



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2021] CSIH 70
P659/20

Lord President
Lord Malcolm
Lord Turnbull

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD PRESIDENT

in the petition by

UK AGRICULTURAL LENDING LIMITED

Petitioners

against

(First) HAMILTON ORR LIMITED; (Second) ORRDONE FARMS LIMITED (*in administration*); (Third) MARTIN FROST; and (Fourth) JANET FROST

Respondents

for Rectification of Documents in terms of section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

Petitioners and Respondents: J Brown; Shepherd & Wedderburn LLP
First Respondents and Reclaimers: Paul Newsham (lay representative)
Second Respondent: No appearance
Third respondent and Reclaimer: No appearance
Fourth Respondent and Reclaimer: Party

17 December 2021

[1] Hamilton Orr owned Harcarse Hill and Sunwick Farms. They were in debt to Ilona Rose Investments to the extent of about £2.380m. The Lord Ordinary, who determined this petition for rectification of standard securities, found that, in terms of certain documents which had been produced, it had been arranged for the petitioners to lend Orrdone Farms

(formerly Avocet Agriculture) £3.25m. This was to be used to pay off the debt owed to Ilona Rose and otherwise for working capital and to pay interest. Security over the farms was to be given by Hamilton Orr. That was duly done and a loan facility for Orrdone Farms was created. Unfortunately, and as was admitted by the drafter, namely Russell Spinks, a solicitor, in an affidavit lodged with the court, the standard securities were in error framed in respect of the indebtedness of Hamilton Orr and not Orrdone Farms.

[2] Holding that the circumstances fell within section 8(1)(a) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, the Lord Ordinary ordered rectification. Hamilton Orr and the third and fourth respondents, who are personal guarantors of the debtor, reclaimed (appealed) the Lord Ordinary's decision. They contended that the standard securities reflected the true picture; *viz.* that the loan was to be made to Hamilton Orr, not Orrdone Farms.

[3] In the respondents' joint grounds of appeal, joint note of argument, and in written submissions for Hamilton Orr and the fourth respondent, which were presented at the hearing, it was argued that the Lord Ordinary erred in failing to draw various conclusions from the productions which were before him, and generally in failing to prefer the respondents' submissions. The respondents made particular criticisms of the Lord Ordinary's acceptance of the evidence contained within Mr Spinks's affidavit; alleging that Mr Spinks had acted unprofessionally. The respondents criticised the Lord Ordinary for failing to take into account that Orrdone Farms was a wholly owned subsidiary of a parent company with "no commercial benefit" at the time of the transaction. Criticisms in relation to the manner of the appointment of administrators to Orrdone Farms were also made. The fourth respondent's submissions detailed complex family relationships between various actors involved in the farming business of the group of companies owned by the Orr family

and their associates. She alleged that the present dispute arose as a result of both certain members of her extended family and the lawyers involved in the transactions telling lies. Both Hamilton Orr and the fourth respondent moved the court to allow the reclaiming motion, or to allow a proof. The third respondent did not appear at the hearing on grounds of ill health.

[4] There is no merit in any of the respondents' arguments. In order to grant their rectification, the Lord Ordinary required to be satisfied that the standard securities did not accurately reflect the intention of the parties at the date when they were executed. He was asked to assess that matter without resort to a proof, as he was entitled to do in a petition process. The weight of evidence contained in the productions and the affidavit of the principal solicitor involved in the transactions overwhelmingly pointed to the conclusion that the identification of the debtor in the securities did not reflect the parties' intentions. It demonstrated that the parties' intention at the time was that the loan relative to the securities would be made by the petitioners to Orrdone Farms and not Hamilton Orr. That loan was to be secured by a number of means, including standard securities over the farms owned by Hamilton Orr. The court has not been provided with the commercial reasons for that arrangement, but it is not unusual for related companies to provide security for debts owed by one another.

[5] The court is not persuaded that it would be contrary to business common sense for it to find in the petitioners' favour. The allegations made against the lawyers involved in the transaction and the fourth respondent's various family members are unsubstantiated and largely irrelevant. There is no reference to a loan by the petitioners to Hamilton Orr in any of the productions, with the exception of the standard securities themselves. The court therefore accepts, for the reasons given by the Lord Ordinary, that the securities were

drafted erroneously in that regard. No substantial basis for interfering with the Lord Ordinary's findings in fact on the central issue have been presented.

[6] Had the respondents considered that a proof was necessary in advance of a final determination of the case, they ought to have moved the Lord Ordinary to allow such a proof. They did not do so.

[7] The third and fourth respondents do not have title and interest to resist this petition. Their only interest is in their capacity as guarantors of the debtor. The basis of that liability is contained in the terms of personal guarantees and a facility letter. The rectification of the standard securities will have no bearing on their personal obligations to the petitioners. The standard securities do not require to be rectified in order to enforce the guarantees. The arguments regarding the appointment of administrators to Orrdone Farms do not add anything to this. The appointment, as highlighted by the Lord Ordinary, has not been challenged.

[8] The reclaiming motion is accordingly refused.