

JERSEY / JUDGMENT

Booth v Bults [2018] JCA 135 (25 July 2018)

[2018] JCA 135

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Court of Appeal 25 July 2018 Before : James McNeill , Q. C., President; David Perry,Q. C, and Lord Anderson of Ipswich, K. B. E. Q. C. Between Alan Paul Booth Appellant And Eelke Jan Bults Respondent The Appellant appeared on his own behalf. The Respondent appeared on his own behalf.

judgment

ANDERSON JA: This is the judgment of the Court.

Introduction

1. By judgment of 1 February 2018 (Booth v Bults

[2018] JRC 027), the Royal Court (T. J. Le Cocq Esq., Deputy Bailiff, and Jurats Olsen and Ramsden) dismissed a claim brought by Alan Paul Booth against Eelke Jan Bults (also known as Elik Bults). Mr Booth, who represented himself both in the Royal Court and before us, now appeals against that dismissal. Mr Bults was legally represented in the Royal Court and appeared in person before us. 2. The Appellant and Respondent were business associates for a considerable period, and had many commercial dealings over the years. The point at issue in the claim, and on this appeal, is however a narrow and factual one. It may be simply stated as follows: when the Appellant transferred £160,000 to the Respondent in August 2005, after the refinancing of a residential property in St Clement known as The Penthouse, did he do so by way of a loan which is now repayable, as the Appellant claims, or as a payment reflecting the Respondent's 50% beneficial interest in The Penthouse, as the Respondent maintains. The Royal Court determined that the Appellant had failed to discharge the burden of proving a loan. The only question for this Court is whether the Royal Court erred in that determination.

Background

3. The commercial background to this matter is set out in paragraph 6 of the judgment of the Royal Court. The most immediately relevant matters may be summarised as follows: (i) The Appellant had a Jersey company called Custodian Business Management Services Limited ("Custodian"), which was without assets. The Appellant gave the Respondent some 50% of Custodian's shares in 2003, and appointed him as a Director. The Appellant and the

Respondent hoped that each would introduce funds and fund projects to their mutual benefit. (ii) The Appellant and the Respondent decided in late 2003 to purchase The Penthouse as an investment to be rented out. In June 2004, ownership of The Penthouse was obtained by the transfer to the Appellant as legal owner of shares in a property-holding company known as East Lodge Limited. The purchase consideration appears to have been provided by a BVI company known as Adelphi Bay Limited ("Adelphi"), of which the Appellant and Respondent were co-owners and directors. (iii) The Appellant disputes the conclusion of the Royal Court that he held the shares in East Lodge Limited for Custodian, maintaining that he held them for himself. The Royal Court also found that the rent from The Penthouse was paid into Custodian's bank account, that it appeared in Custodian's accounts and tax returns, and that Custodian paid income tax on it. (iv) In 2005 the Appellant and the Respondent decided, in circumstances which are disputed, to refinance The Penthouse. In July 2005 the Appellant obtained an offer of a mortgage from Jersey Home Loans Limited ("JHL"), and in this context a document headed "Loan Security" ("the Loan Security Agreement" or "the LSA") was drawn up and signed by the Appellant and the Respondent in August 2005. (v) The mortgage was drawn down in August 2005 and £160,000 was transferred to the Respondent shortly thereafter. (vi) Custodian paid the larger part of all the mortgage instalments and expenses related to The Penthouse, and these were reflected as expenses in its accounts and claimed as deductions on its income tax returns. (vii) In December 2006 The Penthouse was sold and the proceeds of sale were used to repay the mortgage in full. The net proceeds of approximately £228,000 were received by the Appellant, and some £100,000 transferred by him to the Respondent. Judgment of the Royal Court 4. Having amply summarised the arguments and the evidence of both parties (who were the only witnesses before it), the Royal Court gave its reasons for dismissing the claim. 5. The Royal Court concluded that the evidence from both sides was "not without its unsatisfactory elements", and that the Respondent was not necessarily without fault. However it noted that the Appellant's evidence "displayed more inconsistencies" than the Respondent's, and that the Appellant "often could not explain documents" and "was comfortable with signing documents that on any analysis were wholly fictitious and did not represent the true state of affairs". After hearing evidence at length from both parties, the Royal Court preferred the evidence of the Respondent. 6. The Royal Court's conclusions were based not only on its assessment of the oral evidence but on its interpretation of the documentary record. It noted, in particular: (i) repeated indications, in correspondence and minutes signed by the Appellant and detailed in paragraphs 26-32 of the judgment of the Royal Court, that The Penthouse was considered to be an asset of Custodian; (ii) the fact that rental on The Penthouse was paid and accounted for, and various charges associated with property ownership paid, by Custodian rather than the Appellant (paragraphs 33-35 of the judgment of the Royal Court); (iii) the Appellant's repeated complaints that he had to bear the burden of arranging the mortgage and of meeting any shortfall in Custodian's payments, despite the fact that, as he put it in an email of 18 January 2007 to the Defendant (quoted at paragraph 23 of the judgment of the Royal Court) "we were supposed to have equal responsibility"; (iv) suggestions by the Appellant in correspondence (e.g. the email of 28

October 2008 quoted at paragraph 10 of the Royal Court's judgment) that both the purchase of East Lodge Limited and the JHL mortgage were intended as joint obligations and that they were in the Appellant's name only because the Respondent as a non-resident in Jersey was thought to be unable to enter into them; (v) the prompt payment to the Respondent by the Appellant of half of the monies received from the 2005 refinancing and of a sum largely reflecting the proceeds of the 2006 sale, both of which were suggestive of a 50/50 understanding; (vi) the signature in August 2005 of the LSA, which on the analysis of the Royal Court reflected "an attempt by the [Respondent] to provide security for an obligation which legally was taken on by the [Appellant] but in reality, and beneficially, was for the benefit of them both", and could not be construed as reflecting a loan between the Appellant and the Respondent ; (vii) the absence of any documentation stating that the payment of £160,000 was intended as a loan by the Appellant to the Respondent, or that the Respondent had understood or acknowledged it as such, or specifying the rate of interest due; and (viii) the fact that the Appellant did not raise the claim forming the subject matter of these proceedings until an email of 7 January 2015 to the Respondent's legal advisers. 7. On the basis of its assessment of the documentary record and of the oral evidence of the parties, the Royal Court concluded that the Appellant had not established his case. Appellant's contentions 8. The Appellant advanced a range of contentions, both in his written submissions and orally, which we have carefully considered and whose principal elements we summarise and respond to below. For reasons that will be apparent, we did not consider it necessary to call upon the Respondent to address us orally. 9. The Appellant first submitted that the Royal Court had failed to make proper allowance for the imbalance that resulted in the Royal Court proceedings from the fact that a litigant in person was opposed by a professional advocate. Reliance was placed on jurisprudence of the European Court of Human Rights and on the case of *Holmes v Lingard* [2015] JCR 172. 10. We do not consider that the Royal Court failed in its duty in this respect. Mr Booth is no stranger to these courts, and indeed was successful when representing himself on a previous appearance in the Court of Appeal: *Booth v The Viscount of the Royal Court of Jersey*

[2016] JCA 218 . The fact that litigants may be capable of presenting their own cases does not of course absolve the court from making all necessary allowances for the fact that they are not lawyers, particularly when they face professionally represented opponents. But in our estimation, as the trial record makes clear, Mr Booth had a fair opportunity to give his evidence and to make any relevant submissions to the Royal Court. 11. The Appellant next asserted a similarity with a property transaction in Western Australia which was said to have been funded in the same way as the transaction in dispute, and criticised the Royal Court for leaving it out of account. We do not consider that the Royal Court is open to criticism on that basis. As it correctly emphasised at more than one point, the Royal Court was concerned not with broader aspects of the business relationship between the parties but with a payment of £160,000 in 2005 and with the purpose of that payment as it was to be understood from the documentation relating to that payment and the oral evidence before it. 12. The Royal Court was further criticised for undue concentration on the issue

of equal ownership, and for failure to have proper regard to the alleged untrustworthiness of the Respondent and to other aspects of the commercial relationship which, it was said, rendered the judgment unjust and inequitable. Reference was made to the alleged provenance of the funds used for the original purchase, a matter on which the Royal Court expressly declined to make findings, and to the Royal Court's refusal, by an earlier judgment of 31 August 2017 (*Booth-v-Bults*

[2017] JRC137), to admit the evidence of two witnesses which, in the Royal Court's estimation, had nothing at all to say about the factual matters disputed in the case. 13. In our view the Royal Court was fully justified in proceeding as it did. It is clear from its judgment that it did not consider either party to be above criticism. But its function was not to make a full assessment of the parties' respective characters or to achieve an overall equitable resolution of their financial relationship. Rather, it was to make only such findings on the evidence, including the documentary record, as were necessary to determine the particular question before it. 14. Leaving aside the various documents referred to by the Royal Court which are on balance unhelpful to the Appellant's case, his central difficulty is that, as the Royal Court remarked at paragraph 78 of its judgment, his case depended on establishing the claimed loan but he could point neither to any documentation evidencing the existence and terms of such a loan nor to any acceptance by the Respondent that such a loan was in place. When we raised this with the Appellant, he initially sought to rely (as he had done previously) on the LSA of 17 August 2005. On further consideration, however, he freely and correctly accepted the Royal Court's understanding of this agreement as we have summarised it above. Though it was suggested to us by the Appellant (who invoked the doctrine of *erreur*) that he misunderstood the nature of the document that he signed, that submission is not capable of remedying the fatal deficiency of evidence to which the Royal Court referred.

Conclusion

15. For the above reasons we dismiss the appeal. Authorities *Booth v Bults*

[2018] JRC 027 . *Holmes v Lingard*

[2015] JCR 172 *Booth v The Viscount of the Royal Court of Jersey*

[2016] JCA 218 *Booth-v-Bults*

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