



OUTER HOUSE, COURT OF SESSION

[2021] CSOH 47

CA75/17

OPINION OF LORD ERICHT

In the cause

OMI MANAGEMENT LIMITED

Pursuer

against

BELLHILL LIMITED

Defender

Pursuer: Sandison QC, O'Brien QC; Dentons UK and Middle East LLP

Defender: Dean of Faculty, Wilson; BTO Solicitors LLP

5 May 2021

Introduction

[1] This is one of four related cases arising out of the business relationship between, on the one hand, Mr Rajinder Bains and his associated companies OMI Facilities Limited ("OMI Facilities") and OMI Management Limited ("OMI Management"), and on the other hand Mr Sohan Singh and his associated company Bellhill Limited ("Bellhill"). The cases relate to the Lorne Hotel in Sauchiehall Street, Glasgow (the "Hotel").

[2] In this action and *OMI Facilities Limited v Bellhill Limited* ([2021] CSOH [46]) Mr Bains' associated companies seek payment of sums for services said to have been provided to Mr Singh's associated company Bellhill in respect of the running of the Hotel.

[3] In *OMI Facilities Limited v Singh* (2021 CSOH [45]) OMI Facilities seeks payment of sums said to be outstanding under a Personal Bond dated 9 October 2010 (the “Personal Bond”). In *Bellhill Limited v Rajinder Bains* ([2021] CSOH [48]) Bellhill seeks payment of sums said to have been misappropriated by Mr Bains during the time when Mr Bains was running the Hotel.

[4] The opinions in all four cases should be read together in order to give a complete view of my findings.

[5] This case and *OMI Facilities Limited v Bellhill Limited* both relate to services said to be provided by Mr Bains’ companies to Bellhill. OMI Facilities trades as a supplier of cleaning and other services to hotels. OMI Management trades as a supplier of management and other services to hotels. There is considerable crossover between this action and *OMI Facilities Limited v Bellhill Limited*. Similar issues apply to both, the difference being whether the service in question was supplied by OMI Facilities or OMI Management. Where there are common issues, I deal with them in detail in the opinion in *OMI Facilities Limited v Bellhill Limited*, and then apply my decision in this opinion.

First conclusion: payments in 2013-14 by OMI Facilities to allow Hotel staff wages to be paid and to member of Hotel staff, totalling £303,450.49

[6] In terms of this conclusion, OMI Facilities seeks to recover sums paid by OMI Facilities on behalf of Bellhill to Towncrest and Kelvingrove in 2013 and 2014 to pay the wages of staff nominally employed by Towncrest or Kelvingrove who were working in the Hotel for Bellhill. It also seeks to recover a wages payment made to a member of staff Frank Queen in 2013. The legal basis on which OMI Management seeks to recover these sums is the same as that on which OMI Facilities sought to recover sums under

conclusions four and five in the *OMI Facilities v Bellhill* action. I have found in favour of OMI Facilities and it follows that I should find in favour of OMI Management also.

Accordingly I find that, subject to adjustment as follows, the payments by OMI Management to Towncrest, Kelvingrove and Mr Queen were made by OMI Management on behalf of Bellhill.

[7] OMI Facilities' expert Mr Cuerden identified the sums by reference to the payment narrative included in OMI Facilities bank statement. He adjusted the sum originally sought to limit it to the amounts verified by him. The sum of £303,450.49 now sought under this conclusion is the amount as adjusted by him.

[8] That sum of £303,450.49 requires to be reduced by £21,000 in respect of invoice 71, as counsel for OMI Management accepted that it should be removed to avoid double counting.

[9] Senior counsel for Bellhill criticised some of the supporting documentation in respect of some of the figures claimed. However, in my view no further adjustments require to be made. I accept Mr Cuerden's opinion, based on his examination of all relevant documentation that these figures fall to be included. I find that, subject to the discussion of the general defence below, Bellhill is liable to pay the principal sum of £282,450.49 and interest under this first conclusion. Consistently with conclusions 4 and 5 in *OMI Facilities v Bellhill*, interest will be at the judicial rate from the date of citation.

Second conclusion: supply of staff by OMI Management to Bellhill in 2014-2015 in the amount of £1,413,910.70

[10] The claim under this heading relates to the cost of employees who were engaged by OMI Management but who carried out work in the Hotel for Bellhill's benefit, following a TUPE transfer in January 2014. Under the TUPE transfer, staff working at the Hotel who

had been nominally employed by Towncrest or Kelvingrove were transferred to OMI Management. Following the transfer, OMI Management invoiced Bellhill for the staff costs. There was a dispute between the parties as to the basis of the transfer. There was also a dispute as to quantification of the wages paid.

[11] Mr Bains gave evidence that in around January 2014, Butta Ram, one of the chefs spoke to Frank Queen about concerns and Frank subsequently spoke to Mr Bains. At that point, Mr Ram was notionally employed by Towncrest Limited and worked as a chef at the Hotel. He was upset as he was having difficulty getting a mortgage as PAYE had not been paid. To facilitate getting the Hotel back on an even keel, Mr Bains arranged to transfer the staff who worked at the Hotel out of Towncrest and Kelvingrove and into OMI Management. That was done with Mr Singh's approval, having been discussed at a meeting between Mr Singh and Mr Bains in January 2014. Mr Singh asked Mr Bains to set up a further management company notionally to employ the staff but Mr Bains refused to do so in order to ensure that things were done properly. The transfer was done in April 2014 with the agreement of Mr Singh. Once the staff were transferred to OMI Management, OMI Management invoiced Bellhill at the end of each month for services rendered. When the Hotel was back on an even keel the staff were transferred back to Bellhill in January 2016, from when Bellhill met the costs of the wage bill.

[12] Mr Singh's evidence was that the OMI companies had made unlawful deductions from the wages of their staff members. The discussion between Mr Bains and Mr Singh referred to in Mr Bains' evidence did not take place. Mr Bains transferred the staff to the OMI companies without the knowledge or input of Mr Singh. The real reason why Mr Bains moved his staff onto the Bellhill payroll was due to the fact that his companies were being

investigated by HMRC and Mr Bains was beginning to panic and thought he would have to dissolve those entities in order to escape the liability.

[13] I accept the evidence of Mr Bains. It is consistent with the other evidence about the poor financial position of Bellhill, the financial support given by Mr Bains to Bellhill through the OMI companies, the payment by OMI companies of the Hotel wage bill on behalf of Bellhill prior to the TUPE transfer, and Mr Singh's use of sham companies. Accordingly I find that the arrangement whereby the Hotel staff were transferred to OMI Management and OMI Management charged Bellhill for the supply of Hotel staff was agreed by Mr Singh.

[14] The quantification of the sum sought under this conclusion was undertaken by Mr Cuerden. Mr Cuerden reconciled the total sum recharged to Bellhill to the gross payroll cost recorded in the payroll records of OMI Management. He excluded from the sum sought an invoice which was in his opinion raised in error.

[15] Senior Counsel for Bellhill challenged the quantification on the basis of the invoice numbering sequence and of there being several sets of invoices. In my opinion this challenge does not succeed as Mr Cuerden's analysis is based on the underlying payroll records rather than solely on the invoices raised. Senior counsel also challenged the inclusion of VAT in the sum sought under this conclusion on the basis that since the invoices were for recharges of staff costs, no VAT would be chargeable. This proposition was not developed and no authority was given for it. On the basis of the submission made to me it is not apparent to me that there is any good reason why supply of staff does not, as a matter of law, constitute a chargeable supply. Mr Cuerden, a very experienced accountant, took the view that VAT was chargeable and included it as part of the amount which in his view properly fell under this conclusion. In my opinion this challenge also fails.

[16] I find that, subject to the discussion of the general defence below, Bellhill is liable to pay the principal, and interest in terms of the Late Payment of Commercial Debts (Interest) Act 1998, sought under this second conclusion.

Conclusion three: goods and services supplied to the Hotel by third parties and paid for by OMI Management mainly in the period 2013-2015 in the sum of £35,199.94

[17] This conclusion relates to sums expended by OMI Management between July 2013 and April 2015 in purchasing various goods and services for the benefit of Bellhill in operating the Hotel. The invoices are listed in two appendices to the summons. The first appendix lists items identified by Mr Bains and the second lists further items identified by Mr Cuerden. The underlying documentation in respect of both appendices was reviewed by the pursuer's expert Mr Cuerden, who identified and stripped out any clerical mistakes, so that the only sums set out in the appendices and sought under this conclusion were the sums that he had verified in respect of OMI Management.

[18] The two sums sought under this conclusion fall to be dealt with in the same way as I have dealt with conclusion three in *OMI Facilities v Bellhill*. The only difference between the sums sought under this conclusion and the sums sought in conclusion three in *OMI Facilities v Bellhill* is that here the advances were made by OMI Management rather than OMI Facilities. For the reasons set out in *OMI Facilities v Bellhill*, I find that Bellhill impliedly contracted with OMI Management that Bellhill would reimburse OMI Management in respect of the items set out in each of the appendices if the sale of the shares to Mr Bains did not go ahead.

[19] The sums sought to be recovered under this heading relate to expenditure by OMI Facilities for the purposes of the business of Bellhill at the Hotel mainly in the period from

2013 to 2015. The invoices for the items supplied, or bank statements showing the payments, were produced and were listed in a schedule to the summons, totalling the sum concluded for. Mr Robb had not been instructed to form a view on the sums sought in this action.

[20] I find that, subject to the discussion of the general defences below, Bellhill is liable to pay the principal and interest sought under this third conclusion.

Conclusion four: sums advanced to Bellhill by OMI Management in June and July 2013 totalling £74,875

[21] This conclusion relates to two sums which were advanced by *OMI Management* to *Bellhill*, namely a sum of £20,875 in April 2013 and a sum of £54,875 in June 2013.

[22] There was no dispute on record that these sums had been paid. The issue between the parties was the nature of the payment. OMI Management averred that Bellhill impliedly contracted with OMI Management that it would repay these loans if the anticipated share transfer did not take place. Bellhill averred that the payments had been made towards the deposit for the grant of the option.

[23] Mr Bains gave evidence that in April 2013, OMI Management lent Bellhill a sum of £20,875 that Bellhill owed to Bank of India. The Hotel was being managed by Mr Sharif at that point and was in a terrible state. The money was needed urgently to relieve the significant pressure the Bank of India was putting on Bellhill to clear its arrears with the bank. In June or July 2013, OMI Management had to lend a further £54,000 to clear the debt with Bank of India.

[24] Mr Singh's evidence was that although Bellhill had been in arrears with the Bank of India from time to time, these had been repaid promptly from Bellhill's cash flow. Bank of

India had never threatened to repossess the Hotel. There was an entry on Bellhill's current account from OMI Management of £20,000, but Mr Singh agreed to set this off as part of the non-returnable deposit agreed in respect of the agreement to transfer the shares.

[25] In my opinion, the bank statements for Bellhill's current deposit account with the Bank of India support Mr Bains' evidence. They show that around June and July 2013 repayments of the loan from Bank of India were not paid regularly nor in fixed amounts. Instead, whenever Bellhill was a few thousand pounds in credit in the current deposit account almost the entire sum at credit was transferred to Bellhill's Bank of India loan account. They show that on the same day that the £20,875 and £54,000 from OMI Management were paid into the current deposit account they were transferred out of the current deposit account to the loan account.

[26] The two sums sought under this conclusion fall to be dealt with in the same way as I have dealt with the sum sought under conclusion 6 in *OMI Facilities v Bellhill*. All three sums were advanced in June or July 2013, at a time when Mr Bains had just taken over the running of the Hotel and Bellhill and the Hotel were in a poor financial state and, in order to continue in business, needed to be financially supported by Mr Bains through provision of working capital, repayment of Bank of India loans and payment of suppliers. As in *OMI Facilities v Bellhill*, I reject Bellhill's position that the payment was part of a non-returnable deposit under the option because I have found in *OMI Facilities v Singh* that there was no agreement whereby such a non-returnable deposit was to be paid.

[27] I find that, subject to the discussion of the general defence below, Bellhill is liable to pay the principal and interest sought under this fourth conclusion.

General defence: Abuse of process

[28] The third plea in law for Bellhill was that the action being fundamentally dishonest and an abuse of process, the claim should be dismissed. The arguments in relation to that plea were the same as those for the identical plea in *OMI Facilities Limited v Bellhill*. I reject the defence of abuse of process in this case for the same reasons as I did so in *OMI Facilities v Bellhill*. Accordingly I shall repel the third plea in law in this action.

Order

[29] I shall uphold the second plea in law for OMI Management, and repel the third, fourth and sixth pleas in law for Bellhill and uphold Bellhill's seventh plea in law in part. I shall grant decree in terms of first conclusion in the principal amount of £282,450.49 plus interest as concluded for. I shall grant decree in terms of the second, third and fourth conclusions. I reserve all questions of expenses in the meantime.