IN THE COURT OF APPEAL

CIVIL DIVISION

THE PRESIDENT OF THE FAMILY DIVISION (SIR JAMES MUNBY)

Appeal Number: B2/2015/1025

ON APPEAL FROM THE MANCHESTER COUNTY (HHJ PLATTS)

REMITTED FROM THE SUPREME COURT OF THE UNITED KINGDOM [2014] UKSC 61

Case Number: 9CH00028

B E T W E E N:

SUSAN PLEVIN

Claimant/Appellant

-and-

(1) PARAGON PERSONAL FINANCE LIMITED
(2) LL PROCESSING (UK) LIMITED (IN LIQUIDATION)

Defendants/Respondents

NOTE OF THE JUDGMENT REFUSING PERMISSION TO APPEAL OF THE RIGHT HONOURABLE SIR JAMES MUNBY, PRESIDENT OF THE FAMILY DIVISION, HANDED DOWN *EX TEMPORE* ON WEDNESDAY 18th NOVEMBER 2015

Mr Andrew Clark (9 St John Street Chambers, 9 St John Street, Manchester, M3 4DN) instructed by Miller Gardner Limited, 497 Chester Road, Trafford, Manchester M16 9HF for the Appellant.

Mr Ian Wilson (3 Verulam Buildings, Gray's Inn, London, WC1R 5NT), instructed by Harrison Clark Rickerbys, Ellenborough House, Wellington St, Cheltenham, Gloucestershire GL50 1YD for the First Respondent.

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

And after reading the Appeal Bundle

And after hearing oral submissions from the Appellant (the Respondent not being called upon to make oral submissions in reply), the following *ex tempore* judgment was delivered at 11.10am

JUDGEMENT:

1. Permission to appeal was refused in this case on the papers by Floyd LJ on 13/7/15.

2. The Appellant was a victim of egregious mis-selling of a PPI policy. Misfortune – 3 years since the original trial which lasted 4 days in October 2012 by a Recorder. Since then this case has been to this court and to the Supreme Court. The outcome was recorded in the judgment below that the Appellant succeeded in 1 part of her claim – namely that the relationship was unfair for failure to disclose the amount of commission to her.

3. The Appellant borrowed a capital sum of £34,000. Added to this loan – itself bearing interest was a PPI premium of £5780. This point gives rise to this litigation.

4. The Appellant succeeded in the Supreme Court. 71.8% of this premium was paid as "commission". It is highly relevant factor that this was **never** disclosed to her. Consequently, (and this is common ground), the court had a wide discretion conferred by section 140A of the Consumer Credit Act 1974.

5. The case was remitted by the Supreme Court to the County Court for determination of that issue. The judgement under appeal that of HHJ Platts dated 2nd March 2015 (paragraph 31) identifies what discretionary factors which "are important in **this** case". Importantly the 4th of those factors was that the Appellant had the benefit of the insurance and "peace of mind" that goes with this.

6. The Appellant relies as a matter of discretion on paragraph 33 of the judgment below. She relies on payments of commission <u>not</u> the cost of the insurance premiums. In paragraph 35 of the judgment below this decision was given on the particular facts of this case and was not intended to give general guidance.

7. The Appellant received £3000 by way of compensation from another party. The judge directed that the amount to be recovered be deducted – the amount of commission – less than the amount of that compensation.

8. When the matter was first before this court, there were **two** complaints. **Firstly** that the judge was wrong in principle and on the facts to relation to the calculation of the quantum of the commission. **Secondly** that he was wrong in crediting the Respondent in how he referred to it.

9. Floyd LJ refused permission on each point.

10. The Appellant at the renewed oral permission hearing today seeks to rely on not merely the original skeleton argument dated 10th April 2015 (which was before Floyd LJ) but also an Advocate's Written Statement under CPR Practice Direction 52C that was put before me only this morning.

11. This AWS makes clear that the Appellant no longer pursues the 2nd of the 2 matters identified. This document makes explicitly clear in paragraph 4 that it is now accepted that the judge below "displayed no error of principle" in directing repayment. Mr Clarke identified the key point this morning was that the judge below was wrong in principle to fix the relief by reference to the commission.

12. In the course of the very helpful document and the oral submissions, Mr Clarke on behalf of the Appellant has pointed to the fact that before HHJ Platts below in the bundles were 3 sheets of paper. These he says demonstrate quotations from other insurance providers and he asserts are figures for obtaining insurance cover for £1671. The judge below attributed £2870 to be applied to the cost required to obtain that insurance. So that the point comes down to this – in principle it is at least arguable that HHJ Platts was wrong to tie the compensation to the amount of commission when he should have focussed instead on the cost to the Appellant of obtaining the cost of alternative cover.

13. Secondly, and as a matter of fact, on that basis this gives the sum of **£416.** This is what this appeal reduces to.

14. The fundamental difficulty seems to be with Mr Clark's current presentation of this appeal (as he frankly accepts) the documents to which I refer, and this alternative basis was **never** put to HHJ Platts.

15. The argument before HHJ Platts was that the entirety of the insurance premium should be repaid – not just the commission element. This is no longer the basis on which this appeal is being pursued.

16. It is very noticeable the various factors that HHJ Platts applied in paragraph 31 of his judgment. It is unsurprising there is no reference to factual matters now relied on as to true cost as for example there was before HHJ Keyser QC in *Gareth James Brookman v. Welcome Financial Services Limited*[1] in which he gave judgment on 6th November 2015 (see paragraph 47.8 of HHJ Keyser's judgment addressing the material before him: the cost of similar insurance in the market). In is interesting (but nothing turns on this) it was given in that case, although HHJ Keyser identified the relevant cost as £923 – the amount he actually awarded was the far greater figure of £1500.

17. Mr Clark's argument comes down to this. HHJ Platts was wrong in principle to tie the quantum of compensation to the amount of commission. This ties in to the complaint that HHJ Platts said that he had a free choice as to what to do – and that he erred in principle as whatever considerations you bear in mind the Supreme Court result and the application under CCA section 140A.

18. In my judgment this renewed application has to be refused.

19. Firstly this was not put before HHJ Platts.

20. Secondly, I do not read the commission point in the judgment of HHJ Platts (in particular paragraph 43) as demonstrating that Judge Platts was treating as axiomatic that the question of relief should be tied to the quantum of the premium.

21. What HHJ Platts was doing in the circumstances of this case – it is absolutely clear – that the Appellant's basis of the calculation was the quantum of the relief.

[1] Unreported. Case number: B40CF014. Mercantile Court at Cardiff.

22. I ask myself rhetorically given the argument run before HHJ Keyser but not in this case, and given that it is now accepted that the approach of HHJ Platts was correct, in saying in principle to not award the full amount of the commission but to tie the quantum of the relief, and value this by assessment of the marker. Before HHJ Platts the Appellant actually achieved what other basis did HHJ Platts quantify in this particular case? There was no material before him on the benefits or market cost. Was HHJ Platts simply to pluck a figure out of thin air? If he had, the Appellant in this particular case would complain that he had plucked it out of thin air.

23. It is beyond argument that HHJ Platts was entitled to proceed as he did. He did no treat the quantum of commission as determinative. The figure he used in the circumstances of this case where no other figure was available to him. In conclusion, this demonstrates that Judge Platts wasn't very far wide of the mark.

24. If on the 2nd string to the bow, you don't accept the totality of the commission repaid the alternative case is the amount of relief should be assessed by value or marker rate of insurance. If he had advanced these figures and then gone on to say, as a matter of principle, the Appellant's measure was the quantum of cover, then this case would be fairly different.

25. I am inclined to think, if presented that way, I might have granted permission. But this is not the way HHJ Platts actually applied it as indicated by the Respondent.

26. In these circumstances, despite Mr Clark's valiant endeavours I am wholly unpersuaded there is any realistic of this appeal succeeding.

27. I will add only this. The analysis of the forensic merits of the argument put by Mr Clark that whatever the general interests of consumers generally might be, were this appeal to go in the Appellant's favour – the reality is that it now seems to come down to whether the Appellant should receive an extra £400 or so. In the circumstances, **even if** I was persuaded, there must be a very realistic prospect that the appeal would be unsuccessful where the consequences for the Appellant would be severe.

28. Even if the Appellant were successful, on the figures I have seen, any victory would be pyrrhic. I make these observations but this is not the basis on which I refuse permission.

29. Irrespective of the figures there is no arguable basis from Mr Clark that how the judge below sought to assess relief was wrong. This renewed application must be refused.

30. I mention for the sake of completeness that there has been present throughout, holding a watching brief on behalf of the Respondent, Mr Ian Wilson, who appeared below. He submitted a Respondent's Note for the purposes of this hearing dated 17th November 2015, which I have had regard to as appropriate, but he has not sought to address me today.

31. The application is refused.

32. There is not anything else is there Mr Clark?

Mr Andrew Clark

33. No my Lord.

The President

34. No public funding?

Mr Andrew Clark

35. No my Lord.

The court rose at 11.40am.

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19th November 2015