



**SHERIFF APPEAL COURT**

**[2018] SAC (Civ) 22  
EDI-A455-17**

Appeal Sheriff McCulloch

**OPINION OF THE COURT**

delivered by APPEAL SHERIFF A G McCULLOCH

in appeal in the cause

EDGAR RAMSAY

Pursuer and Appellant

against

GRAHAM MANN

Defender and Respondent

**Pursuer and Appellant: Party  
Defender and Respondent: Hawkes**

20 August 2018

[1] The pursuer and appellant raised proceedings in Edinburgh Sheriff Court, seeking reparation from the defender and respondent. After sundry procedure the cause was appointed to a debate of the respondent's preliminary pleas, which included a plea of no jurisdiction. When the matter came for debate before the sheriff on 4 April 2018, the respondent insisted upon all preliminary pleas. The sheriff took the view that he would hear parties first on the plea regarding jurisdiction, on the basis that if the respondent was successful with the plea, there need be no further argument on other matters. Having heard

argument on the matter, the sheriff sustained the plea, and dismissed the action. It is against that decision that the appellant appeals to this Court.

[2] In his Note of Appeal, the appellant brings forth several points. First, he was not allowed a fair hearing in accordance with Article 6 of the European Convention on Human Rights. Second, the sheriff fell into error in refusing the appellant the opportunity to make his case on jurisdiction. Thirdly, the sheriff erred in law in making jurisdiction a question of domicile, and then failing to clarify where the respondent was domiciled. Fourthly, the sheriff misdirected himself regarding an averment about the respondent having given an address in Edinburgh to Companies House. Fifthly, the sheriff misdirected himself in referring to two defenders, when there was only one; and finally new evidence had come to light regarding the claim itself, which would answer the remaining preliminary pleas.

[3] When the appeal commenced, the appellant read from a prepared statement. In it he indicated his shortcomings as being neither a lawyer nor as eloquent as an advocate, but if he could be allowed a proof of his case, then justice would be served. Indeed at the conclusion of his submissions, he averred that the defender would not dare to appear at a proof, as the appellant had incontrovertible evidence in support of his case. He argued that he had not received a fair hearing as the sheriff had insisted that he (the appellant) had to deal with jurisdiction before he would be able to lead the evidence that justified his claim. He claimed not to understand why domicile was relevant or even what it meant. He told the sheriff so, but to no avail. He had been refused permission to read from his prepared script.

[4] His submissions in the appeal then turned to the issue of jurisdiction. He averred that the respondent was not sued at his place of business because he had several addresses, all in Glasgow. He was sued on the basis of the harmful event taking place in Home Street,

Edinburgh, and on the basis that the respondent had given an Edinburgh address as director of a company in a return to Companies House. As the appellant knew no other address for the respondent it was safe to assume that Edinburgh Sheriff Court not only had jurisdiction but also a special jurisdiction. Such a matter could only be resolved at a proof. Finally, the respondent offered no alternative averments regarding jurisdiction, merely arguing that the appellant had no proper basis for proceeding in Edinburgh Sheriff Court. The remainder of the appellant's submissions, as contained in his written note, seemed to be an essay on the various types of jurisdiction available to parties, how to decide which court to use, and whether Alternative Dispute Resolution was contractually required. He did suggest that if the court had warranted the Writ, there must have been an acceptance of jurisdiction by the court. He also advised this court that his personal files and computers had been removed by the Police, following some false allegations which must have come from the respondent. However that information was purely for the benefit of this court, and was accepted as not being in point regarding jurisdiction. He accepted his confusion and lack of understanding of the matter in hand.

[5] In reply, Counsel for the respondent adopted his Answers to the appeal, and his Note of Argument. Put simply, it was for the appellant to aver why the case was brought in Edinburgh Sheriff Court. The respondent was designed in the instance at an address in Glasgow. The case seemed to be based on delict, and a breach of a duty of care, bringing about loss. In such circumstances a pursuer required to aver where the harmful event occurred, and such a place would found jurisdiction. In his pleadings, despite adjustment opportunities, the appellant had failed to do so. In particular, article 2 of condescence which sets out the history of the respondent's involvement with the appellant, after

confirming that their initial meeting was in Home Street, Edinburgh, is then silent on place.

The appellant then avers:-

“The first named defender after several months involving meetings with McLetchie, examination of McLetchie’s company files and investigating the validity thereof, the first named defender met with the Pursuer and advised him that the business was a viable commercial transaction. The first named defender advised the Pursuer he should proceed with confidence making the proposed loan to McLetchie..... But for the advice tendered by the first named defender....the Pursuer would not have proceeded with the loan...”

It can be seen that there is no averment of where the advice was tendered, and so no place of the harmful event can be detected. Accordingly, the sheriff had been correct to hold that the appellant had failed properly to aver a basis for jurisdiction at Edinburgh. The appellant had made no motion to amend his pleadings, or to seek to have the cause transferred to Glasgow.

[6] Dealing with the appeal points raised in the Note of Appeal, there can be no doubt that the appellant received a fair hearing. The respondent’s position on jurisdiction was clear. Not only was it raised in the pleadings, reference to it was made in a note in terms of Rule 22.1 lodged before the Options Hearing, expanded upon in a Supplementary Note prior to the Continued Options Hearing and repeated at the debate, before the appellant was required to speak. The sheriff attempted to assist the appellant by explaining that the appellant had to overcome the plea of jurisdiction before there could be any enquiry into the facts. Although he appeared as party litigant, he was afforded ample opportunity to make his case. There was no Article 6 point to be made. The sheriff had not misdirected himself at any point. He was correct to deal with the case as one based on delict. Although there were some averments which might suggest a case based on contract, these were too vague and lacking in specification to do so. As the case was based on delict, it was for the appellant to aver where the harmful event had occurred. There were no such averments. Domicile

required to be considered in that context. As regards the point that there was an Edinburgh address for the respondent in a return to Companies House, this was of no assistance.

Firstly, the address was not given. Secondly, the company has no connection to this case.

Thirdly any such address might not be the domicile of the respondent. Such an address was irrelevant to the question, as the sheriff well understood.

[7] The final two points could be dealt with briefly. The sheriff had not been confused by reference to two defenders, as there clearly was only one in the instance. The appellant however in the pleadings referred to two defenders, but it was understood that he was trying to differentiate between the firm and the individual principal of the firm. In fact for these purposes there was no such distinction. Finally, new material coming to hand about the claim itself was not a factor to be taken into account in an appeal on the narrow, preliminary point of jurisdiction. For all these reasons, the appeal should be refused.

[8] It is of course the case that a party litigant should be afforded some latitude in the way that a case may be presented, or argued. But it is not the case that Rules of Court, laws of evidence, and procedure are to be ignored even when latitude of presentation is afforded. It was always known by the appellant, but perhaps not understood by him, that the respondent challenged the jurisdiction of Edinburgh Sheriff Court. Such a challenge was contained in both Rule 22.1 Notes. That the appellant failed to understand the significance is unfortunate, but cannot be a ground of appeal. That the appellant even now accepts that he does not understand issues of jurisdiction is of concern, but cannot be excused. This Court must deal with the pleadings as they are now, indeed the same as they were before the sheriff. They are in a confused state, but it is clear enough that the appellant is suing the respondent for reparation, based upon advice tendered, and acted upon. The appropriate court for that, in an action based on delict, would be where the harmful act took place.

[9] In Scotland, the question of jurisdiction is regulated by the Civil Jurisdiction and Judgments Act 1982, Schedule 8. These rules provide a code of jurisdiction where they are not in conflict with UK rules or European rules, the latter contained in what are now referred to as Brussels I, or Brussels II. In determining whether a Scottish Court has jurisdiction, it is necessary to have recourse to Brussels I and UK rules only to ascertain if there is such a conflict. The central principle of our rules is that persons, natural or legal, are to be sued in the courts for the place where they are domiciled. Unless the special rules relating to an exclusive jurisdiction regardless of domicile apply, any person in Scotland can be sued in the Court of Session, or the Sheriff Court in which a person is domiciled. Domicile is defined by sections 41- 43 of the 1982 Act, and can include the concept of residence in a place. Further a business can be sued at its place of business. In matters relating to delict, there exists a special jurisdiction based on the place where a harmful event took place. Accordingly, in the present case, Edinburgh Sheriff Court would have jurisdiction if the appellant had averred either that the respondent was resident within its district, or if the harmful event complained of had occurred there. Having regard to the pleadings, the respondent is given an address in Glasgow, which is not within the Edinburgh Sheriff Court District. Therefore, for that court to have jurisdiction, the appellant would have to aver a special jurisdiction. As he bases his case on delict, that means that he must aver, that is offer to prove, that the harmful event – in this case advice – was given in Edinburgh. On this vital point, the pleadings are silent. Accordingly it is clear that the appellant has failed to plead a case to invoke the jurisdiction of Edinburgh Sheriff Court.

[10] Turning to the specific grounds of appeal contained in the appellant's Note of Appeal, this court is satisfied that the sheriff acted appropriately and entirely properly in insisting that the plea of jurisdiction had to be answered before there could be any further

enquiry into the merits of the action. Such an approach has the potential to save time and expense. The sheriff, in his Note, sets out what he asked of the appellant, indeed how he tried to assist him in focussing the issue. There was no failure to allow a fair hearing, as required by Article 6 of the Convention. The appellant had an opportunity to address the Court on an issue of which he had been given ample notice. He had previously been given the opportunity to adjust his pleadings in light of the challenge on jurisdiction. That he appears not to have understood the concept does not give rise to a ground of appeal. It must be assumed that the allegation that the sheriff "refused the appellant the opportunity to make his case on jurisdiction" is truly an allegation that he was refused a proof, as it is clear that the appellant did indeed advance arguments that sought to support his position. The third ground is that the sheriff erred in making jurisdiction a matter of domicile. That argument must fail, standing the 1982 Act, and Brussels I. It was not for the sheriff to clarify where the respondent was domiciled. Rather, that was a necessary pre-requisite of pleading that fell to the appellant. The issue of the respondent's address being available in Companies House was interesting, but entirely misleading. Such an address is not pled. If it was suggested that because there was such an address, Edinburgh Sheriff Court would have some sort of jurisdiction over the respondent, who was sued at an address in Glasgow, there is no substance in such an argument. In any event as even now we know not what that address is, the issue is irrelevant. The alleged misdirection of the sheriff in referring to two defenders is not an issue that, even if correct, touches on the question of jurisdiction. In any event it is the appellant's pleadings that refer to a first and second defender. Finally, possible new material which is said to assist the appellant on the merits of his claim is irrelevant to the issue of jurisdiction. No offer to amend based on this material was made. A final, additional point was raised by the appellant in his submissions, namely that the

Court must have accepted jurisdiction, as it warranted the Writ. Such a contention does not stand scrutiny. At the moment of warranting, the Court is only carrying out an administrative role, checking that a Writ is competent, and in proper form. There is no contradictor, until defences are lodged. The Court can only note what is averred, and cannot, of itself, raise a plea of no jurisdiction, unless it is obvious that the court does not have jurisdiction, in which case enquiries may be made of the drafter before a warrant is granted. If, as in the present case, a defender does not accept that a court had jurisdiction over him for the subject matter of the case, he can raise the matter as a plea in law. That is exactly what occurred here.

[11] For all these reasons, the appeal is refused. Further, there has been no miscarriage of justice. I was not addressed on the issue of expenses. If the successful party seeks an award of expenses, a motion to that effect should be made within 14 days of the issue of this opinion.