

IN THE COURT OF APPEAL
CIVIL DIVISION
LORD JUSTICE CHRISTOPHER CLARKE

Appeal Number: A3/2015/0903

ON APPEAL FROM THE HIGH COURT OF JUSTICE,
CHANCERY DIVISION, LEEDS DISTRICT REGISTRY
HH JUDGE BEHRENS

B E T W E E N:

SANTANDER ASSET FINANCE PLC
(Former Name: ALLIANCE & LEICESTER COMMERCIAL FINANCE PLC)
(Former name: SOVEREIGN FINANCE PLC)
(Former name: SOVEREIGN LEASING PLC)

Claimant/Respondent

-and-

MR RICHARD NICHOLAS DIXON

Defendant/Appellant

NOTE OF THE JUDGMENT GRANTING PERMISSION TO APPEAL OF THE

RIGHT HONOURABLE LORD JUSTICE CHRISTOPHER CLARKE

HANDED DOWN *EX TEMPORE* ON THURSDAY 23rd JUNE 2016

Mr Henry Byam-Cook (20 Essex Street Chambers, 20 Essex Street, London WC2R 3AL) instructed by direct access for the Appellant (who did not appear for the Appellant below).

The Respondent did not appear and was not represented.

After reading the Appellant's Skeleton Argument, the Appellant's Advocate's Written Statement and the Respondent's Note

And after reading the Appeal Bundle

And after hearing oral submissions from counsel for the Appellant the following *ex tempore* judgment was delivered at 10.45am

JUDGEMENT:

1. This is a renewed application for permission to appeal from the judgement of HHJ Behrens dated 14th October 2011. On 7th January 2016 I refused permission to appeal on the papers on these grounds:
 - (i) it was out of time, and
 - (ii) the Grounds of Appeal – the length and discursive narrative account of events since 2008 of Mr Dixon’s complaint - in my view then set out no good grounds of appeal and there was no realistic prospect of success.
2. Today Mr Byam-Cook appears on behalf of the Appellant who has taken me through a 16 page document prepared by the Appellant which makes matters explicitly clear. Mr Byam-Cook has produced a note which sets out on 2 pages the matters he relies upon.
3. The basic facts are these. Mr Dixon was the sole director and shareholder in Just Vans Self-Drive Limited (“Just Vans”). The Claimant/Respondent (then called Alliance & Leicester Commercial Finance PLC) succeeded at trial. Just Vans was a motor leasing company. Most of its vehicles were financed by Alliance & Leicester on hire purchase agreements. Mr Dixon provided guarantees and indemnities.
4. In summer 2008, Just Vans ran into financial difficulties. Mr Dixon asked for a payment holiday of 3 months. Alliance & Leicester were prepared to grant this if the arrears were brought up to date. Just Vans attempted to do this. It missed 3 payments from the end of July 2008. Alliance & Leicester purported to terminate the agreements on 18th September 2008 because of arrears.
5. Just Vans Self-Drive Limited had administrators appointed which brought the hire purchase agreements to an end. These administrators were appointed by Svenska Handelsbanken (who were Just Vans’ bankers).
6. Alliance & Leicester claimed to enforce its guarantees. Alliance & Leicester held 37 guarantees. It had withdrawn 9 of them because it had written to Mr Dixon previously confirming that they would expire after 12 months. For 1 agreement the judge below found that the guarantee had been released.

7. At trial in 2011 Mr Dixon was unrepresented. The judge below identified these 5 factors for trial namely whether:
 - (i) the hire purchase agreements were valid. Mr Dixon alleged that his signature had been forged or they had been materially altered,
 - (ii) the guarantees were valid. Similar allegations as were made in relation to the hire purchase agreements. Many guarantees were not witnessed,
 - (iii) Mr Dixon was released from the guarantees. He said he had a letter expressly agreeing to release him after 12 months,
 - (iv) 2 agreements were tampered with, and
 - (v) The termination letter of 18th September 2008 was in breach of his payment holiday.
8. The judge below found the agreements and guarantees did not bear forged signatures. Mr Dixon signed them or staff of Just Vans signed them with his authorisation or express agreement. The judge below held that the burden of proof was on Mr Dixon and he was not satisfied on the evidence this was made out except in relation to 1 agreement.
9. Just Vans did not fulfil the condition(s) for the payment holiday. The hire purchase agreements were terminated. The agreements could be terminated on account of appointment of administrators in September 2008.
10. This is a matter that Mr Dixon seeks to appeal. Mr Byam-Cook has taken me to where he says the judge below was wrong to find no release because of the letter dated 27th June 2008. Mr Dixon obtained this letter after a criminal trial where he was acquitted. The 22nd June letter was sent to his home address and that of Just Vans. This Alliance & Leicester letter confirms it is releasing him from his personal guarantees in relation to a number of agreements – of which 6 are mentioned – and were in respect of what the judge had given judgment.
11. What is said that appears very clearly and indicated that in fact is relevant is that Santander Asset Finance was aware of the release and this process. No indication was given in questioning before HHJ Behrens below any dispute as to the authenticity of this document. Mr Dixon says there are similar releases from other guarantees. If this letter is admitted in evidence, he says there is a realistic prospect of the appeal succeeding.
12. Secondly Mr Dixon says the judge below was wrong to find that no moratorium had been agreed. This is a matter of law. I was taken to an email exchange referred to at §105-106 of the judgment below. Just Vans payment of a sum to Santander Asset Finance. Another letter obtained by Mr Dixon after his criminal trial dated 6th August 2008 from Alliance &

Leicester refers to £116k arrears up to the end of July 2008 and the reprieve for August, September and October 2008 is now in effect. If this is admitted in evidence, there is a realistic prospect of this appeal succeeding.

13. The next matter is the judge was wrong in law to hold that the hire purchase agreements were not validly terminated by the September 2008 letter but were validly terminated when the administrators were appointed. The judge below did not acknowledge the legal consequences of wrongful termination – his answer was that termination was a renunciation of the agreements. Secondly he said that cumulative proceedings brought after the agreements were terminated.
14. In relation to Mr Dixon being guilty of fraudulent trading – he was acquitted - and Santander Asset Finance’s wrongful actions caused the administrators to be appointed because Santander produced a corrupted spreadsheet in relation to a number of vehicles and the amounts outstanding. Alliance & Leicester had the spreadsheets and for some reason because of the way they were completed there was wrong data. Mr Dixon prays in aid the information in his version of amounts which the bank had and this was the cause of the administration. This is complex and no longer aligned with the relevant vehicle and the veracity of the records. It accounts to the wrong person.
15. Lastly Mr Dixon says the judge below was wrong to hold that the agreements and guarantees were not tampered with. This is a pure question of fact. I decline permission to appeal on this point in any event.
16. The major problem is the length of time that has elapsed. Judge Behrens gave his judgment in 2011. Mr Dixon was represented before trial but not at the trial. Mr Dixon has had serious mental health problems. He collapsed at the 1st Crown Court trial and was subsequently acquitted in July/August 2011. In September 2012 Mr Dixon made a claim for compensation against Santander Asset Finance. Mr Dixon had funding for that but not for this appeal.
17. The claim against Santander Asset Finance was issued on 16th September 2014. Mr Dixon’s solicitors notified Santander of the possibility of a claim in August 2013. In 2015 HHJ Behrens was satisfied he had capacity to conduct a trial. In November 2014 there had been a medical examination. In February 2015 there is a form of mental health problems and criminal proceedings as a result Mr Dixon was acquitted. This accounts for some reason for the delay. There is limited value in relation to the period after his acquittal.

18. The effect on Santander any delay is prejudicial. At the same time the proceedings have not come to an end. The judge has granted a stay on his quantum judgment pending this appeal. Santander is aware of the Grounds of Appeal but they were not instructed to appear today.
19. My conclusion is that it is just to extend time because of the particular circumstances of this case. The letters of 28th June and 6th August 2008 should have been disclosed at disclosure. There is a very powerful case that Mr Dixon was released on 7 of the agreements and the confirmation of the payment holiday in circumstances where Mr Dixon was asking for this where these should have been disclosed. Mr Dixon was a litigant in person. It would be unjust to decline to grant permission to appeal on grounds of the lateness of this application.
20. As far as grounds of appeal are concerned, I am going to grant Mr Dixon permission to appeal on **all** grounds with the exception of Ground 2(b) (appeal against judge's finding that the guarantees/agreements were not tampered with).
21. I am minded to do the following:
 - (i) A document be prepared which sets out the Grounds of Appeal to be no more voluminous than the current note. This document I have instructed be prepared I will initial/sign giving permission,
 - (ii) Extend time for purposes of bringing an appeal,
 - (iii) The application to adduce fresh evidence – I don't propose to deal with today. This can either be dealt with on papers or at a hearing at which the Respondent will be enabled to make submissions or alternatively at the hearing of the actual appeal.
 - (iv) I will postpone consideration until the Respondent has had an opportunity of commenting on this.
 - (v) The Appellant must identify precisely what is the fresh evidence sought to be adduced. At least the letters of 27th June and 6th August 2008. There must also be identification of what other documents constitute a renunciation of any lawful termination on 18th September 2008 by the Respondent. It is most important to identify fresh evidence from the criminal proceedings which constituted wrongful actions of the Respondent which **caused** the action.
22. The court cannot wade through masses of transcripts. There must be clear identification of the evidence relied on. It needs to become apparent what evidence is relied on in an application to adduce fresh evidence. The morass of material before me is so large it

should be made clear what is the evidence relied on in support. A fresh application notice is to be issued identifying:

- (a) evidence adduced, and
 - (b) evidence in support sought to be relied on.
23. The composition of the court. This is a 2-judge case to be heard by 2 Lord Justices (as HHJ Behrens sits as a High Court judge).
24. There are more things to be done before I can issue this appeal. Mr Dixon is fortunate to have had your services Mr Byam-Cook.
25. I grant permission to appeal.

The court rose at 11.10am.

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24th June 2016.