
Dispute Resolution
Case Law Update
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The Facts

In 2001, Prompt Motor Ltd (the "**Claimant**") obtained a term loan of £1,000,000 from HSBC Bank Plc (the "**Bank**") for the purpose of redeveloping its premises (the "**Premises**") and providing working capital.

The Bank's standard terms and conditions provided that it was entitled to demand repayment of all sums owed (even before the term date) as a result of any failure by the Claimant to repay or discharge, in full, any liability owed to the Bank for monies borrowed, when they became due.

The loan was secured by way of a first legal charge over the Premises and a debenture over the Claimant's assets. The debenture was security for the payment of any liabilities to the Bank (the "**Debt**"), including the loan and any overdraft. The debenture was enforceable if the Debt was not paid when due, or if the Bank reasonably considered that any claim might be made against the Claimant, under any agreement or contingent liability, by a third party. Once the debenture was enforceable the Bank could appoint a receiver.

The Premises were closed for redevelopment between July 2001 and April 2002 which had an adverse effect on the Claimant's business. After obtaining a further valuation of the Premises, the Bank obtained a personal guarantee from a director of the Bank as additional security.
In May 2004, the Bank formally demanded that sums owing on the Claimant's overdrawn bank account (the "**Demand**") be repaid. When the Demand was not satisfied, the Bank appointed receivers (the "**Receivers**").

Having been struck off the Register of Companies in 2006, the Claimant was restored to the Register in order to bring a claim against the Bank. In May 2011, the Bank obtained summary judgment in that litigation (the "**May Order**"), against which the Claimant unsuccessfully sought permission to appeal on two occasions, the latest being in October 2011 (the "**October Order**"). In early 2017, the Claimant made an application to set aside the October Order.

The Application

The Claimant submitted that:

1. The further valuation obtained by the Bank was based on incorrect information and resulted in the wrong conclusion of the Claimant's assets being reached;

2. The Demand had been unlawful because:

   a. It had had an illegible signature and the Bank had allegedly not told the Claimant who had written or signed it;

b. the Claimant's relationship manager (employed by the Bank) had said he had not authorised the Demand; and

c. the description of the individual who had signed the Demand was inaccurate and therefore constituted fraud;

3. The appointment of the Receivers had been wrong, because:

a. the Claimant had not received adequate notice;

b. staff of the Receivers worked on the Claimant's affairs in 2003 and from that date, up until the date on which the Receivers were appointed, the staff were trespassing on the Premises; and

c. the Bank had no power to appoint these particular Receivers.

Judgment

The Court held that it did not have jurisdiction, under CPR 3.1(7), to set aside the October Order because it was a final judgment with no evidence of fraud. Where there is a final judgment, the bar is set considerably high in order to satisfy the increased public interest in achieving a final result in litigation. A final judgment could not be set aside merely because a party wishes to put forward evidence which it failed to deploy the first time round, or even where fresh evidence comes to light. A party has the obligation to fight its case, and the whole case, on one occasion and cannot deal with it in stages, as and when convenient.

The Court noted that the events in question took place in 2004, the October Order was made in 2011 and the application to set it aside was issued nearly 6 years later. Given the passage of time, the Court considered it a "very stale claim" that could not be fairly dealt with now.

The Court went on to say that even if it did have jurisdiction, it would not have exercised its discretion as the application was wholly without merit because:

1. even if there had been an error in the valuation, this did not render it fraudulent;

2. the Bank had had no obligation to inform the Claimant who had signed the Demand. Even if it had not been authorised, the Bank had relied on the Demand and had therefore ratified what, on that hypothesis, would have been an unauthorised demand; and

3. there was no impropriety in respect of the appointment of the Receivers as the alleged.

Commentary

This case is a useful reminder to lenders of the approach that the Courts take in respect of challenges to the validity of a lender's attempts to enforce its security. It also demonstrates the approach that will likely be taken when parties attempt to restore proceedings which were resolved many years before.

For further information, please contact Georgina Squire or the Partner with whom you usually deal.