

THE HIGH COURT

ASHBOURNE BEEF AND LAMB LIMITED t/a BRINDLEY PARK MEATS

[2013 No. 276 CA]

Appellant

AND

MICHAEL WOODS t/a QUALITY MEATS

Respondent

JUDGMENT of Kearns P. delivered on the 11th of April, 2014**Introduction**

This is an appeal in which the appellant seeks an order setting aside the order of the Circuit Court of the 3rd December, 2013, which had set aside judgment in default of appearance obtained against him in the office.

Background

The appellant is a limited liability company trading in meat and meat products with premises at Ashbourne, County Meath. The respondent is a butcher and trades as Quality Meats in Dundalk, County Louth. He resides in Crossmaglen, County Armagh, Northern Ireland. The plaintiff claims for monies due and owing to it for goods sold and delivered and services rendered by the appellant to the respondent.

History of the Proceedings

By civil bill dated the 16th February, 2011, the appellant sought to recover the sum of €28,919.16 from the respondent. No appearance was entered by the respondent and by way of affidavit of debt of the 29th March, 2011, the appellant entered judgment in default of appearance in the Office of the Circuit Court on the same date in the sum of €29,919.16 plus costs of €624.00.

By notice of motion of the 8th April, 2013, supported by an affidavit of the respondent sworn the 4th April, 2013, the respondent sought to have the judgment set aside. He claims that the proceedings were not served on him and that he never received them. He also denies owing the sum to the appellant. The respondent asserts that he only became aware of the proceedings when he was served with an equity civil bill on the 27th February, 2013, in which well charging relief was sought against him.

The appellant, in a replying affidavit sworn on the 29th May, 2013, claims that the respondent used to live at the address at which the documents were served and refers to an affidavit of service from a summons server stating that he spoke to the respondent at that address.

In the Circuit Court it was argued by the respondent that service was not effected in accordance with the rules of court. The court was referred to Order 14B Rule 12 which provides that judgment in default of appearance cannot be entered without leave of the court. The appellant argued that service was effected under the ordinary rules for service outside the jurisdiction (Order 14) and that judgment in default of appearance may thereafter be sought in the office under Order 26.

Relevant law**Order 14B Rule 12**

12. (1) Subject to Rule 12(5), judgement shall not be given or entered in default of Appearance in any proceedings to which this Order applies until it is established that:

(i) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or

(ii) the document was actually delivered to the Defendant or to his residence by another method provided for by the Regulation, and that in either case the service or delivery was effected in sufficient time to enable the Defendant to defend.

(2) Judgement in default of Appearance shall only be entered with leave of the Court.

Order 14

1. Notwithstanding the Rules of Order 13, service of a Civil Bill or notice thereof out of the jurisdiction is permissible without the leave of the Court, if, it complies with the following conditions:

(i) The claim made by the Civil Bill is one which by virtue of the 1998 Act the Court has power to hear and determine; and

(ii) No proceedings between the parties concerning the same cause of action is pending between the parties in another contracting state; and

(iii) either C

(a) the defendant or other person to be served is domiciled in Ireland or in any other contracting state, or

(b) the proceedings commenced by the Civil Bill are proceedings to which the provisions of Article 16 of the 1968 Convention concerning exclusive jurisdiction apply, or

(c) the defendant or other party to be served is a party to an agreement conferring jurisdiction to which the provisions of Article 17 of the 1968 Convention concerning prorogation of jurisdiction apply.

2. Where the person to be served is not a citizen of Ireland, notice of the document, and not the document itself, is to be served on him.
3. (i) Notwithstanding the provisions of Rules 3, 4 and 5 of Order 11 and save as provided in Rules 8, 9 and 11 of Order 11, service under this Order on an individual shall be effected by personal service or by registered or insured post and service on a corporation or association shall be effected in the manner provided by sub-rule (v) below.
 - (ii) Personal service shall be effected by delivery of a copy of the Civil Bill or notice thereof on the person to be served.
 - (iii) Service by registered or insured post shall be effected by delivery to the person to be served of an envelope addressed to such person. At the time of posting an application should be made to the postal authorities for an advice of delivery.
 - (iv) Where it appears that the person to be served is within the jurisdiction of the state where service is to be effected and that reasonable efforts have been made to effect service in accordance with the foregoing provisions of this Rule, service may be effected by delivery of such copy notice or envelope at the house or residence of the person to be served or at the place where such person carries on any profession, business or occupation, to the wife, husband, child, father, mother, brother or sister of the person to be served, or to any servant or clerk of the person to be served (the person to whom such copy notice or envelope shall be delivered being of the age of sixteen years or upwards).

Order 26

1. Where the plaintiffs claim in a Civil Bill is for a debt, or liquidated demand, or for the delivery of specific goods or chattels, and a defendant has not entered an Appearance within time limited in the Civil Bill, or, having entered an Appearance, has not delivered a Defence within the time limited by these Rules, the plaintiff may, in default of such Appearance or Defence, as the case may be, apply in the Office for judgment to be entered against such defendant. In any such cases in which the defendant shall, after action brought, have satisfied the plaintiff's claim (save as to costs), the plaintiff may apply in the Office for judgment for the costs applicable to the plaintiff's claim. The application for such judgment shall be supported by the documents mentioned in Rules 2 and 3 of this Order with such alterations and additions thereto as may be appropriate and shall be in accordance with Forms 9 and 10 of the Schedule of Forms annexed hereto.
2. An application under the provisions of Rule 1 of this Order shall be supported by:
 - (a) the sealed Civil Bill with endorsement of service thereon in accordance with these Rules;
 - (b) an affidavit or statutory declaration of service of the Civil Bill, or of service of notice thereof, as the case may be; and
 - (c) if the application be for judgment in default of Appearance, a certificate by the County Registrar that no Appearance has been entered, or if the application be for judgment in default of Defence, an affidavit by the plaintiff or solicitor for the Plaintiff verifying that an Appearance has been entered but that a Defence has not been delivered.
 - (d) an affidavit verifying the plaintiff's claim made by the plaintiff, or by some other person on his behalf who can swear positively to the facts; and
 - (e) a certificate by the plaintiff where he sues in person, or, where he does not, then by his Solicitor, specifying the amount then actually due, or certifying that the goods or chattels in respect of which the judgment is sought are still withheld by the defendant as the case may be, and, in the case of judgment in default of Defence, that no Defence has been served.

Case made on Appeal

The appellant sought to rely on service under Order 14 and judgment in default of appearance under Order 26. Further the appellant advanced the argument that where there is evidence put forward on the part of the respondent that the proceedings were not received then it is within the discretion of the court to decide whether or not to allow the respondent proceed with its defence. To take this into account the court must evaluate whether there is a defence raised that has a reasonable prospect of success and not simply a stateable defence.

The appellant argued that, when serving proceedings out of the state on a person within the E.U., Order 14 of the Circuit Court Rules applies. It was argued that this rule applies to tort and contract issues and this was a straightforward case of debt arising out of supply of beef to a butcher. Within the rules, service effected by registered post is allowed for a person outside of the jurisdiction, *per* Order 14 Rule 3 (iii).

In response to the argument that Order 14B applies the appellant argues that this relates to transmitting and receiving agencies. It is contended that this is not relevant in the within circumstances.

The respondent argued that under Order 14B Rule 12 that judgement in default of appearance can only be granted with leave of the court rather than by way of application in the office. The respondent claims that the money is not due and owing and that they are anxious to file a defence to the claim against them. They allege that service of the Civil Bill by registered post was not sufficient and it ought to have been served personally.

Decision

Where the civil bill in this case related to a claim for monies due for provision of services it must be deemed to be under Order 14 of the Circuit Court Rules and defined as a contract where monies fall due. Therefore under Order 14 service by registered post outside the jurisdiction is in compliance with the rules under Order 14 Rule 3(iii) where the person is resident outside the jurisdiction. There cannot be any issue with service by registered post.

The respondent claims that they did not receive the proceedings when they were served by registered post. In these circumstances the court has discretion to set aside the judgment under *Maher v. Dixon* [1995] I.L.R.M. 218 and *O'Callaghan v. O'Donovan* (Unreported, Supreme Court, 13th May, 1997) where it was determined that where there is a "regular judgment" in compliance with the rules it may then assess whether the respondent has a reasonable prospect of success on the basis of the defence offered and not simply a stateable defence and in the justice of the matter it would be unfair to allow judgment to be entered against them without an opportunity to defend the claim against them. In the circumstances of the case presently before the court it cannot be said that the respondent has a reasonable prospect of success in defending the claim against them. There is no draft defence from the respondent and merely a bald assertion in the affidavit of Michael Woods of the 4th April, 2013, that the monies are not due and owing.

In the circumstances the Court cannot deem that the respondent has a reasonable prospect of success and exercise its discretion to set aside the judgment. Service was effected in the proper manner under Order 14 and judgment was correctly entered against the respondent under Order 26 of the Rules of the Circuit Court.

I would therefore vacate the order of the Circuit Court and allow judgment in default of appearance as against the respondent in the sum of €29,919.16.