



IAN HAMILTON Q.C.
Pursuer

v

THE ROYAL BANK OF SCOTLAND GROUP PLC
Defender

OBAN SHERIFF COURT

SUMMARY

26 February 2009

of

The Decision of Sheriff Simon Pender in respect of the Defenders' Incidental Application to have the Small Claim raised by the Pursuer treated as an Ordinary Cause, issued at Oban on 26 February 2009.

This is a Small Claim raised by Ian Hamilton Q.C. against The Royal Bank of Scotland Group plc for payment to him of the sum of £1282, being the sum invested by him in shares in the Defenders, pursuant to a rights issue by the Defenders last year. The action was originally based on both alleged fraud and negligence on the part of the Defenders. By amendment when the case called last week, all allegations of fraud were withdrawn. The claim is therefore now based only on alleged negligence on the part of the Defenders. The Pursuer claims that the Defenders were negligent (1) in representing themselves as solvent at all material times when they were, according to the Pursuer, insolvent, (2) by not disclosing to their shareholders,

including the Pursuer, the true state of the Defenders' finances, (3) by not disclosing debts arising from the Defenders' acquisition of ABN Amro, and (4) by not disclosing the loss announced by the Defenders some two months after the Pursuer had subscribed for the shares in question.

Under Section 37 (2)(b) of the Sheriff Courts (Scotland) Act 1971, the Sheriff may, if he is of the opinion that the importance or difficulty of the case makes it appropriate to do so, direct that a Small Claim be treated as an Ordinary Cause – a more formal procedure in the Sheriff Court, based on written pleadings, and in which the expenses which may be awarded against an unsuccessful party are not limited (in a Small Claim such as this one, expenses would ordinarily be limited to a maximum of £150).

The Sheriff may also make such a direction under Section 37 (2B) of the Act, if he is of the opinion that a difficult question of law, or a question of fact of exceptional complexity is involved.

The Sheriff concluded that there would be difficult questions of law and exceptionally complex questions of fact involved in this case. Having considered the respective characteristics of Small Claims procedure and Ordinary Cause procedure, the Sheriff decided, under Section 37 (2B) of the Act, that the case should be treated as an Ordinary Cause. He also decided that the importance of the case, both to the parties, and generally, having regard to the public interest, made it appropriate, under Section 37 (2)(b), to treat the case as an Ordinary Cause. The Sheriff therefore directed that the case proceed as an Ordinary Cause in Oban Sheriff Court.

In particular the Sheriff formed the view that full written pleadings, for which there is no provision in Small Claims procedure, would be necessary, so that each party would have proper notice of the legal and factual basis of the other's case, and so that the Court would be enabled to consider the legal issues in the case properly. He further regarded as important that Ordinary Cause procedure, unlike Small Claims procedure, makes provision for a hearing to debate legal issues, separate from and in advance of any hearing at which evidence would be led – the Sheriff considered that such a debate might perhaps make an evidential hearing (which would be likely to be lengthy) unnecessary, or restrict the scope, and therefore the length, of such a hearing.

In exercising his discretion in favour of the Defenders, the Sheriff decided that the foregoing considerations outweighed the concerns of the Pursuer as to his ability to meet, in the event that his claim failed, an award of expenses in favour of the Defenders, which would, in an Ordinary Cause, not be limited as it would be in a Small Claim.

The Sheriff was of the opinion that Small Claims procedure was clearly intended for claims of small value, not involving difficult legal issues or exceptionally complex factual ones, and was never intended to be used for cases such as this one.

After the Sheriff had given his decision Mr Hamilton moved, and was allowed, to abandon the action on the basis that no expenses would be found due to or by either party.