



13 June 2013

## PRESS SUMMARY

### **Apollo Engineering Limited (Appellant) v James Scott Limited (Respondent) (Scotland)** **[2013] UKSC 37**

*On appeal from [2012] CSIH 4; [2012] CSIH 88*

**JUSTICES:** Lord Hope, Lord Clarke and Lord Carnwath

### **BACKGROUND TO THE APPEAL**

This case concerns an aspect of the Supreme Court's jurisdiction to hear appeals in Scottish civil cases. Mr and Mrs Politakis are the directors and the only shareholders of Apollo Engineering Ltd (“Apollo”). They wish to appeal against two orders that were made in a case stated for the opinion of the Inner House of the Court of Session under section 3 of the Administration of Justice (Scotland) Act 1972. The stated case arose from an arbitration between Apollo and James Scott Ltd in relation to a contractual dispute [2].

Apollo ran out of funds and could no longer afford legal representation. On 18 January 2012 the Inner House made an order refusing Mr Politakis’ request that he represent Apollo, on the basis that as a matter of Scots law, a company requires to be legally represented. On 27 November 2012 the Inner House made a further order in which, among other things, it (1) refused Mr Politakis leave to appeal to the Supreme Court against the order of 18 January 2012; (2) refused to allow Mr Politakis to be joined as a party either to replace or in addition to Apollo; and (3) dismissed the stated case [3, 4].

Section 40 of the Court of Session Act 1988 (“the 1988 Act”) regulates appeals to the Supreme Court in Scottish civil cases. It provides that it is competent to appeal from the Inner House to the Supreme Court without the leave of the Inner House, against: (1) a judgment on the whole merits of the cause; (2) an interlocutory judgment where there is a difference of opinion among the judges; or (3) where the interlocutory judgment is one sustaining a dilatory defence and dismissing the action. It is also competent to appeal to the Supreme Court with the leave of the Inner House against any other type of interlocutory judgment of the Inner House [6].

The House of Lords had decided in the case of *John G McGregor (Contractors) Ltd v Grampian Regional Council* 1991 SC (HL) 1 that an opinion of the court in a stated case did not constitute a “judgment” within the meaning of section 40 of the 1988 Act. In the present case, an opinion on the legal issues in the stated case had not been given [7].

Two issues are before the Supreme Court: (1) whether the *McGregor* principle applies in the present case so that an appeal against the order of 27 November 2012 is incompetent; and (2) if not, whether the part of the order of 27 November 2012 which dismissed the stated case can competently be appealed to the Supreme Court under section 40 of the 1988 Act without the leave of the Inner House. The Supreme Court directed that these two issues should be the subject of an oral hearing [8].

There is no self-standing right of appeal to the Supreme Court against the order of 18 January 2012, because it was an interlocutory judgment under section 40 of the 1988 Act and the Inner House has refused leave to appeal against it [9].

### **JUDGMENT**

Apollo can competently appeal to the Supreme Court without the leave of the Inner House against the part of the order of 27 November 2012 which dismissed the stated case, as long as the appeal raises a question which can be responsibly be certified by counsel as reasonable [16, 28, 29]. Lord Hope gives the judgment of the Court.

## REASONS FOR THE JUDGMENT

On issue (1), the Court holds that none of the cases in this area, including the *McGregor* case, offer direct assistance on the question that is to be resolved, and none deals with the situation where the court has declined to do what the statute provides for, which is to give an opinion [10 – 14].

The ordinary use of language indicates that an appeal to the Supreme Court against an opinion of the Inner House under section 3 of the 1972 Act is excluded by necessary implication because it is for the opinion of that court only that the case has been stated. But the 1972 Act makes no provision for the course of action that the Inner House felt obliged to take in this case: dismissing the stated case without giving its opinion on the questions that were before it at all [15].

On issue (2), the Court holds that the order dismissing the stated case cannot be regarded as an interlocutory judgment of the kind which is appealable only with leave under section 40 of the 1988 Act. All the issues that were in controversy before the Inner House were disposed of when the stated case was dismissed. In dismissing the stated case, the court exhausted its functions under the statute, save as to resolving any outstanding issues about expenses. The effect of the order was to end the proceedings completely, in just the same way as if it had encompassed the court's opinion on the questions that were before it [22, 23].

It is not easy to characterise the order dismissing the stated case as one “sustaining a dilatory defence and dismissing the action”. The order gave effect to a motion by James Scott Ltd based on Apollo's inability to fulfil the court's rules of practice about representation. It would be stretching the language of the statute to say that this objection was a defence, especially as the procedure under section 3 was not one that could, in the ordinary sense of the word, be defended [27].

It may not matter much whether the order is to be regarded as a judgment on the whole merits of the cause or as one sustaining a dilatory defence, as both are appealable without the leave of the Inner House. On balance, however, it would be more correct to regard it as a judgment on the whole merits of the cause within the meaning of section 40 of the 1988 Act, even though the Inner House did not address itself to the issues raised in the stated case [27].

As is the case with all other orders that are appealable without leave however, Apollo's petition of appeal must be certified by two counsel as reasonable – the test for which is whether the appeal raises arguable points of law which are of general public importance. The only question which the Supreme Court can consider is whether the order of the Inner House to dismiss the stated case was one which was open to it to make under the jurisdiction given to it by the statute. Unless something has gone seriously wrong, however, this was an exercise of judgment on a matter of procedure with which this court would not normally wish to interfere [29].

The question whether there was any way in which Apollo's interests could have been represented which might have avoided the situation in which the Inner House felt obliged to dismiss the stated case is not before the Court. But it is a troublesome aspect of this case, and there may be grounds for thinking that the rule which disables a company from being represented other than by counsel or a solicitor with a right of audience needs to be re-examined [30].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)