

JUDGMENT : WEATHERUP J IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND 17th October 2003

- [1] This is an appeal from a small claims arbitration by way of a case stated by Deputy District Judge Kearney under Article 30(4)(b) of the County Courts (Northern Ireland) Order 1980. Article 30(4)(b) was amended by paragraph 36 of Schedule 3 of the Arbitration Act 1998 to provide that in any action dealt with by way of arbitration "the district judge may, and shall if so required by the High Court, state for the determination of the High Court any question of law arising out of an award so made." Order 94 Rule 1(iii) of the Rules of the Supreme Court provides that an appeal to the High Court under Article 30(4)(b) of the 1980 Order shall be brought by way of case stated in accordance with the provisions of Order 56.
- [2] By Application for Arbitration (Small Claims) dated 12 October 2001 the applicant applied to the District Judge at Newtownards for arbitration in respect of a claim for £1,099.88 and court fees of £55 being the balance claimed on foot of a hire purchase agreement dated 16 February 1998 between the applicant and the respondent. By Notice of Dispute dated 7 December 2001 the respondent claimed in effect to have given valid written notice of termination of the hire purchase agreement so as not to be liable for the amount claimed. On 7 March 2002 the Deputy District Judge ordered that the applicant's claim be struck out. By notice dated 20 March 2002 the applicant applied to the Deputy District Judge to state a case for the opinion of the High Court, and the Deputy District Judge having refused to do so the applicant applied to the High Court by Notice of Motion dated 6 December 2002 for an order requiring the Deputy District Judge to state a case for the determination of the High Court. On 13 December 2002 it was ordered that the Deputy District Judge state a case for the opinion of the High Court and he did so on 24 February 2003.
- [3] The hire purchase agreement of 16 February 1998 was regulated by the Consumer Credit Act 1974. The respondent agreed with a car dealer known as Shaws of Bangor to purchase a Citroen Saxo by a means of a hire purchase agreement with the applicant involving a single payment of £280.92 on 12 March 1998 and 35 monthly payments of £205.92 commencing 12 April 1998 and one single final payment of £4,400 on 12 March 2001. The terms and conditions of the hire purchase agreement included clause 7 under the heading "Dealer/Supplier. The supplier of the Goods or any person who introduced you to us is not our agent except as deemed to be so by the Consumer Credit Act 1974 if this agreement is regulated."
- [4] The applicant paid the one single payment of £280.92 on 12 March 1998 and the 35 monthly payments of £205.92 from 12 April 1998. In March 2001 the respondent returned to Shaws of Bangor and agreed the purchase of a new Citroen Saxo by means of a further hire purchase agreement with a finance company other than the applicant. Shaws of Bangor completed a Vehicle Enquiry Form dated 5 March 2001 setting out particulars of the respondent's vehicle requirements and the comment "5/3/01 Handing car back to NIIB".
- [5] The final payment of £4,400 payable under the hire purchase agreement between the respondent and the applicant was not due until 12 March 2001. According to the respondent's Notice of Dispute dated 7 December 2001 the respondent notified the applicant by telephone on 9 March 2001 of his intention to terminate the hire purchase agreement and he gave notice in writing of termination of the hire purchase agreement by letter posted first class to the applicant on 9 March 2001. It is stated that the letter did not reach the applicant until 15 March 2001. While the Notice of Dispute attributes the delay to industrial action on the part of postal workers a letter from the Royal Mail furnished to the Court without objection indicated no record of such industrial action. The respondent's Notice of Dispute contended that he had taken all reasonable steps to comply with his obligations under the agreement.
- [6] It is apparent that the respondent made a commercial decision that it was preferable to terminate the hire purchase agreement and return the vehicle to the applicant rather than make the final payment and keep the vehicle. As the applicant contended that the respondent had not validly terminated the hire purchase agreement by notice in writing to the applicant before the final payment became due on 12 March 2001 the applicant's claim for £1099.88 represents the difference between the final payment of £4,400 and the amount realised by the applicant on the sale of the returned vehicle.
- [7] Under the Consumer Credit Act 1974 it is provided that at any time before the final payment by the debtor under a regulated hire purchase agreement falls due, the debtor shall be entitled to terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement (Section 99(1)). Notice shall be given in writing (Section 189(1)).
- [8] The respondent's Notice of Dispute had addressed the issue of termination of the hire purchase agreement by reference to the written notice to the applicant dated 9 March 2001. The case stated addressed the issue of termination of the hire purchase agreement by reference to the form completed by the dealer on 5 March 2001 and stated as follows -
- "3. During the course of the evidence the following matters were proved to admitted –
- (a) Shaws of Bangor acted as agent for the applicant in the preparation and completion of the hire purchase agreement dated 16 February 1998.
 - (b) Shaws of Bangor prepared the document entitled 'vehicle enquiry form' dated 5 March 2001.
 - (c) Shaws of Bangor were agents of the applicants on 5 March 2001 though not acting as such in preparing the document entitled 'vehicle enquiry form'.
4. I found that Shaws of Bangor was the agent at common law of the applicant notwithstanding Clause 7 of the said hire purchase agreement or, in alternative, the deemed agent of the applicant under Section 56(1)(c) of the

Consumer Credit Act 1974 and that consequently Shaws of Bangor was the agent of the applicant for the purpose of receiving a notice of termination under Section 99(1) of the Consumer Credit Act 1974."

- [9] In essence the Deputy District Judge found, first of all, that on 5 March 2001 Shaws of Bangor as the dealer was agent at common law of the applicant, and secondly that Shaws of Bangor was a supplier under Section 56(1)(c) of the 1974 Act so as to be the statutory agent of the applicant, and thirdly that Shaws of Bangor was the agent of the applicant for the purpose of receiving notice of termination of the hire purchase agreement, and fourthly that Shaws of Bangor as agent of the applicant received a valid notice of termination upon completion of the Vehicle Enquiry Form of 5 March 2001.
- [10] At common law a dealer who negotiated a credit agreement generally was not the agent of the finance company. Section 56 of the 1974 Act reversed that position in relation to "antecedent negotiations".
- "(1) In this Act 'antecedent negotiations' means any negotiations with the debtor or hirer –*
- (a) conducted by the creditor or owner in relation to the making of any regulated agreement, or*
 - (b) conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject matter of a debtor-creditor-supplier agreement within section 12(a), or*
 - (c) conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or (c)*
- and 'negotiator' means the person by whom negotiations are so conducted with the debtor or hirer.*
- (2) Negotiations with the debtor in a case falling within sub-section (1)(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as his actual capacity.*
- (4) For the purposes of this Act antecedent negotiations will be taken to begin when the negotiator and the debtor or hirer first enter into communication (including communication by advertisement), and to include any representations made by the negotiator to the debtor or hirer and any other dealings between them."*
- [11] Thus there are three types of negotiator. The first is the creditor or owner. The second is the dealer who arranges a regulated hire purchase agreement where the dealer is described as a credit broker and the finance arrangement is described as a debtor-creditor-supplier agreement. In 1998 Shaws of Bangor as dealer was the credit-broker in relation to the vehicle that was proposed to be sold by the dealer to the finance company before forming the subject matter of the hire purchase agreement with the respondent. The third type of negotiator involves the dealer being described as a supplier who arranges a loan to finance the purchase. In the second and third situations above where the dealer is a credit-broker or a supplier he is the statutory agent of the creditor in the negotiations that precede the conclusion of the finance agreement.
- [12] The Deputy District Judge stated the following points of law for the opinion of this court –
- "(1) Having found that the documents entitled "Vehicle Enquiry Form" dated 5 March 2001 prepared by Shaws of Bangor amounted to notice of termination by the respondent of the hire purchase agreement dated 16 February 1998 made between the applicant and the respondent, was the court correct in law in holding that the said document constituted a valid notice of termination by the respondent under Section 99(1) of the Consumer Credit Act 1974.*
- (2) Having found that Shaws of Bangor was the agent at common law of the applicant notwithstanding Clause 7 of the said hire purchase agreement or, in the alternative, the deemed agent of the applicant under Section 56(1)(c) of the Consumer Credit Act 1974, was the court correct in law in holding that Shaws of Bangor was the agent of the applicant for the purpose of receiving a notice of termination under Section 99(1) of the Consumer Credit Act 1974.*
- (3) If the answer to question (1) or (2) is 'No', was there any other evidence on which the court could have construed that a valid notice of termination had been served by the respondent on the applicant under Section 99(1) of the Consumer Credit Act 1974."*
- [13] The first finding of the Deputy District Judge was that the dealer was the agent at common law of the finance company notwithstanding clause 7 of the hire purchase agreement. The common law position was considered by the House of Lords in *Branwhite v Worcester Works Finance* (1968) 3 All ER 104 where it was established that a standard three party agreement involving a customer, dealer and finance company did not constitute the dealer as agent of the finance company. However, there may be exceptions where the dealer is the agent of the finance company. As Lord Morris stated at page 113G:
- "A dealer may in some circumstances be held out by a finance company as their agent. A dealer may in express terms be made an agent. A dealer may for some ad hoc purpose be the agent of a finance company."*
- In the general course of events the dealer in the present case would not be the agent at common law of the finance company. The case stated does not indicate any evidence on the basis of which the dealer in the present case was capable of being found to be the agent at common law of the applicant.
- [14] Secondly, the Deputy District Judge found that the dealer was the deemed agent of the finance company under Section 56(1)(c) of the 1974 Act. Section 56(1)(c) refers to negotiations conducted by the dealer, described as the supplier, and relates to a transaction financed by third party finance. That is not the present case where the dealer was a credit-broker who sold the goods to the creditor under Section 56(1)(b). Under (b) a hire purchase agreement would be included, such as the present case, and under (c) a loan agreement would be included, and they are treated the same for the purposes of statutory agency. However under both section 56(1)(b) and (c) the

statutory agency applies to negotiations which are "antecedent" to the conclusion of the relevant agreement. Counsel for the respondent referred to the words of section 56(4) of the 1974 Act to the effect that the statutory agency included any representations made by the dealer to the hirer "and any other dealings between them." Further he referred to other examples of statutory agency involving dealer and finance company. Section 69 of the 1974 Act deals with notice of cancellation of a cancellable agreement where section 69(6) provides that the dealer is the deemed agent and section 102 deals with notice of rescission where again the dealer is the deemed agent. The present case does not involve cancellation or rescission and the specific statutory provision made for cancellation and rescission does not impact on the effect of section 56(1) establishing a statutory agency for negotiations that are antecedent to the conclusion of the relevant agreement. In the present case the relevant agreement was the 1998 agreement and the case stated does not indicate any evidence on the basis of which the dealer could have been the statutory agent of the applicant in the negotiations of March 2001.

- [15] Thirdly, the Deputy District Judge found that the dealer was the agent of the applicant for the purpose of receiving notice of termination under Section 99(1) of the 1974 Act. It does appear that on 5 March 2001 Shaws of Bangor, as dealer, was engaged in antecedent negotiations with the respondent in relation to a new Citroen Saxo that was to become the subject matter of a new hire purchase agreement with a new finance company. Any statutory agency at that date would have involved the dealer and the new finance company. The case stated does not indicate any evidence on the basis of which the dealer was capable of being found to be the agent of the applicant on 5 March 2001. Nor does the case stated indicate any evidence on the basis on which the dealer was capable of being found to be the agent of the applicant for the purpose of receiving a notice of termination under Section 99(1) of the 1974 Act.
- [16] Fourthly, the Deputy District Judge found that the entry on the Vehicle Enquiry Form was a valid notice of termination of the hire purchase agreement. The entry on the Vehicle Enquiry Form of 5 March 2001 was made by the dealer and indicated that the first Citroen Saxo was to be returned to the applicant. That entry indicated the respondent's intention to terminate the hire purchase agreement, as returning the motor vehicle was the alternative to completing the payments falling due under the hire purchase agreement. A notice of termination in writing may be completed by the hirer or on behalf of the hirer and could be completed by a dealer on behalf of a hirer. I would have considered that any document relied on as the written notice of termination must have been intended by the hirer to be a notice of termination and the contents of the document should include a means of identifying the agreement and should indicate the termination of that agreement. Leaving aside the question of agency I would have considered that the entry in the Vehicle Enquiry Form was not capable of amounting to notice of termination any more than would have been the case with any written record made by the applicant's employee of the respondent's telephone call of 9 March 2001 at which he intimated an intention to terminate the agreement. The case stated does not indicate any evidence on the basis of which Shaws of Bangor was the agent of the applicant for the purpose of receiving notice of termination of the hire purchase agreement nor was the entry in the Vehicle Enquiry Form intended to be such a notice of termination nor were the contents such as to amount to such notice of termination and that accordingly the entry in the Vehicle Enquiry Form was not a valid notice of termination.
- [17] Counsel for the respondent contended that the Court must accept the findings of the Deputy District Judge and address the points of law accordingly. By this he intended that the Court be bound by the premise of the first question that the Vehicle Enquiry Form was a notice of termination of the hire purchase agreement and the premise of the second question that the dealer was the agent of the applicant in the negotiations in March 2001. I cannot accept that contention as in essence the case stated seeks to establish whether the Deputy District Judge was correct in law in holding (1) that the Vehicle Enquiry Form constituted a valid notice of termination, and (2) that the dealer was the agent of the finance company for the purpose of receiving the notice of termination, and further (3) whether there was any other evidence of a valid notice of termination having been served on the finance company. The three points of law necessarily raise the issue as to the existence of evidence for the findings of the Deputy District Judge. Were it otherwise the case stated would be rendered ineffective as a means of addressing the issues arising from the decision of the Deputy District Judge.
- [18] The respondent's letter of 9 March 2001 addressed to the applicant did identify the agreement and did specify the termination of that agreement. It was capable of amounting to a valid notice of termination had notice been given to the applicant before the final payment fell due on 12 March 2001. Section 99(1) of the Consumer Credit Act 1974 provides for the right to terminate hire purchase agreements by the "giving" of "notice"; section 189(1) provides that "notice" means notice in writing and "give" means deliver or send by post. Reliance was placed on section 176(2), which provides that a document to be served under the Act may be sent by post, but the relevant authorisation for the giving of notice by post is as set out above. Reliance was placed on the Interpretation Act (Northern Ireland) 1954 which applies to Northern Ireland legislation and section 24 (1) provides that where an enactment authorises a document to be served by post, and this applies equally to the giving of written notice, that service or giving may be effected by prepaying, registering or recording and posting an envelope enclosing the document to the person on whom the document is to be served at his usual or last known place of business. Unless the contrary is proved the document is deemed to have been served at the time at which such envelope would have been delivered in the ordinary course of post. However the Interpretation Act 1978 extends to Northern Ireland and section 7 applies to the Consumer Credit Act 1974 and is to like effect as the 1954 Act save that the service or giving of the document is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document. The case stated does not indicate that there was any evidence or

any agreement as to the achievements of the ordinary course of post, but a letter from the respondent posted to the applicant's office by first class post on 9 March 2001 might have been delivered in the ordinary course of post on 10 March 2001, and would have been within time. However deemed delivery applies "*unless the contrary is proved*" and in the present case the respondent's Notice of Dispute states that the letter was not delivered until 15 March 2001 and in that event the notice was out of time. The case stated sets out no finding in relation to the posting or the delivery of the respondent's letter dated 9 March 2001 but receipt by the applicant of written notice of termination on 15 March 2001 would have been out of time for a valid notice of termination under section 99(1) of the 1974 Act. The case stated indicates no other evidence of a valid notice of termination of the hire purchase agreement.

- [19] The answer to question 1 is "No".
The answer to question 2 is "No".
The answer to question 3 is "No".