SHERIFF APPEAL COURT

[2023] SAC (Civ) 10
EDI-SG1490-20

OPINION OF THE COURT

delivered by Sheriff Principal N A Ross

in appeal by

MARK DORAN

Claimant and Appellant

against

SC CAUSEWAYSIDE LIMITED

Respondent

6 February 2023

[1] This Simple Procedure action is a claim for damages arising from the appellant's lease of student accommodation from the respondent. The initial heads of claim covered inconvenience due to a high number of room inspections, delays in repairs, loss of shower facilities, delay in return of deposit and other complaints. After parts of the claim were dismissed at a case management discussion, the single remaining head of claim was for loss of shower facilities of a few days. The sheriff granted decree of absolvitor on 18 March 2022. There was subsequent procedure related to the issue of expenses, then the appellant lodged the present appeal.

[2] The appellant appeals the interlocutor of 18 March 2022. He does not do so on the merits of the claim. Instead, his complaints relate to aspects of the conduct of the whole

proceedings. His overall position is that the proceedings were not conducted in a fair manner, and were in breach of the Simple Procedure Rules.

Ground 1 – statement by the sheriff

[3] The appellant states that the sheriff failed to conduct the case fairly, and breached the Rule 1.2(2) and 1.2(3), in a single respect. The appellant claims that the sheriff stated that the respondent's solicitor regularly appears in court and would be looking for dismissal. That, in the appellant's view, demonstrated bias against the appellant. The sheriff is also said to have "overextended" the amount of hearings in the case.

[4] This complaint is not placed in context, and no explanation is given of how any such statement, if made, was unfair, or biased, or tended to affect the outcome of the case. The appellant's written submissions do not expand on that. Those submissions are lengthy and extend beyond the grounds of appeal. They open up again the four heads of claim which were dismissed by the court during case management proceedings. The appellant adheres to the proposition that the sheriff, in anticipating that the respondent's agent would want decree of dismissal, clearly demonstrated bias against the appellant.

[5] This ground of appeal lacks either principle or logic. The respondent, like almost every respondent in every case, would want either dismissal or absolvitor. For the sheriff to anticipate that is to anticipate the inevitable. To say so demonstrates nothing but the obvious. The fact a party wants a result does not mean they get it. Each case has to be argued, which is what happened here.

[6] There is a separate part of this ground, namely that the sheriff overextended the amount of hearings in the case, resulting in high expenses being incurred. No specification or context is given of this claim.

[7] The sheriff explains the background to the case. A first order was made on 29 October 2020 (to identify further procedure). A procedural hearing was held on 25 February 2021 (to deal with a preliminary plea, duly repelled). It was identified that an evidential hearing would be necessary, which was duly fixed for 20 October 2021. On that date, the sheriff explored settlement, then dealt with some of the merits of the case. The majority of the claims were dismissed, because they were no longer live issues. A separate action by the respondent against the appellant had been dropped, and a full deposit returned to the claimant. There was accordingly no remaining basis for those claims, and they were dismissed.

[8] On that date, the remaining claim relating to the shower could not be dealt with. That was because the claimant had lodged a significant amount of material, including two DVDs, which did not give fair opportunity to the respondent to understand the nature of the case against them. The material was voluminous, was not organised, was not categorised, was not labelled, and comprised files of correspondence, an audio recording, and 22 folders incorporating 300 photographs, all unlabelled. The sheriff, understandably, identified that another date would be required, in order to allow the respondent to tackle the large amount of material it now faced. That was the only fair result.

[9] A further evidential hearing was fixed for 18 May 2022. The appellant amended his averments, triggering an objection and further consideration. The appellant lodged a further amended claim on 25 October 2021 seeking an amended sum. The respondent applied for dismissal, which was opposed, and this was heard on 18 November 2021. The sheriff sets out in detail what was discussed on that date, mainly the unspecific nature of the claim and the unexplained and unclear evidence lodged in support. Rather than dismiss the claim as not coherently presented, the sheriff fixed a further evidential hearing to allow the appellant

time to organise, label and clearly present his evidence. He made an Unless Order to explain what was required. The sheriff made express allowances for the appellant's lay status.

[10] A further case management discussion was fixed. The appellant had not fully complied with the Unless Order. At that hearing, the respondent again sought dismissal. The appellant accepted that his evidence was lacking in certain essential respects. One head of claim, after full consideration, was dismissed for that reason. That left a single head of claim, namely the loss of use of a shower for five days. That claim was the subject of the interlocutor against which this appeal is taken.

[11] In none of the foregoing can the appellant claim to have been unfairly treated. There was no extravagant use of court procedure. Most appears to have been directed to repelling unjustified grounds of claim, asking the appellant to present his case in a coherent and fair way, and dealing with the consequences of his failure to do so. The appellant does not describe how things could have been done any quicker or more efficiently. The extended procedure appears attributable solely to the appellant's choice of unsustainable claims and their chaotic presentation.

[12] The first ground, accordingly, has no stateable basis, and is refused.

Ground 2 – requesting written submissions

[13] The next ground alleges that the sheriff acted unfairly in requesting various written submissions from the appellant, but not from the respondent. It appears that by "submissions" the appellant means the productions and statements of claim, because that is what the process contains under that head.

[14] In any claim, in any court, the initial burden is on the claimant to show that he or she has a claim that makes sense, that is properly grounded in law, and that is supported by specific allegations of fact. In Simple Procedure, the claimant can lodge supporting evidence to some extent in place of written averments. Here, the appellant conducted his case by lodging a large volume of materials, and changing his case over the course of the action. In doing so, he did not present a clearly explained case which the respondent could understand and answer. The court required to point out to him what was required, and the appellant only partly complied. The court required the appellant to lodge further documents, to allow the case to be understood and answered. By contrast, the respondent's position was clear, simple and unchanged. There was no need for the respondent to lodge further documentation for the sake of clarity. That accounts for the different requirements placed on each party. It is logical, and does not indicate unfair treatment.

[15] Accordingly, the sheriff's requests were made not out of bias but a need to get the appellant to fairly and succinctly explain his case, the principles behind it, and the evidence. On the materials lodged in process, that approach was not only justified but necessary for the efficient conduct of the case. This ground of appeal is without basis.

Ground 3 – use of Unless Orders

[16] The appellant criticises the sheriff for dismissing parts of the case, based on a non-compliance with Unless Orders. He suggests the correct course of action would be to allow re-submission, or to overlook minor inconsistency.

[17] It is unclear whether the appellant considers this to be an error in law, or a misdirection in fact. What is not in issue, however, is that Unless Orders are an important

element in the case, allowing a sheriff to direct that the issues be simplified, focused or understood.

[18] The sheriff describes the circumstances in which these orders were made. The orders were intended by him to result in a clear understanding of the appellant's case. The appellant failed to follow these. The failure was not just a technicality, but had real consequences. The appellant required to set out a coherent, adequately specified and legally relevant case. These orders were intended to give him direction, as a lay person, on how to achieve that. The failure to do so meant his case was not supported. Dismissal was the only logical result, and was fair to both parties. It is unjust to expect a respondent to defend a case that they or the court cannot understand. This ground is without merit.

Ground 4 – unfair conduct of evidential hearing

[19] The appellant specifies the complaint as failure to explain to him that the respondent's solicitor had stated that the respondent had dealt with the issue fairly. The issue was loss of use of the shower for a few days. The respondent claimed to have dealt with the appellant, at the time, in a reasonable and fair manner. It is not clear how this defence came as a surprise to the appellant, but that appears to be his grievance.

[20] The appellant has not understood that, in raising a civil action, the burden is on him to prove his case. Irrespective of what the respondent said or did, the appellant required to come to court in a position to explain and prove his case. His case appears, although it is not spelled out, to be that the respondent was in breach of the contract of lease. He does not identify which term of the lease. He does not say why the conduct amounts to breach of contract. All of this is left to guesswork. That has served to obscure the legal basis of his claim.

[21] The sheriff managed to identify that the appellant relied on clause 17 of the lease. Under the heading "Owner's Obligations", the respondent agreed, amongst other things, to "keep the structure and exterior parts as well as plumbing, sanitary conveniences…in good and safe working order". The sheriff also found, on enquiry, that the shower had failed, been fixed temporarily the same day, had failed again, but was fixed when parts were available.

[22] The sheriff narrates that he asked the appellant to describe what standard of care clause 17 imposed. The appellant stated that he did not know. That is a strange and unhelpful response from a party who insists he has a right to enforce a contractual term. The sheriff sets out the assistance he gave to the appellant, inviting the respondent's agent to make submissions and asking the appellant for his views thereafter. The sheriff considered that the standard imposed by clause 17, in context, was not an absolute guarantee but instead a duty of reasonable care. The appellant does not criticise that approach on appeal and did not do so before the sheriff.

[23] The ground of appeal criticises the sheriff for not explaining the respondent's position. The sheriff states that the respondent's position was made plain by the respondent itself. The sheriff was mindful that, although a party litigant may be assisted to understand proceedings in general, a court cannot assist a party to win his case (*Barton* v *Wright Hassall LLP* [2018] UKSC 12). The appellant demands too much of the sheriff, and too little of himself.

[24] This ground cannot succeed either. The appellant's complaint is, in effect, that he was taken by surprise by the defence that the respondent took reasonable care. That is not a good ground, because (i) the onus was, and remained, on the appellant to state clearly and prove his own case, irrespective of what the respondent said; (ii) the respondent's claim to

have acted reasonably was stated in their defence, and he only had to read that; and (iii) whether reasonable care was the test is a matter of law, not of evidence, and it was for the appellant to consider that before he raised the action, and certainly before he reached a final hearing 18 months later.

Disposal

[25] In terms of the relevant Simple Procedure Rules, this is the note referred to in Rule 16.4(6), issued within 4 weeks of the written hearing date (17 January 2023) in terms of Rule 6.4(1) and (4). There is no alteration to the decision of the sheriff (Rule 16.4(7)). The decision of this court is that the first question is answered in the affirmative, the second question answered in the negative, and the appeal is refused. Rule 14 (expenses for proceedings before a sheriff) does not apply to the expense of an appeal. I require to make a decision about expenses of the appeal. The appeal has been refused in its entirety, as without merit, and accordingly it is unjust that the respondents are required to make payment towards the appeal, whereas it is just that the appellant bears the expenses. I accordingly make a decision that the appellant is liable to pay to the respondent the expenses occasioned by this appeal, as taxed.