

Neutral Citation No: [2019] NIQB 15

Ref: McC10878

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered Ex Tempore:
14/02/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

HEANEY

v

BYRNE

McCLOSKEY J

[1] The Defendant has brought an application under RCC Order 33. There may have been some understandable misconception arising out of the precise relief which the Defendant is seeking at this interlocutory stage relating to the terminology of the summons dated 28 September 2018. Whether that is correct or not it is now abundantly clear that the order which the Defendant is seeking of the court falls within what is described as "Stage 1" in the case of O'Brien v The Chief Constable of South Wales [2005] UKHL 26. For the avoidance of any possible doubt I refer to the crystal clear distinction made between what are known as stages 1 and 2, first in the opinion of Lord Bingham at paragraphs 3-5 inclusive and, second, in the opinion of Lord Carswell at paragraphs 69-72 inclusive.

[2] If and insofar as any clarification of the interlocutory relief sought by the Defendant was required, given my observation about the phraseology of the summons, it has been provided beyond peradventure in the submissions of Mr Simpson QC on behalf of the Defendant. It is entirely clear to the court that such doubt as may have been harboured on behalf of the Plaintiff was dispelled as Mr Fee QC's reply makes abundantly clear.

[3] The test is that of relevance. That is the supreme criterion and that test is clearly satisfied, particularly on account of the clarification of another query on the part of the court which was whether the Defendant is positively making the case of fraud. The answer is affirmative: see yet another iteration of the Defence at paragraphs 5-7 inclusive. The court, therefore, is being asked to rule on admissibility

of the evidence in question in principle (i.e. stage 1). The test is plainly satisfied and ultimately this, properly, was not seriously contested.

[4] Accordingly, the order of the court is that the evidence set forth in the schedule to the summons of 28 September 2018 and the supporting material which in large part, but not exclusively, is the evidence in question is admissible in principle at the trial. I have said “not exclusively” simply because the court has not for example (and perhaps only) seen the CCTV footage or the tape recorded interviews, albeit I have seen the transcripts. So everyone will be under no misapprehension about that.

[5] The court therefore accedes to the application. The second stage will be a matter for the trial judge. The reason for this staged approach is beyond plausible dispute. It will be for the trial judge to make an informed assessment of the state of play at the trial and in particular evidence that has been adduced before this stage is reached. The trial judge will also be applying considerations and criteria which by definition are simply not in existence at this advanced stage.

[6] It was entirely proper to bring this application at this interlocutory stage.

[6] Costs are reserved.

Edited and approved transcript.

Bernard McCloskey

The Hon Mr Justice McCloskey

14/02/19