IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

Case No. KB-2023-000133

[2024] EWHC 1517 (KB)

Courtroom No. E100

Strand
London
WC2A 2LL

Thursday, 16th May 2024

Before:
MASTER DAVISON

B E T W E E N:

YERBURY

and

AZETS HOLDINGS LIMITED

THE CLAIMANT appeared
MR B SMILEY appeared on behalf of the Defendant

JUDGMENT

MASTER DAVISON:

1. With a degree of reluctance, I have decided I must uphold the defendant's application and strike out the claim and/or grant summary judgment on it. I will give my reasons briefly.
2. The claim is against, or was intended to be against, LPA Receivers in respect of their sale at an undervalue of property over which the lenders had a charge. (My reluctance to strike out the claim stems from the fact that there seems to me, on the face of it, to be substance in that allegation).
3. The sale was on 19 September 2016. The claim was issued on 23 January 2023. It would have been out of time but for a standstill agreement entered into on 6 September 2023. The claimant claims as assignee of the borrower's cause of action against the receivers. That assignment was taken on 1 June 2022 in an agreement signed by or on behalf of the borrowers (BRV) and the liquidator, Mr Goldfarb. What was assigned was the claim against the receivers. However, the claimant has not sued the receivers. He has sued the accountancy firm of which the receivers were employees, or its successor - Azets Holdings Limited. A cause of action against Azets (if there is one) was not assigned to him.
4. However, there is an even more fundamental objection to the claim as the claimant has constituted it which is that it was the receivers, not the firm which employed them who were appointed. Receivers must by law be individuals, not corporate entities. They are appointed as principals and, so far as the conduct of the receivership is concerned, they are not subject to the control and direction of their employer even though as a matter of contract between them and their employer, their fees may be payable to the employer. For this reason, an action for breach of duty *qua* receiver is brought against the receiver personally. This was the subject of a judicially approved concession in *Serene Construction Limited v Salata and Associates Limited and Others* [2021] EWHC 2433 (Ch).
5. To these points the claimant had no very good answer. He said that the wording of the assignment was apt to include the receivers because they were employees of Azets and that this point was anyway immaterial because the outcome (by which I understood him to mean the party/entity who would meet the judgment debt if he was successful) would be the same. As a matter of construction, the first point is just plain wrong. The second point (if correct) is irrelevant.
6. As to the liability of Azets as opposed to the receivers themselves, he said that Azets were vicariously liable for the receivers and were, anyway, estopped from denying that they were the proper defendants.
7. No authority was offered for the proposition that an employer of an LPA receiver was vicariously liable for the receiver's breaches of duty to a third party. Counsel's researches revealed a clear and consistent practice of suing the receivers, not their employers. In the single case where an employer was joined (*Bell v Long and Others)* [2008] EWHC 1273 (Ch)) the point was not explored and, because the claim failed, was redundant anyway. As already noted, LPA Receivers are appointed as principals and this seems to me squarely inconsistent with the concept of vicarious liability on the part of their employers. I think the practice I have referred to reflects that principle.
8. As to estoppel, the correspondence and conduct of Azets falls short of the clarity required to generate one. Nor can it plausibly be said that Azets were under a duty to speak out, i.e. to nominate the correct defendants or to state explicitly that they, Azets, were not a proper defendant. The parties were opponents in proposed litigation and that status would be flatly inimical to the existence of any such duty. But even if there were an estoppel, that would not overcome the problem the claimant has with the wording of the assignment.

9. The foregoing difficulties could perhaps be overcome or partially overcome by joinder of the receivers pursuant to CPR 19.6(2)-(3). However, (a) no such application has been made; and (b) because of the narrow wording of the standstill agreement, the condition in rule 19.6(2)(a) - that the relevant limitation period was current when the proceedings were started - could not be met. I have no power to re-write that agreement so nothing would be gained by allowing the claimant extra time to apply to join the receivers. The application would not be well-founded and would fail.
10. It is regrettable that the claimant finds himself in this situation. He is not the first person to be caught out by an error in suing the correct defendants within the limitation period. It has often been said that leaving issue and service of a claim form to the last minute is a game of Russian roulette, which litigants should avoid. Nevertheless, I express my sympathy.
11. For the reasons that I have stated, I uphold the defendant's application.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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