

THE HIGH COURT**[2007 No. 5072 P.]****BETWEEN****JOHN SHERLOCK****PLAINTIFF****AND****ULSTER BANK IRELAND LIMITED****DEFENDANT****Judgment of Mr. Justice Hedigan delivered on the 13th July, 2007.**

1. This is an application for an interlocutory order sought by the plaintiff requiring the defendant to, in effect, resume compliance with a mandate given on the 7th February, 2003, by two companies i.e. Sherlock Brothers Limited and Beechmount Furniture Limited to pay out on cheques and accept other orders for payment drawn on the account of these two companies.

2. The application arises from an unfortunate disagreement that has arisen between the plaintiff and his brother Patrick Sherlock. As a result of this disagreement the plaintiff states that his brother Patrick has in effect withdrawn from the company since December, 2006.

3. The company meeting was held in the Ardboyne Hotel on the 11th May, 2007 and not notably on the company premises in the Beechmount Industrial Estate in Navan, Co. Meath. At this meeting conflicting proposals in relation to the company's mandate with its bank were proposed and defeated. This seemed to leave the situation such that the signature of one director on a cheque was sufficient for the bank to act.

4. By letter dated the 14th May following, solicitors on behalf of Patrick Sherlock wrote to the bank notifying them of the dispute which appeared they said to be "irreconcilable". They indicated, in a somewhat contradictory way, that they were then trying to negotiate a settlement in order to continue the business. They requested that in the meantime withdrawals from the accounts be only made upon the joint signatures of both directors i.e. Patrick and John Sherlock.

5. The bank having taken internal legal advice complied with this request on the basis that the mandates had been varied by this request. See para. 6 of the replying affidavit of David McHugh.

6. As a result the bank have returned all subsequent cheques signed by John Sherlock and drawn on the company's accounts stamped with the phrase "not drawn in accordance with mandate". The most significant of these was a cheque to the Revenue Commissioners in the amount of €180,000 in relation to corporation tax.

7. In the result the plaintiff claims the company is in effect paralysed and is itself unable to pay its bills. The plaintiff has himself been paying these bills out of his private funds but, not unnaturally, maintains that this cannot continue.

8. I am informed by counsel for the plaintiff that some attempts at negotiated settlement are in train and that it is thought there will be an application in this matter by the companies to the Commercial Court shortly, probably next week. Orders dealing with the situation will be sought including directions as to how to proceed to a company meeting. Presumably the ability of the companies to pay their bills will be a central feature of that application involving inevitably the question of the bank's mandates from the two companies.

9. This court is asked to intervene at this stage by way of an interlocutory order to the bank to return to the status quo ante i.e. before the letter from the solicitors to the bank on the 14th May and to recommence paying out on company cheques signed by just one director. The plaintiff argues that the existing mandate has not been varied by the company but at the request of one of its directors and that this request is not in accordance with the modus to vary provided in the mandate. The plaintiff both in his grounding affidavit and in open court had indicated his willingness to give any undertaking as to damages as may be required.

10. The bank submits that no order should be made herein because:

- a) There is clearly a dispute between the directors and it is their duty to take a prudent line. i.e. until the resolution of the dispute they should consider the mandate to have been varied and pay out only of both signatures.
- b) The plaintiff has not evidenced that the company really is in the difficulty he alleges because the plaintiff is paying its debts out of his own resources at the moment and will no doubt be able to recover these advances in due course.
- c) The plaintiff being aware of the attitude of the bank since the 21st May last when they notified the plaintiff of the purported varying of the mandate, have delayed and now seek relief when they say they are in any event going to apply to the Commercial Court apparently as soon as next week.
- d) Granting an order now in the context of this impending Commercial Court application will only "muddy the waters" and drag the bank into Commercial Court proceedings where they have no real role.
- e) The relief is sought only in respect of Sherlock Brothers Limited and not in respect of Beechmount Furniture Limited. The latter has vastly greater funds in the bank it is noted.
- f) There is no action at the suit of the plaintiff. The real plaintiff should be the company and Mr. Sherlock is trying to bring the matter before the court improperly. Moreover his brother Patrick should be a party or at the very least be a notice party as should the companies.
- g) In any event damages are an adequate remedy.
- h) The balance of convenience is against the granting of interlocutory relief.

11. I have considered submissions and note firstly that I have some doubts as to the procedure adopted. There is much to be said for the defendant's argument that there is no issue between it and the plaintiff. There appears to be no contractual relationship and although adverted to in the affidavit of the plaintiff and the correspondence exhibited therein, there is no claim of defamation made in

the plenary summons. If there is any issue it lies between the companies and the bank. Furthermore, since the matter closely involves the interests of Patrick Sherlock there is much to be said for his involvement either as a co-defendant or a notice party in interlocutory proceedings of this nature.

12. Whilst I am very conscious of the desirability of keeping going an apparently prosperous company in the interests of its workers, its creditors, its owners and the general interest I am also informed that it has been continuing albeit with the support of the plaintiff since this difficult situation emerged on the 14th May. It is very much to the credit of the plaintiff that he has acted thus. I am further informed that an application to the Commercial Court is planned as a part of a concerted move to resolve this situation. In the light of these matters it appears a somewhat dubious proposition that the company cannot continue for at least a few weeks more and there is therefore a doubt in my mind as to the necessity for the court to intervene at this point in time.

13. Furthermore, I am more than a little concerned that making an interlocutory order at the stage where there is an application imminent in the Commercial Court may have the opposite effect to that of helping resolve this very difficult situation in which these companies and the family find themselves.

14. In all the circumstances I am not prepared to make any order at this stage. I think it very desirable that an application is made forthwith to the Commercial Court and I am prepared to adjourn this matter for mention until such an application is made and these proceedings can be adjourned to the Commercial List.

15. On the application of counsel I will adjourn this matter for mention to Thursday, 19th July, 2007.