[2001–02 Gib LR 350]

FORD v. CLANCY

COURT OF APPEAL (Neill, P., Clough and Staughton, JJ.A.):
September 14th, 2002

Civil Procedure—small claims procedure—general guidance

The applicant brought an action against the respondent in the Court of First Instance to recover payment allegedly due to him under a building contract and the respondent counterclaimed in respect of poor workmanship.

The Court of First Instance (Judge Dudley) dealt with the case under the new small claims procedure introduced in consequence of the application of the Civil Procedure Rules. The judge explained the procedure and gave judgment for the respondent on the counterclaim. The appellant's appeal to the Supreme Court was dismissed and he then made the present application for leave to appeal further.

Held, refusing leave to appeal and giving general guidance on the use of and expectations of the small claims procedure:

(1) The small claims procedure is intended to provide a cheap and simple method of disposing of cases where the sum or sums at stake would make the cost of a full formal hearing uneconomic and disproportionate.

(2) The parties should understand that the procedure is informal and that the judge is not bound by the strict rules of evidence.

(3) There may be cases where, though the sum or sums of money at stake are quite small, the mutual antipathy between the parties is such that it would be wise to proceed by means of a formal hearing.

(4) Since the object of the small claims procedure is to achieve simplicity and a saving of expense, the Supreme Court should become involved as an appellate court only occasionally. Similarly, the involvement of the Court of Appeal should be a rare event and, in the

ordinary way, an application to that court for leave to appeal would be dealt with quite shortly (paras. 31–36).

Legislation construed:
Civil Procedure Rules 1998 (S.I. 1998/3132), r.27.8: The relevant terms of this sub-rule are set out at para. 7.
r.27.10: The relevant terms of this sub-rule are set out at para. 8.

Small Claims Track (Practice Direction 27), para. 4.3: The relevant terms of this paragraph are set out at para. 8.

The parties appeared in person.

1 **NEILL, P.:**

Introduction

Before I turn to consider the arguments that have been addressed to the court in this case, I should first say something about the procedure that was followed in the courts below.

2 The trial took place in the Court of First Instance of Gibraltar. This court was established in 1960 by s.3 of the Court of First Instance Ordinance. By s.8 of the Ordinance, the court has jurisdiction, subject to certain exceptions, to hear and determine any action founded in contract or tort where the debt, demand or damage claimed is not more than £1,000. By s.55 of the Ordinance, the Chief Justice is empowered to make rules of court for the purposes specified in the section.

3 The Court of First Instance Rules made under s.55 provide, with certain exceptions and modifications, that the Rules of the County Courts in England should apply to the Court of First Instance.

4 In 2000, the Court of First Instance Rules were amended by the Court of First Instance (Amendment) Rules 2000. The amendment rules came into operation on May 4th, 2000. The effect of the amendment to the rules was to bring into force in Gibraltar the small claims procedure that had been established following what are known as the Woolf reforms.

5 The county courts in England were created by the County Courts Act 1846. The purpose of the Act was to provide a local, cheap and simple system for the recovery of small debts. The original jurisdiction was limited to £20. Over a period of time, however, the jurisdiction of the county courts increased and it again became necessary to find an economic method of dealing with disputes involving small sums. In 1973 a system of what was called "small claims arbitration" was introduced, initially for claims not exceeding £100.

6 Following the Woolf reforms, the use of the word "arbitration" was

discontinued and the new system for the adjudication of small claims is now by means of "The Small Claims Track." Part 27 of the Civil Procedure Rules 1998 contains the relevant provisions for the Small Claims Track, and the rules in Part 27 now govern the procedure for small claims in the Court of First Instance in Gibraltar. The rules in Part 27 are supplemented by a Practice Direction.

7 Rule 27.4 contains provisions relating to the preparation for the hearing. The conduct of the hearing is covered by r.27.8 and by certain provisions in the Practice Direction. I should set out the terms of r.27.8 which provides:

> "(1) The court may adopt any method of proceeding at a hearing that is considered to be fair.
>
> (2) Hearings will be informal.
>
> (3) The strict rules of evidence do not apply.
>
> (4) The court need not take evidence on oath.
>
> (5) The court may limit cross-examination.
>
> (6) The court must give reasons for its decision."

8 Paragraph 4.3 of the Practice Direction relating to a small claim hearing permits a judge to "ask questions of all or any of the witnesses himself before allowing any other person to ask questions" and to refuse to allow "cross-examination of any witness until all the witnesses have given evidence in chief." There are other provisions which underline the fact that the procedure is intended to be as simple as possible and to be proportionate to the amount of money at stake. In 1994 the Court of Appeal in England described the former small claims arbitration as "brisk." The procedure under Part 27 of the Civil Procedure Rules merits the same description. It may be noted, for example, that "the court may, if all parties agree, deal with the claim without a hearing": see r.27.10.

9 I have referred to the procedure at some length in order to explain to the parties the nature of the jurisdiction that Judge Dudley was exercising. Moreover, at the outset of the hearing on December 3rd, 2001 Judge Dudley explained that the proceedings under the new scheme (by which he meant the Small Claims Track procedure) were meant to be less adversarial and "to some extent more casual and more conciliatory."

10 This court now has two transcripts of the proceedings in the Court of First Instance on December 3rd, 2001. The two transcripts appear to be taken from two successive tapes. The first tape breaks off (at page 25) with the words "we had to carry it up the stairs from the . . ." The second tape (13 pages) starts with the words ". . . into the brick work" and ends with the judge's decision on pages 12 and 13.

11 In England, the Small Claims Track is intended to provide a simple and cheap method of dealing with claims up to a modest limit. Appeals are rare and are brought only with leave. It seems, however, that in Gibraltar the scope for appeal is rather different because the Ordinance takes precedence over any rules of court. By s.45 of the Court of First Instance Ordinance, the leave of the judge or the Chief Justice is required in the case of all interlocutory orders and decisions but there is no similar provision in relation to final judgments and decisions. Accordingly, as the law stands at present, an appeal lies to the Supreme Court from the Court of First Instance even where the small claims procedure has been followed. However, any appeal from the Supreme Court to this court does require leave.

12 In the present case, the Chief Justice dealt with the matter when it came before him quite shortly. But we have thought it right to consider the matter at length and in some detail. I should refer first to some of the documents which are presently before the court.

The documents

13 I do not propose to set out a complete list of the documents before the Court of Appeal, but they include the following:

(a) The Record of Civil Appeal ("the RCA") prepared by the applicant. The RCA contains 68 documents extending over 194 pages. Documents 69 and 70 in the index appear as separate documents: see (f) below.

(b) Two transcripts of the hearing before Judge Dudley on December 3rd, 2001. The longer transcript of 25 pages appears to be the transcript of the earlier part of the hearing. The shorter transcript of 13 pages is, it seems, of the later part of the hearing and includes (at pages 12 and 13) Judge Dudley's decision.

(c) The transcript of the hearing before Judge Dudley on April 8th, 2001.

(d) The applicant's letter to the Court of Appeal dated September 13th, 2002.

(e) The list of chronological events prepared by the applicant dated September 16th, 2002.

(f) Documents 69 and 70 in the index to the RCA.

(g) A substantial number of duplicate copies of the documents in the RCA, but also including some original photographs.

(h) An envelope containing a number of photographs which, I understand, were before the judge and have since been in the custody of the court.

(i) A number of other documents including documents relating to the summons that was sent to Mrs. Ford in June 2002.

(j) The applicant's skeleton argument dated September 5th, 2002.

14 The documents listed in para. 13 were put before this court by the applicant. In addition this court has a 7-page document dated September 11th, 2002 from the respondent. To this document are attached:

(a) A statement from Mr. Calderon dated November 15th, 2001.

(b) A receipt from CIAP (Construction) Ltd. ("CIAP") dated September 14th, 2001 for £35 received from Mr. Calderon.

(c) A letter from CIAP dated September 13th, 2001 to the respondent and Mr. Calderon.

(d) An estimate from CIAP dated September 13th, 2001 for removing wall tiles and fitting new wall tiles supplied by the client. The estimate is for £648.

(e) A document that appears to be an invoice for materials in the sum of Ptas. 296,000. It was addressed to Mr. Calderon.

(f) A customs receipt dated November 29th, 2000. The assessed amount is £172.86.

(g) A registered letter dated September 3rd, 2001 from Mr. Calderon to the applicant. In paras. 4 and 5 of this letter, Mr. Calderon set out the two options that he said that he had been given by a tiler. Option A was "to carry out remedial work to greatly improve on the existing layout." The cost of Option A inclusive of labour and materials was estimated at £275. Option B involved removing all tiles and restarting "from scratch for a professional finished product." The estimate for Option B was £900.

15 I understand that copies of all the documents attached to the respondent's document dated September 11th, 2002 were before Judge Dudley.

The main grounds relied on by the applicant

16 From the various documents before the court, I have extracted what appear to be the main grounds relied on by the applicant. I would identify them as follows:

(a) That the respondent's counterclaim of £275 was not properly proved.

(b) That the applicant was not able to call Mr. Castle as a witness.

(c) That Judge Dudley did not pay sufficient attention to the

Construction (Design & Management) Regulations 1994, or to the fact that Mr. Calderon was, in the applicant's view, an agent or project manager for the purpose of those Regulations.

(d) That any step to levy execution or to institute committal proceedings should have been suspended pending the appeal.

(e) That imprisonment was a disproportionate penalty.

17 I shall deal in turn with the main grounds relied on by the applicant but first it is convenient to say something about the applicant himself.

The applicant

18 The applicant is a man of mature years. He now works in Gibraltar as a specialist sub-contractor in brickwork, tiling and plastering. He holds City and Guilds (London) Institute qualifications and has over 35 years of experience in his field of work. I understand that he is presently working for AMCO in charge of their small work building department.

The proof of the counterclaim

19 The respondent relied on the letter dated September 3rd, 2001 from Mr. Calderon in which he referred to an estimate of £275 that he had received. The applicant objected to this evidence as hearsay.

20 In the small claims procedure, however, the judge does not have to apply the strict rules of evidence and I am satisfied that the judge was entitled to accept the evidence of the estimate contained in Mr. Calderon's letter. It is to be remembered that Mr. Calderon was present in court and intervened from time to time.

21 The judge was clearly concerned about the fact that six months had elapsed after the completion of the work before a formal complaint was made and that in the meantime the applicant had been asked to do other jobs. But the judge accepted the respondent's explanations that they had been convinced by the applicant that the job could not be done better.

Mr. Castle

22 The applicant complains that he was not allowed to call Mr. Castle as a witness.

23 At page 6 of the shorter transcript, the applicant referred to the fact that he had a witness outside. He said a little earlier:

> "I know CIAP, I deal with them all the time. I went in and the man from CIAP is a mate of Johnny's; he's gone in there under the battle-axe and made a certain letter out and made it sound as bad as possible. It's not the way it's done."

24 At that stage, the judge thought that there might be a witness from CIAP downstairs. At page 11 of the shorter transcript, the applicant said: "I do have a witness to call. That's Mr. Eddie Castle. I told you when I came in earlier." The judge asked whether Mr. Castle was the person who went with the applicant to CIAP. On being told that he was, the judge said: "Well, I don't think . . . I'm not bothered. Frankly, I am not particularly concerned as to that. That doesn't really add much one way or the other."

25 It is clear that the applicant did not pursue the matter any further and in his judgment the judge accepted the figure of £275. In answer 8 in his skeleton argument, the applicant said that written notification about Mr. Castle had been given long beforehand. But in any event, as the applicant did not press the matter, the judge was entitled in this informal procedure to deal with the totality of the evidence as he thought best.

26 There may have been some misunderstanding about the precise nature of Mr. Castle's evidence, but I am quite satisfied that the absence of Mr. Castle does not provide any sufficient ground for giving leave to appeal.

Mr. Calderon and the 1994 Regulations

27 Mr. Calderon is the respondent's partner and was frequently present at the premises whilst work was going on. However, I can see no sufficient basis for regarding him as the project manager. The applicant came as a specialist tiler and was responsible for his own work.

Suspension pending appeal

28 The applicant complains that execution should have been stayed pending the appeal. But, as Judge Dudley explained, an appeal does not stay execution under a judgment automatically. The respondent was entitled, in the absence of a formal stay, to enforce her judgment.

Imprisonment was disproportionate

29 It is a matter of regret that a man of the applicant's standing and experience should have been imprisoned for a judgment debt of £56.50. But the applicant's refusal to pay entitled the judge to impose a prison sentence. I very much hope that the matter can now be resolved by an appropriate payment. In my view the applicant's reputation as a skilled craftsman has not been damaged by this single episode. I trust that he can take the same view.

Conclusion

30 I have read these papers with care. I can find no adequate basis for granting leave to appeal or for interfering with any of the orders of the courts below.

Some general guidance on the small claims procedure

31 Before parting with the case I propose to give some general guidance.

32 First, it is important to underline that the small claims procedure is intended to provide a cheap and simple method of disposing of cases where the sum or sums at stake would make the cost of a full formal hearing uneconomic and disproportionate.

33 Secondly, it is important that the parties should understand that the procedure is informal and that the judge is not bound by the strict rules of evidence. I set out the explanation given by Judge Dudley:

> "Now the proceedings in this court under the new scheme of things is supposed to be more of a less adversarial and to some extent more casual and more conciliatory type of proceedings, if that is possible. If I see that this is not going to be possible—and we'll see how it works out—then I may say 'Well, let's try and make this more formal' and then it may be necessary for both sides to call witnesses. But the whole idea of the small claims court is to try and make it, shall we say, as user-friendly as possible, and shall we say maybe to some extent, and I don't deny it, to some extent, a bit rough. Slightly, shall we call it, rough justice is not the right word but it's, shall we say, trying to avoid the technicalities that arise going through the whole process of both sides having to call witnesses and details. But we will see how we get on and if we see that we are getting nowhere with that, then we'll go down a slightly more formal route, and we'll take it from there."

34 Thirdly, there may be cases where, though the sum or sums of money at stake may be quite small, the mutual antipathy between the parties is such that it would be wise to proceed by means of a formal hearing. In the present case it seems that in the earlier part of the hearing the parties were on first-name terms and, as I understand from the transcripts, it was only later that feelings of hostility came to the surface.

35 Fourthly, it is to be hoped that the Supreme Court will become involved as an appellate court only occasionally. The object of the small claims procedure is to achieve simplicity and a saving of expense.

36 Fifthly, the involvement of the Court of Appeal should be a rare event. In the particular circumstances of the present case, we have thought it right to take a considerable time to study the papers. Furthermore, the fact that the enforcement of the judgment has led to the imprisonment of the applicant on no less than two occasions has given us concern. But in the ordinary way, if an application came to the Court of Appeal for permission to appeal, it would be dealt with quite shortly.

CLOUGH and **STAUGHTON, JJ.A.** concurred.

Order accordingly.

[**NOTE:** *The Court of First Instance was abolished by the Administration of Justice Ordinance 2004 (No. 11 of 2004), s.3 and its jurisdiction transferred to the summary jurisdiction of the Supreme Court (ss. 6–7). The English Civil Procedure Rules were formally introduced by s.2 of the same statute (as s.38A(1) of the Supreme Court Ordinance—though see also In re Application under Supreme Court Rules, r.2, 2001–02 Gib LR 329) and the exercise of the small claims jurisdiction was entrusted to a Master (s.38B(1) of the Supreme Court Ordinance)*].