



Neutral Citation Number: [2022] EWHC 2924 (Ch)

Case No: CH-2021-BRS-000008

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
CHANCERY APPEALS (ChD)
ON APPEAL FROM THE ORDER OF DISTRICT JUDGE TAYLOR DATED 30
NOVEMBER 2021 IN THE COUNTY COURT AT BRISTOL
BL-2021-BRS-000002

Bristol Civil Justice Centre,
2 Redcliff Street, Bristol, BS1 6GR
Date: 16/11/2022

Before :

MR JUSTICE ZACAROLI

Between :

MR AHMED US SAMAD CHOWDHURY

Claimant
/Respondent

- and -

MR MOTIN ALI

Defendant/
Appellant

Mr Shomik Datta (instructed by **BTMK Solicitors Limited**) for the **Appellant**
Mr Kamar Uddin (instructed by **Cambridge Solicitors LLP**) for the **Respondent**

Hearing dates: 16 November 2022

JUDGMENT

Mr Justice Zacaroli:

1. This is an appeal from a decision of District Judge Taylor, dated 30 November 2021, by which he dismissed the application of the appellant (the defendant below) (“Mr Ali”) for summary judgment against the respondent (the claimant below) (“Mr Chowdhury”). The appeal is brought with permission granted by me on 24 March 2022.
2. At the hearing of the appeal, I announced my decision to allow the appeal with short reasons to follow. These are the reasons.

Background

3. Mr Ali and Mr Chowdhury operated two restaurants in partnership together, including “Desh” which traded from premises at 10 Chelsea Road, Weston, Bath (the “Property”). The Property was jointly owned by Mr Ali and Mr Chowdhury.
4. The present claim by Mr Chowdhury against Mr Ali follows on from earlier proceedings brought by Mr Ali against Mr Chowdhury. Those earlier proceedings related to an agreement made between Mr Ali and Mr Chowdhury in 2007 under which Mr Ali advanced £200,000 to Mr Chowdhury for the purposes of an investment in a property development in London (the “Investment Agreement”). Mr Ali raised £100,000 from his own funds and from friends and family. He borrowed the other £100,000 from Lloyds Bank. The loan from the bank was in fact in the sum of £200,000 and was made to him and Mr Chowdhury on a joint and several basis, secured by a charge over the Property (the “Loan”). Mr Ali advanced his share of the Loan to Mr Chowdhury pursuant to the Investment Agreement.
5. At the trial in the earlier proceedings before HHJ Harrington, it was concluded that it was an implied term of the Investment Agreement that the sum of £200,000 advanced by Mr Ali to Mr Chowdhury was repayable on demand, or if the development did not occur within a reasonable time. The trial judge also concluded that the money had been advanced as a result of undue influence exercised by, and a misrepresentation made by, Mr Chowdhury. Mr Ali was put to his election as to the basis on which he wished to recover. He elected to recover damages for breach of the agreement. Accordingly, in an order dated 1 August 2016, the trial judge awarded Mr Ali £200,000 damages, together with interest of £135,000. Mr Chowdhury complied with that order.
6. Subsequently, on 11 April 2017, the Property was sold. Of the proceeds of sale, £83,616.78 was paid to Lloyds Bank in redemption of the security for the Loan, and the remainder was divided equally between Mr Ali and Mr Chowdhury.
7. In the present proceedings, issued on 24 February 2021, Mr Chowdhury claims the sum of £118,758.39 from Mr Ali. This is made up of two parts, as follows:
 - i) Half of the sum that was paid in redemption of the security for the Loan (i.e., £41,808.39); and
 - ii) Half of the monthly payments made by the partnership business over the life of the Loan in repayment of capital, and payment of interest, under the Loan until sale of the Property, at the rate of £1,350 per month, totalling £76,950.

8. The pleaded basis for the claim is in unjust enrichment, based on the assertion that Mr Ali should either have used half of the damages paid to him by Mr Chowdhury under the order of HHJ Harrington to repay his share of the Loan, or should otherwise have accounted for it in dividing the proceeds of sale of the Property after redemption of the Loan. Specifically, in the Particulars of Claim Mr Chowdhury alleged as follows
 - i) The sum of £200,000 awarded to Mr Ali by HHJ Harrington “included the return of the £100,000 of the £200,000 loan obtained from Lloyds Bank”;
 - ii) Mr Ali “should have redeemed the [Loan]” upon being awarded the return of £100,000 of the Loan, or “in the event that [Mr Ali] retained the £100,000 it should have been accounted to following the sale of the [Property]”;
 - iii) By holding the £100,000, as well as the proceeds of sale of the Property less the amount needed to redeem the Loan and expenses, Mr Ali has unjustly enriched himself at the expense of Mr Chowdhury and made “double recovery”;
 - iv) Had Mr Ali accounted for the £100,000 returned by Mr Chowdhury, the “divisible sums from the sale of the [Property] would have been higher as the redemption figure from Lloyds Bank Plc would have been less...”;
 - v) In addition, Mr Ali should not have deducted monthly loan repayments of £1,350 as business expenditure, because by doing so he unjustly enriched himself by keeping the £100,000 and at the same time making monthly payments of £1,350 “on or before 11th April 2017”.
9. Mr Ali sought summary judgment against Mr Chowdhury on two bases, only one of which is pursued on appeal, namely that the claim is fundamentally misconceived and has no real prospect of success.
10. In his judgment, District Judge Taylor concluded that the claim raised triable issues sufficient to defeat the summary judgment application. Specifically, he found:

“The reality, it seems to me, is that the Lloyds’ loan was made to them in joint names. They were jointly and severally liable upon it. We know that Mr Ali used £100,000 from that loan to pay to Mr Chowdhury. It seems to me that it is more than merely arguable to say that in those circumstances, Mr Ali ought to be held to some form of account for “his” £100,000 when that loan was finally redeemed at the time of the sale of the property. Equally, I think it is more than merely fanciful to say that the loan repayments should not have been paid from partnership funds in the circumstances that then existed, again, where Mr Ali had effectively had the benefit of 50% of that loan.”
11. He went on to say that there are complex issues in the case, with factual issues that need to be considered, including as to what was discussed or agreed between the parties and with their conveyancing solicitor at the time of the sale of the Property. A fuller investigation into the facts was required than was possible on a summary judgment application.

12. Mr Ali's grounds of appeal include six separate grounds, but in reality boil down to a single point: the claim is misconceived, because there is no legal basis for the claim in unjust enrichment, and the judge was therefore wrong in law to permit the claim to proceed.
13. A claim in unjust enrichment requires three elements to be established: (1) that the claimant has been enriched; (2) that the enrichment is at the expense of the defendant; and (3) the enrichment was unjust – by reference to established categories of unjust factors or an incremental development from them: see, for example, *Capital Insurance Co Ltd v Samsondar* [2020] UKPC 33.
14. The pleading does not address any of these points. Reading it with as positive a spin as possible, it appears to proceed on the basis that: Mr Ali was enriched by receipt of part of the proceeds of sale of the Property (and, perhaps, by the fact that the Loan was partially repaid by the partnership); that this was at the expense of Mr Chowdhury, whose share of the proceeds of the Property was thereby reduced; and it was “unjust” for Mr Ali both to retain the money awarded by HHJ Harrington and to receive one-half of the net proceeds of sale of the Property because that resulted in double recovery.
15. In my judgment, there is a fallacy at the heart of Mr Chowdhury's case. Specifically, it proceeds on the mistaken basis that Mr Ali has received, via a combination of the judgment debt and the proceeds of sale of the Property, more than he is entitled to on a proper accounting between him and Mr Chowdhury as joint borrowers under the Loan and joint owners of the Property. A critical fact, which Mr Uddin (who appeared for Mr Chowdhury) accepted was true, but which Mr Chowdhury's analysis leaves out of account, is that Mr Chowdhury has not repaid from his own funds any part of *his* share of the Loan.
16. Mr Chowdhury also accepted that if Mr Ali *had* used the proceeds of the judgment debt to repay his share of the Loan, then when the Property came to be sold, the burden of discharging the remaining part of the Bank's debt would have been borne solely by Mr Chowdhury's share of the proceeds of sale (as between him and Mr Ali).
17. The fallacy can be tested by comparing the overall outcome, for each of Mr Ali and Mr Chowdhury, in the event that Mr Ali had used part of the judgment debt to repay his share of the Loan and in the event that he had not.
18. For the sake of simplicity, I will address the two parts of Mr Chowdhury's claim (the repayment from the proceeds of sale of the Property and the repayment of the Loan by monthly instalments by the partnership) separately.
19. As to the first part, I will assume that the Property was sold for £300,000 and that no other repayments of the Loan had been made.
20. Had Mr Ali used part of the proceeds of the judgment debt to repay his half of the Loan, then the position would have been as follows. Upon sale of the Property, as Mr Uddin accepted, the net proceeds would notionally be divided 50/50, with the debt to the Bank coming out of Mr Chowdhury's share. Accordingly, Mr Ali, having initially received, but then repaid, £100,000 under the Loan, would have retained £150,000 from the proceeds of the Property (and would be net £150,000 in credit). Mr Chowdhury would

have retained £100,000 under the Loan (which he had not repaid) and £50,000 from the proceeds of the Property, thus also being net £150,000 in credit.

21. In the same scenario, if Mr Ali had not used part of the proceeds of the judgment debt to repay his share of the Loan, then: the first £200,000 of the proceeds of sale of the Property would have gone to repay Lloyds Bank, and each of Mr Chowdhury and Mr Ali would have received £50,000 from the remainder. They would also both have retained the £100,000 paid to them at the inception of the Loan. Each of them would therefore have been net £150,000 in credit.
22. Thus it can be seen that in either scenario, Mr Ali and Mr Chowdhury end up in the same net position. The fact that Mr Ali had in the meantime advanced his £100,000 to Mr Chowdhury, and then been repaid it (under the judgment debt), has had no impact on the net outcome for Mr Chowdhury.
23. As to the second aspect of Mr Chowdhury's claim, the partnership's payment of monthly instalments of £1350 in respect of the Loan was nothing more than joint payments by those who were jointly and severally liable under the Loan. That gives rise to no accounting issues as between the joint and several debtors. Had the Loan been wholly repaid in that way, for example, then there is simply no basis on which Mr Chowdhury could have complained if, when the jointly owned Property came to be sold (now free of Lloyds Bank's charge), half of the proceeds of sale were paid to Mr Ali. The fact that in the meantime the amount that Mr Ali had loaned to Mr Chowdhury had been repaid (under the judgment debt) is as irrelevant, here, as in relation to the first part of the claim, in circumstances where neither of them had repaid their share of the Loan from their own resources.
24. The case as presented to the Judge raised potential complexities concerning accounting between partners and joint debtors under the Loan, so as to make the case appear unsuitable for summary judgment. Once, however, the fallacy at the heart of Mr Chowdhury's case is revealed, it is clear that no dispute of fact needs to be resolved in order to conclude that the claim is bound to fail. Accordingly, I allow this appeal, substituting the order of the District Judge with an order that the claim be dismissed.