



Neutral Citation Number: [2019] EWHC 2961 (QB)

Case No: QA-2019-000135

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/10/2019

Before:

MR JUSTICE CHAMBERLAIN

Between:

MR PRKASH VYAS AND MRS MINAXI VYAS

Appellants

- and -

NATIONWIDE BUILDING SOCIETY

Respondents

Mrs Minaxi Vyas in person and (with the permission of the Court) Mr Kishan Vyas (the Respondent did not appear).

Hearing dates: 31 October 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain :

Reasons for the grant of permission to appeal

- 1 This is a renewed application for permission to appeal, pursuant to CPR r. 52.4(2), from an Order of Mr Recorder Widdup made at Willesden County Court on 22 March 2019. The sealed order made by the court on that day includes only an order that the Claimant pay the Defendant’s costs of £1,755 within 28 days. The transcript of the Recorder’s judgment makes clear that he understood the application before him was one by the Nationwide Building Society (‘Nationwide’) to strike out a claim against it by Mr Prakash Vyas and Mrs Minaxi Vyas on the basis that it had no real prospect of success; and that he acceded to that application and dismissed the claim, presumably under CPR 3APD, para. 4.2. The application before him was in fact an application for summary judgment, but little turns on that, since the test he applied was the correct test for summary judgment, namely whether the claim had a ‘real prospect of success’.
- 2 The claim, which was issued in the Central London County Court on 27 April 2017, concerned a mortgage which the Claimants took out with Nationwide in 2015. The essence of the claim was that, when she applied for the mortgage, Mrs Vyas was given certain assurances in a series of telephone calls by a representative of Nationwide about the terms of the mortgage and that those things founded a claim for misrepresentation or breach of contract. There was a dispute on the pleadings about what was said in those telephone calls. On 10 October 2018, Nationwide applied for summary judgment. It filed evidence in the form of a witness statement from its in-house Legal Counsel denying that the assurances had been given and relying on transcripts, which she attached, of the telephone calls.
- 3 On 30 October 2018, the Claimants cross-applied to strike out Nationwide’s application for summary judgment. In support of that application, they produced a document which made references to things said at particular points (identified by reference to time-markings) in particular calls between Mrs Vyas and Nationwide. The transcript of the hearing before Recorder Widdup makes clear that Mrs Vyas was making a number of points. One seems to have been that the transcript of the telephone calls did not accord with the CD she had been given by Nationwide. She relied on the CD and the document supporting the Claimants’ application to strike out Nationwide’s summary judgment application and identified the particular points on the CD which they said supported their case. It is apparent that she also contended that even the CD contained some gaps during which other things had been said.
- 4 The Recorder’s judgment is short. It contains the following:

“If it were not for the fact that transcripts of the telephone conversations between Miss Walton and Mrs Vyas have now been transcribed and put before the court, almost inevitably the court would say that there was a real issue to be tried as to what exactly was said but those transcripts have been provided.”

After making reference to the CD, the Recorder said this:

“The difficulty I have had is (inaudible) the time on the CD to the written transcript. But leaving that to one side for the moment she says also that there were gaps in the CD and her argument is that it would be during those gaps or in those gaps that these assurances would have been given. Her case depends upon their being some representations, careless or otherwise misrepresentations about the second mortgage and I have looked through the written transcripts to see whether there are such mis-statements about the redemption figure or about the interest charge. I note that at various places in the transcript at pages 25, 42 and 43 and, no doubt, in other places, Ms Walton referred to a redemption figure not of £15,000, odd, but of over £19,000 and she also referred to an interest payment of £2.12 in respect of this mortgage. So, with the benefit of the transcripts, it seems to me that it is inevitable that the case would fail if it came to trial because there is nothing in them that supports Mrs Vyas’s case that she was misled by Nationwide and in those circumstances I accept the submissions made by Mr Stocks on behalf of Nationwide that there is no real prospect of success for this claim and, therefore, it is dismissed.”

- 5 The Claimants’ application for permission to appeal was presented to me by Mrs Vyas, with the assistance of her son Mr Kishan Vyas, who addressed me briefly (with my permission) after Mrs Vyas had spoken. Their submissions were helpful. Their principal argument is that the papers before the Recorder and the oral submissions made to him both made clear that they relied on the contents of the CD as supporting what they claimed had been said and as showing the transcript prepared by Nationwide to be inaccurate and incomplete. Their references to the CD were not general ones. They had identified specific passages in the conversation recorded there (by reference to time-markings of particular calls) on which they relied. In those circumstances, the Recorder was wrong to conclude, without even listening to the CD, that their claim had no real prospect of success.
- 6 Having considered the Recorder’s judgment and the transcript of the hearing before him, I consider that an appeal on this ground is arguable. The transcript of the hearing appears to show that Mrs Vyas did not accept that the transcript was accurate and was relying on the CD to support her version of events. In those circumstances, it is arguable that the Recorder should not have relied so heavily on absence of support for their case in the transcripts. If that is right, it is arguable that he should have concluded that there was an issue of fact to be tried (as he acknowledged there would be if the transcripts had not been produced). I accordingly grant permission to appeal.
- 7 I also extend time for the filing of the Appellant’s Notice. The appeal was filed late because the Claimants, who are not represented, originally filed the papers within the time limit but in the wrong court. I do not think it would be right to shut them out in those circumstances.
- 8 When the appeal is heard, it will be very important that the judge hearing it can see exactly what the Claimants say is on the CD. I accordingly direct that the Claimants must within 28 days of today prepare, file and serve their own transcripts of the CD, identifying any gaps in recording and drawing attention to any parts of the transcripts on which they rely, so that they can show the judge exactly how they say the disputed conversations took place. That will be important because it will enable the judge to

form a view about whether, even if the Recorder did err, the error could have made any difference.