

AMALGAMATED SOLID

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THE HIGH COURT

1983 No. 2337A

BETWEEN:

AMALGAMATED SOLID FUEL IMPORTERS LIMITED

Plaintiff

and

THOMAS McCRORY AND GERARD McKEEVER  
trading as CAPPAGH COAL COMPANY

Defendants

JUDGMENT of Mr. Justice Hamilton delivered the 1st day of October 1984

On the 4th day of November 1983 the Plaintiff herein caused to be issued a Summary Summons claiming against the Defendants herein the sum of Sterling £65,019.29 being alleged to be due to them by the Defendants as the balance due by them in respect of goods sold and delivered to them within the six years prior to the institution of proceedings.

The particulars set forth, however, in the special Indorsement of Claim state that the goods were sold and delivered between the 5th day of May 1983 and the 31st day of May 1983 and that the value of the goods so sold and delivered was Sterling £68,158.24.

Credit was given in the said Indorsement for the payment by the Defendants to the Plaintiff of the sum of Sterling £3,138.95 stated to have been received in the said period, leaving a balance alleged to be due and owing by the Defendants of Sterling £65,019.29. :-

In the alternative, the Plaintiff claimed the said sum as being due by the Defendants to the Plaintiff on an account stated and settled between the Plaintiff and the Defendants.

In addition the Plaintiff Company claims interest on the said sum of Sterling £65,019.29 at the monthly rate of 1.25% until payment or judgment or such interest as the Court may direct pursuant to Section 22 of the Courts Act, 1981.

In his affidavit filed on behalf of the Plaintiff Company Mr. John Kane, therein described as the Chairman and Managing Director of the Plaintiff Company, avers that between the 5th day of May 1983 and the 31st day of May 1983 goods to the total value of £68,158.24 were sold and delivered by the Plaintiff to the Defendants at their request. The goods in question were

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coal and other kinds of fuel and were delivered to the Defendants' trading address at 3, Barn Lodge, Cappagh in the County of Dublin.

He further avers that between the 5th day of May 1983 and the 31st day of May 1983 the Plaintiff Company received total payments and credits in the sum of £3,138.95 made by the Defendants, leaving a balance on the account of the sum of £65,019.29 claimed in the said proceedings.

He further avers that the said goods were sold and delivered by the Plaintiff to the Defendants on the understanding that interest would be charged on overdue accounts, at the rate of 1.25% per month.

In his said affidavit Mr. Kane exhibits the relevant invoices and delivery documentation, a detailed statement of the Defendants' account with the Plaintiff and the letter from the Plaintiff Company's Solicitors demanding payment from the Defendants and each of them of the alleged outstanding balance.

In his affidavit sworn on the 20th day of February 1984, the first-named Defendant, Thomas McCrory, averred that:-

"Prior to the 7th day of April 1983 I carried on business with Gerard McKeever the second-named Defendant and traded as Cappagh Coal Company. On or about the 7th day of April, 1983 after discussions with the said second-named Defendant I was dissociated from the Cappagh Coal Company and no longer traded under that name or indeed had access to the Cappagh Coal Company's premises at 3 Barn Lodge, Cappagh, Co. Dublin.

On or about the 7th day of April, 1983 Mr. John Kane, the Managing Director of the Plaintiff Company was informed by telephone that I this deponent was no longer associated with Cappagh Coal Company. As a result of the said telephone conversation Mr. Kane travelled to Dublin and on the 8th day of April, 1983 attended with this deponent at the premises of Cappagh Coal Company at 3 Barn Lodge, Cappagh, Co. Dublin. In the presence of the second-named Defendant, Mr. John Kane, the Managing Director of the Plaintiff Company was informed by this deponent and the second-named Defendant that I was no longer associated with or involved in Cappagh Coal Company and would not in future have access to its said premises."

Though this was denied by Mr. Kane, these averments and the further averments contained in Mr. McCrory's said affidavit were sufficient to raise a bona fide issue of fact and the Plaintiff Company's claim against the first-named Defendant was on the 25<sup>th</sup> day of June 1984 sent for plenary hearing.

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The matter presently before me is an application made on behalf of the Plaintiff for leave to enter judgment against the second-named Defendant, Gerard McKeever, for the amount claimed in the Summary Summons together with interest thereon.

In his affidavit sworn on the 21st day of March 1984, Mr. McKeever avers that in or about the 15th September 1980 he went into partnership with the first-named Defendant for the purpose of selling coal and traded under the name of Cappagh Coal Company.

He states that during the currency of the partnership, he began to check more closely on the accounts which, up to then, had been kept by the first-named Defendant and his wife Ellen and noticed that considerable sums of money were due to the partnership by the said first-named Defendant.

He stated that he terminated the partnership by letter dated the 24th day of May 1983.

He denied that the sums claimed in Mr. Kane's affidavit are properly due and owing and alleges that "if the said or any sums are due, which is denied, then Thomas McCrory is entirely or alternatively partially liable for same".

In a further affidavit sworn on the 5th July 1984 the said

Gerard McKeever stated that:-

"3. In respect of the debt allegedly owed by Cappagh Coal Company to the Plaintiff herein I say as follows:-

(a) On the 28th day of February 1983 the sum owed by the Defendants to the Plaintiff was £84,988.

(b) I say on the 31st day of March 1983 the sum owed by the Defendants to the Plaintiff was £92,142.85.

(c) I say that, on the 7th day of April 1983 the sum due by the Defendants to the Plaintiff was £93,878.65."

He refers to a computerised statement of the accounts furnished to the Defendants and exhibits the said accounts.

At paragraph 5, he goes on to say that:-

"From the 7th day of April 1983 to the 31st May 1983 goods to the value of £154,908.99 were received from the Plaintiff by the Defendants"

and that during that period the Defendants paid to the Plaintiff the sum of £183,768 and he exhibits bank drafts in respect of same.

He goes on to say at paragraph 6 of his affidavit that:-

"I therefore say that the sums claimed in respect of the period 5th May to the 31st May in the Indorsement of Claim herein had been fully discharged and satisfied by the Defendants. I further say that if any sums are due and owing by the Defendants to the Plaintiff, which is denied, then same are in respect of debts which arose at an earlier period of business and not relevant to the sums claimed

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"and to the period referred to in the Indorsement of Claim herein."

In an affidavit sworn on the 13th day of July 1984 by James Edward Annette, who is described therein as the Company Secretary of the Plaintiff Company, it is stated that:-

"3. As is expressly admitted by the second-named Defendant, Gerard McKeever at paragraph 3(c) of his supplemental affidavit the sum due by the Defendants to the Plaintiff on the 7th day of April 1983 was £93,878.65 and as is admitted at paragraph 5 further goods to the value of £154,908.99 were received by the Defendants from the Plaintiff, which said sums added together amount to £248,787.64."

In his affidavit he admits that the Plaintiff Company received the sum of £183,768 referred to in the affidavit of Mr. McKeever and states that that left a balance due by the Defendants to the Plaintiff of Sterling £65,019 which is the amount claimed in the Summary Summons herein.

He further states that the said bank drafts referred to in the supplemental affidavit of Mr. McKeever were not paid by the Defendants in satisfaction of specific invoices but were payments made by the Defendants to reduce their liabilities on foot of their accounts.

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It is quite clear from a consideration of the affidavits hereinbefore referred to and the documents referred to therein that there is due and owing by Cappagh Coal Company to the Plaintiff the sum of Sterling £65,019.29.

Credit has been given for all payments made by or on behalf of the Defendants. }

It is unfortunate from the point of view of the second-named Defendant that disputes have arisen between himself and the first-named Defendant but that does not affect his liability to pay to the Plaintiff Company the amounts due.

He may, in other proceedings, have recourse to the first-named Defendant for all or some of the moneys which he is undoubtedly liable to pay to the Plaintiff.

Consequently, I am satisfied that the Plaintiff Company is entitled to be given leave to enter judgment against the second-named Defendant for the sum of Sterling £65,019.29 together with interest on the said sum at the rate of 1.25% per month simple interest from the 15th day of June 1983 to this date.

*Handwritten signature*