's asserted failure to respond to any of the aforementioned notices.

(vi) On 28 August 2020 the defendant served written objections.

(vii) On 27 October 2020 the plaintiff applied for the following relief: an order striking out the defendant's defence or, alternatively, an "unless" order arising out of the asserted "Non-compliance with Notices by the Defendant …."

(viii) On 19 February 2021 the district judge in the county court made an unless order against the defendant in the following terms:

> "IT IS ORDERED THAT UNLESS the Defendant provides Replies to the Plaintiff's Notice for Particulars of Defence AND ALSO provides discovery by way of a List, to the Plaintiff's solicitors, within 14 days from the date of service of this Order, the Defendant's Defence shall be struck out and the Plaintiff shall be at liberty to enter judgement against the Defendant together with the costs of the action."

The defendant was further ordered to pay the plaintiff's costs of the application.

(ix) A notice of appeal to the High Court dated 4 March 2021 followed.

(x) A hearing before the High Court ensued on 18 June 2021, inter-partes. The plaintiff was represented by counsel and the defendant was self-representing. The appeal was partly successful. Per the order of the court of the aforementioned date:

> "THE JUDGE ORDERED that the appeal be:
>
> 1. Allowed in respect of the [NFBP], one having already been provided.

2. Refused in the matter of a List of Documents. A formal List of Documents from the defendant shall be provided within 21 days.

3. An application for a stay should be made to the judge hearing the case in the County Court.

4. Costs to be costs in the cause."

(xi) By formal notice dated 9 July 2021 the defendant applied to the High Court Judge to state a case for the opinion of the Court of Appeal.

(xii) By order dated 2 August 2021 the High Court dismissed the defendant's application. This order was made in chambers, without any inter-partes listing. Following the formal recitals, it states:

> "IT IS ORDERED THAT the application to state a case is hereby dismissed."

(xiii) By formal notice dated 13 August 2021 the defendant applied to this court for an order directing the High Court to state a case for the opinion of this court.

The Statutory Provisions and Their Predecessors

[6] The order of the county court which the defendant sought to challenge by appeal to the High Court was of the interlocutory variety. An order of this species is a "decree": see Article 2(2) of the County Court (NI) Order 1980 (the "1980 Order"). Thus an appeal to the High Court lay, either by rehearing under Article 60 or by case stated under Article 61. The appeal in this case was by the former mechanism. Illustrations of such appeals are provided by *Hartley v Chief Constable* [1989] 3 NIJB 60 and *Mahon v Sharmi* [1990] NI 106.

[7] Part (VI) of the 1980 Order regulates the topic of "Appeals from and Cases Stated by County Courts." The subject matter of Article 60 is "Ordinary Appeals from the County Court in Civil Cases." Article 60 County Courts (NI) Order 1980 provides:

> "60.-(1) Any party dissatisfied with any decree of a county court made in the exercise of the jurisdiction conferred by Part III may appeal from that decree to the High Court.
>
> (2) **[REPEALED]**

(3) The decision of the High Court on an appeal under this Article shall, except as provided by Article 62, be final."

The alternative appellate mechanism of an appeal by case stated to the Court of Appeal is provided by Article 61. This provides:

"61.-(1) Except where any statutory provision provides that the decision of the county court shall be final, any party dissatisfied with the decision of a county court judge upon any point of law may question that decision by applying to the judge to state a case for the opinion of the Court of Appeal on the point of law involved and, subject to this Article, it shall be the duty of the judge to state the case.

(2) An application under paragraph (1) shall be made in writing by delivering it to the chief clerk within a period of 21 days commencing on the date on which the decision was given and a copy shall be served on the other party.

(3) Within a period of fourteen days commencing on the date on which the chief clerk dispatches to the applicant the case stated (such date to be stamped by the chief clerk or by a member of his office staff on the front of the case stated) the applicant shall transmit the case stated to the Master (Queen's Bench and Appeals) and serve on the respondent a copy of the case stated with the date of transmission endorsed thereon.

(4) If the county court judge is of opinion that an application under paragraph (1) is frivolous, vexatious or unreasonable he may, subject to paragraphs (5) and (6), refuse to state a case and, if the applicant so requires, shall give him a certificate stating that the application has been refused on the grounds stated in the certificate.

(5) The county court judge shall not refuse to state a case upon an application made to him by or on behalf of the Attorney-General with respect to any question arising on or in connection with any appeal or application to which Article 28 applies.

(6) Where a county court judge refuses to state a case or fails to state a case within such time as may be prescribed by county court rules, the applicant may apply to a judge of the Court of Appeal for an order directing the county court judge to state a case within the time limited by the order, and the judge of the Court of Appeal may make such order as he thinks fit.

(7) Except as provided by section 41 of the Judicature (Northern Ireland) Act 1978, the decision of the Court of Appeal on any case stated under this Article shall be final."

Next it is necessary to consider Article 62 which, under the rubric of "Cases Stated by High Court on Appeal from County Court", provides:

"(1) The High Court **may**, upon the application of a party, state a case for the opinion of the Court of Appeal upon a point of law arising on an appeal under Article 60.

(2) The decision of the Court of Appeal upon a case stated under this Article shall be final."

[Emphasis added]

[8] The predecessor provisions of Articles 60, 61 and 62 were sections 1, 2 and 3 of the County Court Appeals Act (NI) 1964. These provided, in material part:

"1-(1) Any party dissatisfied with any decree of a county court made in the exercise of the jurisdiction conferred by Part III (Original civil jurisdiction) or by section 21 (Agreements conferring civil jurisdiction) of the County Courts Act (Northern Ireland) 1959 (in this Act referred to as the "Act of 1959") may appeal from that decree.

…

(6) Except as provided by section 3, the decision of the judge of assize or the High Court on appeal under this section shall be final."

2 (1) Except where any enactment, whether passed before or after the commencement of this Act, provides that the decision of the county court shall be final, any

> party dissatisfied with the decision of a county court judge upon any point of law made otherwise than in exercising jurisdiction under Part V (Original criminal jurisdiction) of the Act of 1959 may question that decision by applying to the judge to state a case for the opinion of the Court of Appeal on the point of law involved and, subject to this section, it shall be the duty of the judge to state the case,
> ……..
>
> (4) If the county court judge is of opinion that an application under subsection **(1)** is frivolous, vexatious or unreasonable he may, subject to subsections (5} and (6), refuse to state a case and, if the applicant so requires, shall give him a certificate stating that the application has been refused on the grounds stated in the certificate.
>
> **3 (1)** The judge of assize or High Court may, upon the application of a party, state a case for the opinion of the Court of Appeal upon a point of Jaw arising on an appeal under section I.
>
> "(2) The decision of the Court of Appeal upon a case stated under this section shall be final."

The latter provision was considered in *Woods v Armagh County Council* [1972] NI 89 where the discretionary nature of the judicial function in play is clearly reflected in the judgment of McGonigal J, who reasoned in part that there was no obligation to state a case for the Court of Appeal even where it was said to be a "*test case.*" The corresponding provisions in the 1980 Order are in essentially the same terms.

[9] The contrast with the Article 61 regime governing appeals from the county court to the Court of Appeal is instructive. Where application is made to a county court judge to state a case for the opinion of the Court of Appeal, "… it shall be the duty of the judge to state the case" – subject only to the frivolous, vexatious or unreasonable provisions of Article 61(4) – and there is express provision, in Article 61(6), for an application to the Court of Appeal for an order directing a defaulting county court judge to do so.

Conclusions

[10] Before this court the plaintiff's primary contention is that the decision of the High Court reflected in its order of 18 June 2021 is final, with the result that this court has no jurisdiction to consider the defendant's application. We consider that the statutory word "may" is, in its ordinary and natural meaning, presumptively

discretionary, or empowering. A discretion, or power, is the antithesis of a duty, or obligation. When one considers Article 62(1) in its full context, it is not possible to identify any reason or consideration or principle of statutory interpretation favouring any other construction. Nothing of this nature featured in the arguments on behalf of the defendant presented to this court. While the combined researches of the parties and the court failed to uncover any judicial decision on the meaning and import of Article 62(1), this is unsurprising given that its construction is so clear.

[11] To summarise, the topic of onward appeal from the High Court to the Court of Appeal in a case involving an appeal under Article 60 of the 1980 Order from the county court to the High Court is regulated comprehensively by statute. The governing statutory provisions are set out above. The effect of Article 62(1) is that the High Court is under no duty to state a case for the Court of Appeal. Rather, it exercises a discretion whether to do so. Where, in the exercise of its discretion, it declines to do so, that is the end of the matter.

[12] As this topic is regulated in its entirety by statute, no further appeal, by whatever means, lies to this court. Nor is an application to this court for an order compelling the High Court to state a case available. The hallowed principle that, in whatever context, no appeal lies unless provided by statute is engaged: see *Scottish Widows Fund v Blennerhassett* [1912] AC 281.

[13] In the present case McAlinden J has, in the exercise of his discretion, refused the application to state a case for the opinion of this court. The consequence of this is that the judge's decision reflected in his substantive order of 18 June 2021 is final and the application before this court is misconceived.

[14] While the foregoing conclusion is determinative of this application, it is appropriate to add that there is unmistakeable merit in the plaintiff's alternative contention, namely that the defendant's application to the High Court did not formulate any *point of law* as required by Article 62(1). Making appropriate allowance for the defendant's unrepresented status and reading his application to the High Court Judge in a broad and generous way no point of law is discernible. The application is an undisguised challenge to the merits of the judge's decision and, in its "Summary" section, confirms the absence of any point of law in its identification of the twofold grounds of "bias and unfair prejudice and discrimination by the court against the defendant/appellant company which being represented by its Director …" [sic].

Going Forward

[15] This court would add the following. The county court proceedings will soon attain their third anniversary. They have become stale in the extreme. The reasons for this egregious delay are immaterial at this remove. This state of affairs is to be lamented. The completion of the underlying proceedings as a matter of priority is obviously desirable. This court notes, as did McAlinden J, that the defendant is

raising the issue of whether the county court proceedings should be formally stayed pending what appears to be an attempt by Mr Murphy to challenge his aforementioned conviction before the Supreme Court. This gives rise to the twofold issues of the power of the county court to stay civil proceedings and, if such power exists, the merits of doing so in the exercise of that court's discretion. This court would strongly exhort the resolution of this issue henceforth, subject to [14] infra.

[16] The defendant has not complied with the order of McAlinden J dated 18 June 2021. This is simply an order to provide a list of documents in the county court proceedings which we cannot help but observe is a modest, routine and entirely appropriate requirement. It imposes no disproportionate burden on the defendant, particularly given Mr Murphy's insistence that the plaintiff received all of the defendant's material documents in the forum of the summary trial.

[17] No stay of that order was sought. The defendant has therefore been in breach of it since the expiry of the specified time limit of 21 days, on 10 July 2021. The consequences of this default will be a matter to be addressed in the underlying county court proceedings. It is appropriate to observe, as the Divisional Court did recently in *Re Security Industry Authority's Application* [2021] NIQB 106 at [49], that the principle of presumptive regularity (the omnia praesumuntur principle) applies to said order. In short, the order of McAlinden J was presumptively regular from the date it was made. The defendant's misconceived application to this court did nothing to alter this juridical reality.

Final Order

[18] For the reason given, the defendant's application to this court is dismissed. As the issue raised by this application was purely jurisdictional in nature, Mr Murphy's quest to obtain a transcript of the hearing in the High Court on 18 June 2021, which he was at liberty to pursue in accordance with the governing protocol had he wished, was simply not to the point.

Costs and Ancillary Issues

[Addendum 17/12/21]

[19] The court has considered Mr Murphy's written submission regarding costs. As this discloses no basis for displacement of the general rule, the defendant shall pay the plaintiff's costs of these proceedings, to be taxed in default of agreement.

[20] The defendant has applied for leave to appeal to the Supreme Court. This is refused on the ground that the requisition formulates no adequately particularized question of law, much less one of general public importance, appropriate for decision by the United Kingdom Supreme Court.

[21] Finally, no tenable basis for staying the final order of this court or any aspect thereof has been demonstrated.