

Dispute Resolution
Case Law Update
Rosling King LLP



The Claim

The Claimant, Mr Milos Andric issued a claim against the Defendants, Credit Suisse (UK) Ltd (“**CSUK**”) and its then employee, Mr Hans-Olav Eldring, alleging that Mr Andric’s former company (Brova Consultadoria de Gestao Unipessoal LDA (“**Brova**”)), had been induced to become involved in raising finance for the purchase of a property in Canary Wharf as a result of Mr Eldring’s false representations.

Brova intended to finance the transaction by drawing on a line of credit of €320 million provided by Banco Espirito Santo (“**BES**”). In order to secure the funds Brova was required to pay a deposit of €8.25 million to BES, which was lost after the property transaction fell through.

Mr Andric’s claim contends that, as a result of the property purchase failing, he suffered loss. Mr Andric claims that CSUK provided him with a £150 million guarantee for financing the property development. As a result, he alleges, CSUK is liable for the deposit he was required to pay to BES and for damages of an undisclosed amount caused by lost investment opportunities, as well as exemplary damages for what he alleges are CSUK’s reckless false representations regarding its guarantee.

CSUK contends that Mr Eldring had no authority to provide a guarantee on its behalf and argued that Mr Andric was unable to provide the written agreement between CSUK and Brova, nor any evidence that Brova had paid an £8.25 million deposit.

The Application

CSUK applied for an order that the claim be struck out, or that CSUK be given summary judgment dismissing the claim. CSUK alleged that the claim could not succeed because:

1. The agreement concerning the BES line of credit of €320m had not been disclosed;
2. There was no evidence that a deposit had been paid; and
3. There was no contractual basis on which the alleged deposit had been forfeited.

Consequently, CSUK argued that Mr Andric could not prove he paid a deposit and the claim therefore was doomed to fail.

The Court had to consider whether Mr Andric’s case, that a deposit had been contractually payable to BES, had a realistic prospect of succeeding.

The Decision

The Court dismissed CSUK’s application and confirmed that summary judgment cannot be granted simply because a claim will probably fail, what must be shown is that the claim has no real prospect of success.

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The Court held that whilst Mr Andric's claim faced undoubted difficulties, and was likely to fail, it had real, and not merely fanciful, prospect of success. The assessment of the evidence must wait until trial and to dismiss the claim now would require the Court to conduct a mini-trial, which would be inappropriate.

Commentary

The decision provides a helpful reminder of the high threshold required for a claim to be struck out, or summary judgment granted. It also highlights that the Courts are unlikely to conduct a mini-trial in order to assess the merits of a claim at an early stage as this should be dealt with at trial.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.