

ROYAL COURT

14th July, 1993

89.

Before the Judicial Greffier

Between: Hambros Bank (Jersey) Limited Plaintiff
And: David Eves First Defendant
And: Helga Maria Eves née Buchel Second Defendant

Application for Summary Judgment under Rule 7/1(1) of the Royal Court Rules, 1992.

Advocate A.P. Roscouet for the Plaintiff.
The First Defendant appeared in person.
The Second Defendant appeared in person.

JUDGMENT

JUDICIAL GREFFIER: On 23rd June, 1993, I gave Judgment in favour of the Plaintiff against the First and Second Defendants in the capital sum of £100,000 for the capital due under a loan and left over the further consideration of the application for Summary Judgment in relation to interest to another day. Unfortunately, the Act of the Court which I produced originally was wrongly dated 24th June, 1993.

The Defendants have lodged notices of appeal against that decision. These notices of appeal were received at the Judicial Greffe by post at approximately 10.30 a.m. on 5th July, 1993. Accordingly, the notices of appeal arrived outside of the period of ten days set out in Rule 15/2(2) of the Royal Court Rules,

1992. That would also have been so even if the original decision had been made on 24th June, 1993.

However, when I gave the Summary Judgment on 23rd June, 1993, I indicated that I would provide written reasons for that decision if an appeal were to be lodged.

This action relates to a loan of £100,000 by way of home mortgage. The loan was offered to the First Defendant in a facility letter dated 18th April, 1988 upon the basis that the Second Defendant would guarantee the loan. A simple conventional hypothec was passed before the Royal Court on 27th May, 1988. The Second Defendant subsequently executed a form of guarantee on 25th August, 1988 which was witnessed by a solicitor.

Clause 7 of the simple conventional hypothec contract read as follows -

"Que si en aucun temps l'emprunteur manque de payer lesdits intérêts à la Société de Banque le jour qu'ils seront dus (y inclus l'intérêt sur aucuns arrérages d'intérêts ajoutés à ladite somme capitale en vertu des provisions de la présente clause) lesdits intérêts seront ajoutés à ladite somme capitale, et à partir de tel jour porteront intérêt au taux d'intérêt payable par l'emprunteur sur ladite somme capitale et tous les droits, privilèges et autres provisions du présent contrat s'appliqueront tant auxdits intérêts ainsi ajoutés qu'à ladite somme capitale même sauf que l'emprunteur aura le droit de rembourser à la Société de Banque aucuns intérêts ainsi ajoutés en aucun temps sans avis préalable. Le tout sans préjudice au droit de la Société de Banque d'exiger le remboursement immédiat de ladite somme capitale ou d'aucune balance sur icelle restant impayée ainsi que les intérêts dus comme est ci-devant mentionné."

The First Defendant soon became substantially in arrears in relation to this mortgage and as a result of this the arrears of interest were debited to his current account no. 197504 CRR 01 0002. Over a period of time the arrears of interest grew to be of the order of £25,000.

It was part of the Defendants' case that the Plaintiff had waived its right under clause 7 to demand repayment of the capital provided that the Plaintiffs kept up to date with current interest payments on the loan of £100,000 together with current interest payments on the accumulated arrears. Interest on the accumulated arrears were due to be paid at the end of each current quarter and interest on the original mortgage was due to be paid monthly on approximately the sixth day of each month. Although the Plaintiffs do not accept that they had waived their right in this way, for the purposes of the Summary Judgment application,

sufficient doubt was raised in my mind for me to proceed upon the assumption that this had been agreed during 1991.

The issue which I had to decide, therefore, was whether the First Defendant had fallen into substantial arrears, sufficient to entitle the Plaintiff to demand repayment of capital and interest, since 1991.

The Plaintiff produced a Schedule which indicated that up to 17th May, 1993, including payments made on that day, further arrears of interest both on the original £100,000 and on the arrears of interest had accumulated to the sum of £7,619.15. Amongst the documents which I examined was a letter from the First Defendant to the Plaintiff dated 22nd February, 1993 in which the First Defendant admitted that there were arrears of £7,267.34.

The only line of defence which the Plaintiffs raised in relation to this was an allegation that there were four payments which they had made into the account of Glendale Hotel (Holdings) Limited between July and October 1991 which should be credited to the home mortgage account. The Defendants were not saying either that these monies had been paid by them in error into the wrong account or that they had been applied by the Bank to the wrong account. What they were alleging was that when I gave Summary Judgment against them in favour of the Plaintiff (Hambros Bank (Jersey) Ltd -v- Glendale Hotel Holdings & Ors. [23rd April, 1993] Jersey Unreported), I did not credit these sums to Glendale Hotel Holdings Limited and therefore ultimately to the guarantors of that loan.

This is a totally unfounded claim with absolutely no rational or factual basis. Firstly, it is incorrect as is shown by the calculations which I made in relation to that case. Secondly, the Defendants had never made any enquiries from me on this point nor been given any indication that this was so. Indeed, the written Judgment in relation to that case clearly sets out the basis upon which I had made calculations in that case.

I am therefore left with the situation in which, on his own admission, the First Defendant has built up further substantial arrears since 1991. During the course of the Summary Judgment hearing I became aware that the Plaintiff had charged interest on the arrears on the mortgage at a different rate to that specified in the said clause 7, namely the current mortgage interest rate. It therefore appears to me that the actual amount of additional arrears accumulated since the start of 1992 would be less than £7,619.15. However, it is quite clear that these additional arrears will certainly exceed £5,000 because there are five and a half monthly payments of interest on the £100,000 loan which have not been made.

I have absolutely no doubt that that is the position and absolutely no doubt that the Plaintiffs are entitled, under the said clause 7 and under the provision of the facility letter, which provides for the right to demand immediate repayment of the home mortgage and interest in the event of the failure of the Defendant to pay any instalments of capital or interest on the due date.

The test in relation to an application for Summary Judgment has been set out by me in numerous previous Judgments and is also clearly set out in the section under Order 14 of the White Book and I do not propose to quote the relevant sections.

This is an extremely straightforward and simple case in which the First Defendant has accumulated at least a further £5,000 in arrears of interest since the terms of the original agreement were varied. The Second Defendant is also liable for the said capital sum of £100,000 under the terms of the guarantee.

Finally, once the hearing in relation to the amount of the arrears of interest resumes, and the Plaintiff provides amended affidavits, statements and calculations with interest charges altered to those which I have found for the purposes of Summary Judgment ought to be charged, then I will be able to determine the precise amount of interest arrears due. The liability of the Second Defendant for arrears appears to be limited under the terms of the guarantee and I have already given directions as to how this should be calculated for the purposes of this application for Summary Judgment.

Authorities

Hambros Bank (Jersey) Ltd -v- Glendale Hotel Holdings (23rd April, 1993) Jersey Unreported.

Hambros Bank (Jersey) Ltd -v- Baker (née Jasper) (27th April, 1993) Jersey Unreported.

R.S.C. (1993) Ed'n): O.14.