

JERSEY / JUDGMENT

Tomes v Coke Wallis [2002]

JRC 131A (17 July 2002)

[2002] JRC 131A

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judgment

the bailiff: 1. On 25th June, 2001, the Master pronounced summary judgment against the first defendant (in the Act of the Court erroneously described as "the defendant") as follows - "IT IS ORDERED THAT - (1) pursuant to Rule 7/2 of the Royal Court Rules 1992, summary judgment be entered against the defendant; (a) in accordance with the terms of paragraph 1(a) of the Prayer to the Order of Justice in the sum of £5,200 together with interest thereon at the rate of 2% above the minimum base lending rate of Barclays Bank plc from time to time from 1st September, 2000 until payment'; and (b) pursuant to paragraph 1(b) of the Prayer of the Order of Justice in the sum of £856.07 together with interest thereon at the said rate from 2nd November, 2000 until the date of payment; (2) the first defendant shall pay the costs of the plaintiff in connection with this application on the standard basis;" 2. The first defendant appealed against that summary judgment and the matter came before this Court (differently constituted) on 10th December 2001. For reasons that it is unnecessary to describe, the Court adjourned the appeal, gave certain directions, and indicated the Court would consider the application for summary judgment de novo. 3. The application came before this Court on 25th February 2002. Mr. Winchester appeared for the plaintiff and the first defendant appeared on his own behalf. After hearing submissions we reserved judgment. 4. The brief history of the matter is that the plaintiff and the first defendant practised as chartered accountants in partnership under the style of Coke-Wallis, Tomes and Co. That partnership was dissolved with effect from 31st July 2000 by agreement dated 5th August 2000. The agreement included three provisions that are relevant for the purposes of this application for summary judgment. Clause 5(1) provided - "(1) It is agreed that a sum of £5,200 be paid by PCW to CPT on or by 1 September 2000 in settlement of any and all claims, including all costs, legal or otherwise and all other sums, other than those due under clauses 5(2) and 19 hereunder, that are or may be due by PCW to CPT or vice versa arising out of the matters referred to in this Agreement". 5. Clause 19(2) provided - "On or by 1 September 2000 PCW shall arrange for the payment to CPT the sum of £15,000 plus any accrued interest thereon since deposit being CPT's 50% share of security held in CWTHL together with ½ the net value of the Premises, if any, and upon payment CPT shall transfer or arrange for the transfer of those shares ascribable to him in CWTHL to PCW or to his order". 6. Clause 21(7) provided - "Where any sum due under this Agreement is not paid by the date or dates shown it shall not be taken as a breach

of a condition entitling the non-defaulting party to treat this Agreement as repudiated but such sum or sums outstanding shall carry interest at the rate of 2% above the minimum base lending rate of Barclays Bank plc from time to time in force such interest to be calculated on a daily basis until payment". 7. Following the alleged non-payment of the entirety of sums due under Clauses 5(1) and 19(2) by 1st September 2000, the plaintiff instituted proceedings by Order of Justice dated 6th December 2000. An answer was filed on behalf of all three defendants on 19th January 2001. On 25th June 2001, as indicated in paragraph 1 above, the plaintiff sought summary judgment in relation to paragraph 1(a) and 1(b) of the prayer of the Order of Justice which provide - "WHEREFORE the Plaintiff claims the following relief:- 1. As against the First Defendant (a) Judgment in the sum of £5,200.00 with interest thereon at the rate of 2% above the minimum base lending rate of Barclays Bank plc from time to time ("the Rate") from 1st September 2000 until payment, under clause 5(1) of the Agreement; (b) Judgment in the sum of £856.07 with interest thereon at the Rate or such other rate as the Court shall think fit from 2nd November 2000 until payment"; 8. The legal test on an application for summary judgment is well settled. The following passage from the White Book has been adopted and applied in numbers of cases - "As a general principle, where a defendant shows that he has a fair case for defence, or reasonable grounds for setting up a defence, or even a fair probability that he has a bona fide defence, he ought to have leave to defend. Leave to defend must be given unless it is clear that there is no real substantial question to be tried; that there is no dispute as to facts or law which raises a reasonable doubt that the plaintiff is entitled to judgment." "Where the defence can be described as more than shadowy but less than probable, leave to defend should be given, especially where the events have taken place in a country with totally different mores and laws". 9. In the defendants' answer to the Order of Justice it is argued that the sum of £5,200 referred to in clause 5(1) of the agreement is " subject to the final adjustment of the capital accounts ". The pleading continues by purporting to explain how that figure was arrived at and how it should be adjusted. We have no doubt that this is no answer to the claim. By clause 5(1) of the agreement of 5th August 2000 the first defendant accepted an obligation to pay the plaintiff £5,200 by 1st September 2000. The obligation was accepted for a sufficient cause, the object was clear and certain, and no issue has been raised as to the capacity or consent of the contracting parties. It is not permissible to seek to go behind the terms of a clear contractual obligation. The plaintiff is entitled to summary judgment in relation to paragraph 1(a) of the Order of Justice and we so order. 10. Paragraph 1(b) of the Order of Justice raises issues that are unfortunately not so clear. The plaintiff claims the balance of an amount set out in clause 19(2) of the agreement. The balance of £856.07 is explained in a letter dated 31st October, 2000, from Advocate Fielding, on behalf of the plaintiff, to Bedell Cristin, then acting for the defendants. In that letter Advocate Fielding writes - "Using the figures supplied by the Royal Bank of Scotland International, my calculation is as follows: RBSI Security Deposit £33,775.68 Accrued interest £485.74 Total £34,261.42 @ 50% = £17,130.71" A fax from Royal Bank of Scotland International put in evidence by the defendants however calculates the share due to the plaintiff as at 31st July 2000 at £16,982.32. It may be that interest to 31st August 2000 would bring the figure closer to £17,130.71 but there is not the certainty required for the pronouncement of a summary judgment. 11. There is a similar mismatch between the figures in the letter from Advocate Fielding and the fax from

Royal Bank of Scotland International in relation to the Business Loan Account and the valuation of the property. Our suspicion is that the first defendant owes the plaintiff something close to £856.07 but we are not sufficiently satisfied so as to enable us to pronounce summary judgment. Bearing in mind the relatively small figures involved we express the hope that the parties will be able to arrive at some sensible compromise. 12. To summarise, we give summary judgment in relation to paragraph 1(a) of the Prayer to the Order of Justice but dismiss the application for summary judgment in relation to paragraph 1(b). Authorities R. S. C.: Order 14. Page Last Updated: 22 Sep 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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