

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT DUNDEE

[2021] SC DUN 34

FFR-SG32-20

NOTE BY SHERIFF JILLIAN MARTIN-BROWN

in the cause

CABOT FINANCIAL UK LIMITED

Claimant

against

JOHN FINNEGAN

Respondent

Claimant: Forrest, Adv; Nolans

Respondent: Absent

Forfar, 28 April 2021

NOTE

Introduction

[1] This case came before me on the claimant's unopposed application for a decision.

The issue concerned whether rule 18.2(4) of the Simple Procedure Rules required the claimant to lodge a delivery receipt or whether the Form 6C, together with evidence of recorded delivery posting, was sufficient to effect service.

Procedural history

[2] The initial writ was warranted on 29 January 2020. No appearance was entered by the respondent and no defences were lodged. Due to COVID-19 restrictions and administrative error, an application for a decision was delayed until 15 December 2020.

[3] By order dated 3 March 2021, a case management discussion was assigned by conference call on 9 April 2021 to address the issue of evidence of intimation of the application.

Claimant's submissions

[4] The claimant submitted that the completed Form 6C, together with proof of recorded delivery posting, was sufficient to comply with rule 18.2(4) of the Simple Procedure Rules 2016 ("the 2016 Rules"). There was no requirement for a delivery receipt to be provided.

[5] There was a presumption in Scots law that a letter which was posted was received (McBryde, *The Law of Contract in Scotland*, (3rd edn.), para 6.116; Walker and Walker, *Evidence*, (2nd edn.), para 3.6.6, *Chaplin v Caledonian Land Properties Ltd* 1997 SLT 384 and *Tullis Russell & Co. Ltd. v Eadie Industries Ltd* 2001 GWD 28-1122). Obviously, this presumption could be rebutted, for example, by the return of the envelope to the court or to the solicitor. Similarly, an application to recall might rebut the presumption. However, until or unless the presumption was rebutted, the completed Form 6C, together with proof of recorded delivery posting, was sufficient.

[6] A delivery receipt alone should not be used to either confirm or rebut the presumption. The claimant submitted that Royal Mail's Track and Trace service, whilst sometimes indicative, was very unreliable, misleading and often simply wrong. It did not adhere to the timescales required within the 2016 Rules and could not form part of the procedure.

[7] When the 2016 Rules came into force, Royal Mail's Track and Trace service was already in operation, yet there was no reference to it within the 2016 Rules. Had the Civil

Justice Committee (formerly the Rules Council) wished that service to be relied upon, specific reference would have been made to it within the 2016 Rules.

[8] To require service by sheriff officer in all cases where a delivery receipt was not lodged would increase the cost of raising an action, which would ultimately end up being passed on to respondents. There was no prejudice to respondents in treating the completed Form 6C, together with evidence of recorded delivery posting, as sufficient to effect service because a decision which had not been implemented in full could be automatically recalled.

Legislation

[9] Part 18 of the 2016 Rules provides as follows:

PART 18: Formal service in Scotland

What is this Part about?

18.1 (1) This Part is about how to formally serve a document on someone living in Scotland.

How can you formally serve a document on someone who lives in Scotland?

18.2 (1) When these Rules require a document to be formally served, the first attempt must be by a next-day postal service which records delivery.

(2) That may only be done by one of three persons:

- (a) the party's solicitor,
- (b) a sheriff officer instructed by the party,
- (c) the sheriff clerk (where provided for by rule 6.10(2)).

(3) The envelope which contains the document must have the following label written or printed on it:

**THIS ENVELOPE CONTAINS A [NAME OF DOCUMENT] FROM
[NAME OF SHERIFF COURT]
IF DELIVERY CANNOT BE MADE, THE LETTER MUST BE
RETURNED TO THE SHERIFF CLERK AT
[FULL ADDRESS OF SHERIFF COURT]**

- (4) After formally serving a document, a Confirmation of Formal Service must be completed and any evidence of delivery attached to it.
- (5) Where a solicitor or sheriff officer has formally served the document, then the Confirmation of Formal Service must be sent to the sheriff court within one week of service taking place.

What if service by post does not work?

18.3 (1) If service by post has not worked, a sheriff officer may formally serve a document in one of three ways:

- (a) delivering it personally,
- (b) leaving it in the hands of a resident at the person's home,
- (c) leaving it in the hands of an employee at the person's place of business.

(2) If none of those ways has worked, the sheriff officer must make diligent inquiries about the person's whereabouts and current residence, and may then formally serve the document in one of two ways:

- (a) depositing it in the person's home or place of business by means of a letter box or other lawful way of doing so, or
- (b) leaving it at the person's home or place of business in such a way that it is likely to come to the attention of that person.

(3) If formal service is done in either of those ways, the sheriff officer must also do two more things:

- (a) send a copy of the document to the person by post to the address at which the sheriff officer thinks the person is most likely to be found, and
- (b) write or print on the envelope containing the document the following label:

**THIS ENVELOPE CONTAINS A [NAME OF DOCUMENT]
FROM
[NAME OF SHERIFF COURT]**

Decision

[10] Rule 1.2 of the 2016 Rules sets out the principles of simple procedure. They include that cases are to be resolved as quickly as possible, with the least expense to the parties and the courts; that the approach of the court to a case is to be as informal as is appropriate; and

that parties should only have to come to court when it is necessary to do so to progress or resolve their dispute.

[11] Against that background, Part 18 of the 2016 Rules sets out simple and straightforward rules for service. The first attempt at formal service must be by recorded delivery by a solicitor, sheriff officer or a sheriff clerk. The envelope which contains the document must have a return label on it. After formally serving the document, a confirmation of formal service must be completed and any evidence of delivery attached to it. If service by recorded delivery is unsuccessful, service must be by sheriff officer.

[12] Whilst a delivery receipt such as that available via Royal Mail's Track and Trace service *may* be lodged in process as evidence of delivery, there is quite clearly no *requirement* to do so in terms of the 2016 Rules. Rule 18.2(4) makes no reference to a particular *form* of evidence of delivery and simply provides that *any* evidence of delivery should be attached to the Confirmation of Formal Service. In the event that a party is in possession of a delivery receipt, such as that available via Royal Mail's Track and Trace service, then that ought to be lodged in process as evidence of delivery. However, the absence of a delivery receipt is not fatal according to the rules.

[13] The rebuttable presumption in Scots Law that a letter which was posted was received is based on common law and statute. Back in 1997, Lord Rodger in *Chaplin* held that the 19th century rebuttable presumption that a letter which was posted was received had greater force in the 20th century when, even though there were far more letters, the postal service was many times more sophisticated than anything which was available at the time of the early cases (*Stewart v Wright* (1821) 1 S 203; *Robertson v Garnock* (1835) 14 S 139; and *Mackenzie v Dott* (1861) 23 D 1310). Consequently, proof that a letter had been posted raised a presumption that it was duly addressed and delivered. Similarly, section 26(5) of the

Interpretation and Legislative Reform (Scotland) Act 2010 provides that service by recorded delivery post is taken to have been received 48 hours after it has been sent unless the contrary is shown.

[14] Applying those principles to the 2016 Rules, I am therefore of the view that completion of the Form 6C, together with proof of recorded delivery posting, creates a rebuttable presumption that formal service has been effected, without the need for a delivery receipt. That presumption can be rebutted by the return of the document to the sheriff clerk. In the event that a party is in possession of a delivery receipt, then that ought to be lodged in process as evidence of delivery. However, the absence of a delivery receipt is not fatal, provided a completed Form 6C has been lodged, together with proof of recorded delivery posting.

[15] That interpretation of the 2016 Rules is in keeping with the simple procedure principles of quick resolution at least expense. To interpret the 2016 Rules as requiring service by sheriff officer whenever a delivery receipt has not been lodged would create unnecessary delay, expense and administrative burden. The 2016 Rules provide that if service by post *has not worked* then service by sheriff officer is appropriate. The court will be informed that service by post has not worked by the return of the document to the sheriff clerk. The absence of a delivery receipt, or the lodging of a delivery receipt which is inconclusive, does not mean that service by post has not worked.

[16] I therefore granted an order against the respondent for payment of the sum sued for, together with expenses.