EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2018] CSIH 47
XA28/18

Lady Paton

OPINION OF THE COURT

delivered by LADY PATON

in the application for permission to appeal to the Court of Session

by

MOHAMMED ASLAM

Applicant

against

ROYAL BANK OF SCOTLAND

Respondent

Applicant: Party
Respondent: Foyle (sol adv); Shoosmiths LLP

27 June 2018

[1] Section 113(2) of the Courts Reform (Scotland) Act 2014 provides that the Court of Session may grant permission to appeal against a final judgment of the Sheriff Appeal Court only if the court considers that the appeal would raise an important point of principle or practice, or there is some other compelling reason for the Court of Session to hear the appeal.

[2] In this case the applicant is a party litigant. He owns many properties in Glasgow, renting them out and making an income from rentals. However the Royal Bank of Scotland

(RBS) exercised their rights under standard securities, and sold 27 of the properties. The applicant's position is that the RBS, in breach of their duties, sold the properties at an undervalue. He raised an action in Glasgow Sheriff Court against the RBS, seeking damages for his loss.

[3] After a debate on 25 July 2017, Sheriff Deutsch held that the action was irrelevant and lacking in specification, and dismissed the action (see his judgment dated 17 October 2017, tab 9 of the application). The applicant appealed to the Sheriff Appeal Court. An accelerated appeal hearing was fixed, without objection, for 18 January 2018. The applicant's Note of Appeal was lodged on 14 November 2017 (tab 11). At the hearing on 18 January 2018, the applicant produced a Minute of Amendment and moved to amend his pleadings. He acknowledged in his Note of Submissions (tab 2), that "there is merit in some of the sheriff's criticisms of [the] pleadings" and he sought thereafter to amend in terms of the Minute of Amendment with a view to answering the criticisms. There had been no prior notice of the details of any proposed amendment, although the possibility of amendment was hinted at in the applicant's Note of Appeal.

[4] The applicant not only moved the Sheriff Appeal Court to allow him to amend, but sought a discharge of the appeal hearing. He apologised for not intimating the Minute of Amendment sooner, referring to the absence of his Mackenzie friend and the intervention of the festive season. The solicitor for the RBS opposed any amendment as coming too late, and in any event failing to cure the defects in the pleadings. The Appeal Sheriff agreed with these submissions; refused to discharge the appeal hearing (tab 13); and after hearing parties, refused the appeal and adhered to the sheriff's interlocutor of 17 October 2017. Detailed reasons were given in the courts *ex tempore* judgment, which was subsequently typed and lodged in process.

[5] The applicant then sought leave to appeal to the Court of Session (tab 14). On 14 March 2018, the Appeal Sheriff refused leave (tab 15), issuing a judgment of that date.

[6] The applicant now applies in person to the Court of Session for permission to appeal. In his written application, he explains that:

> "4.5 The appeal raises an important point of principle or practice in respect that it raises the question of what constitutes adequate notice of an appeal hearing, both generally and in the case of an unrepresented party litigant having no legal qualifications, in particular where an important and lengthy holiday period such as Christmas and New Year intervenes. It also brings into question the manner in which a court conducts its business and explains its conduct and the effects of failing to do so properly.
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> 4.6 Insofar as it may be considered that the appeal does not raise an important point of principle or practice, there is also some other compelling reason for the Court of Session to hear the appeal because of the serious miscarriage of justice resulting from the decision complained about."

[7] Thereafter the applicant sets out two grounds of appeal:

> "5.1 That the sheriff erred in applying an unduly strict standard when he dismissed the action on the grounds that the appellant's case as stated was irrelevant and lacking in specification.
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> 5.2 That insofar as the sheriff's criticisms of the appellant's pleadings were justified, these are capable of being satisfied by amendment, and the appellant should be allowed an opportunity to amend. In particular, the appellant is in a position to identify with greater clarity steps which the respondents ought to have taken in marketing the properties to establish failure to meet the standard required of a creditor exercising its rights as a security holder; he is able to clarify his pleadings with regard to the prices for which the properties should have been expected to be sold; and he is further able to give greater specification in the calculation of his loss and damage."

[8] I am unable to accept the applicant's submission that the appeal raises "an important point of principle or practice" concerning adequate notice of an appeal hearing, both generally and in the case of a party litigant, particularly where Christmas and New Year intervene. As set out in the Appeal Sheriff's judgment of 14 March 2018, the appellant had approximately 2 months to prepare for the appeal hearing, which was ample even where

public holidays intervened. As for the involvement of a Mackenzie friend and a party litigant, the UK Supreme Court in their recent decision *Barton* v *Wright Hassall LLP* [2018] 1 WLR 1119 (particularly paragraphs 18 and 42) emphasised that party litigants and their Mackenzie friends must comply with the rules of court and court administration in the same way as any other party: to give party litigants special indulgence would, the Supreme Court observed, render the court system unfair. Finally, in this context I take the view that the sheriff courts' conduct of business and communication with both parties cannot be criticised.

[9] I am also unable to accept the applicant's submission that there is "some other compelling reason for the Court of Session to hear the appeal". What has happened in the present case is a fairly common occurrence in litigation, namely that a claim has been found to be irrelevant and lacking in specification such that it would be a waste of time and resources to permit the claim, as pled, to go to a proof before answer involving witnesses, productions, and court time. It is standard practice for such a claim to be dismissed. The allowance of any amendment seeking to improve the pleadings with a view to making the action relevant and specific is a matter entirely for the discretion of the court, taking account of the timing and content of the proposed amendment. The decisions of the court below make it quite clear why amendment was not permitted in the present case. Those decisions were justified and cannot be criticised in the circumstances that prevailed.

[10] For all these reasons, the application is refused.