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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
CHANCERY DIVISION
[2021] EWHC 2363 (Ch)

No. FS-2020-000006

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 29 July 2021

Before:

DEPUTY JUDGE ROBIN VOS

(Sitting as a Deputy Judge of the High Court)

B E T W E E N :

FINANCIAL CONDUCT AUTHORITY

Claimant

- and -

BARONS FINANCE LIMITED & ORS

Defendants

MR C. ULYATT appeared on behalf of the Claimant.

The Defendants did not appear and were not represented.

J U D G M E N T

(Via MS Teams)

(Please note this transcript has been prepared without the aid of documentation)

JUDGE VOS:

Introduction

- 1 This is my judgment on the substantive claim. Mr Dharam Gopee for many years conducted a money lending business through various companies owned and controlled by him. The twelve companies which are defendants to this action, all of which are in liquidation, are some of those companies.
- 2 Mr Gopee's activities have spawned numerous legal proceedings, including enforcement action by the Office for Fair Trading and, subsequently, the claimant in this case the Financial Conduct Authority; criminal proceedings against Mr Gopee; claims brought by borrowers to extricate themselves from unenforceable loan arrangements; as well as a judicial review claim against the Chief Land Registrar in relation to the Land Registry's refusal to make certain entries on the land register in respect of properties forming security for the loans.
- 3 In this action, which is a Part 8 claim, the Financial Conduct Authority seeks a declaration that the twelve defendant companies have carried on business in breach of the Consumer Credit Act 1974 and/or the Financial Services and Markets Act 2000, as well as a remedial injunction under section 380(2) of the Financial Services and Markets Act 2000 requiring the defendant companies to remove any entries at the Land Registry which relate to the loans said to be in breach of the relevant statutory requirements. It brings the proceedings as regulator for the benefit of the consumers who have been affected by Mr Gopee's activities. The purpose of the claim is to avoid the need for each individual borrower to bring the separate claims needed to remove the restrictions relating to their own properties. None of the defendant companies seek to contest these proceedings.
- 4 The regulatory regime for credit agreements was, until 1 April 2014, contained in the Consumer Credit Act. After that, the regime was incorporated into the Financial Services and Markets Act. For present purposes, the two regimes are broadly similar.
- 5 A credit agreement with an individual is within the scope of the relevant regulatory regime if the debtor is an individual unless the agreement is exempt (see Section 8 of the Consumer Credit Act and Article 60B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001).
- 6 The burden of proving that an agreement is exempt is on the creditor (See *Wood v Capital Bridging Finance Ltd* [2015] EWCA Civ 451 at [26]). The main exemptions which are relevant to this case relate to loans in excess of £25,000 made for business purposes (the business exemption) and loans which are secured on land less than 40 per cent of which is a residence of the debtor (the investment property exemption).
- 7 Any person making loans within the regulatory regime, or exercising the rights of a creditor in respect of such loans, was required to be licenced under the Consumer Credit Act or must now be an authorised person under the Financial Services and Markets Act (see section 21 of the Consumer Credit Act and section 19 of the Financial Services and Markets Act).
- 8 Carrying on such business without a licence or without authorisation has two key consequences. The first is that the person involved commits a criminal offence (section 39 of the Consumer Credit Act and section 23 of the Financial Services and Markets Act). The second is that the agreement is unenforceable (section 40 of the Consumer Credit Act and section 26 of the Financial Services and Markets Act).

- 9 In this context, it is important to note that an application can be made for an agreement which would otherwise be unenforceable to be validated; for example, if there is an innocent mistake. However, no application has been made by any of the defendants to this claim for the validation of any agreements which would otherwise be unenforceable.
- 10 The only one of the defendant companies which has ever held a consumer credit licence is the fourth defendant Reddy Corporation Limited. Its licence lapsed in August 2012. None of the defendant companies has ever been an authorised person under the Financial Services and Markets Act.

The business model

- 11 Initially, the lending business was fairly conventional. The relevant company would make a loan and take a charge over the borrower's property as security for the loan. The charge would be registered at the Land Registry.
- 12 Following the lapse of Reddy's Consumer Credit Act licence in 2012, the business model changed. Instead of making a loan to the borrower, the relevant company would agree to purchase the individual's property for a consideration equal to the amount of the loan. The individual would have an option to repurchase the property for a nominal amount. However, that option would only be exercisable if the individual made payments to a separate company equal to the amount of the loan plus interest. The registered title to the relevant properties was not transferred to the lending company. Instead, the company would enter a notice or restriction against the title at the Land Registry.
- 13 In February 2018, Mr Gopee was convicted on four counts relating to carrying on business without a licence contrary to the Consumer Credit Act and without being an authorised person under the Financial Services and Markets Act. This included activities under the new business model (which was therefore held to be a regulated credit agreement) as well as under the old business model.

Contraventions of the regulatory regime

- 14 As evidence of the contraventions of the regulatory regime, the Financial Conduct Authority relies principally on Mr Gopee's criminal conviction which is admissible as evidence under section 11 of the Civil Evidence Act 1968. Mr Ulyatt, appearing on behalf of the Financial Conduct Authority, refers to the decision of Spencer J in *CXX v DXX* [2012] EWHC 1535 (QB) where he observed that:
- “These convictions in the present case must be treated as weighty evidence in themselves.”
- 15 Mr Ulyatt also took me to the statement of agreed facts prepared for the purposes of the criminal proceedings. This clearly identifies each of the twelve defendant companies, as well as some others, as companies through which Mr Gopee's business was carried out. The involvement of those companies in the credit business is further confirmed by the fact that each of them has entries against their names at HM Land Registry in respect of the properties belonging to the debtors involved.
- 16 I conclude, based on this evidence, that each of the twelve defendant companies has carried on business in contravention of sections 21 and 39 of the Consumer Credit Act and/or sections 19 and 23 of the Financial Services and Markets Act.

Remedial injunction

17 The injunction sought by the Financial Conduct Authority is, as I have mentioned, under section 380 in the Financial Services and Markets Act. To the extent relevant, this provides as follows:

“(2) If on the application of the appropriate regulator or the Secretary of State the court is satisfied—

(a) that any person has contravened a relevant requirement, and

(b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.”

18 Subsection (5) clarifies that:

“...references to remedying a contravention include references to mitigating its effect.”

19 “Relevant requirements” are defined in subsection (6). They include in subsection 6(a)(i) a requirement imposed under the Financial Services and Markets Act itself. They also include in subsection (6)(a)(ii) a requirement:

“...imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1) [of the Financial Services and Markets Act].”

20 Finally, subsection (10) confirms that:

“...where the contravention constitutes an offence under this Act, the ‘appropriate regulator’ is whichever of the [Prudential Regulation Authority] or the [Financial Conduct Authority] has power to prosecute the offence...”

21 In this case, that was the Financial Conduct Authority which is the authority that prosecuted Mr Gopee.

22 Mr Ulyatt drew attention to the decision of the Chancellor, Sir Andrew Morritt in *Financial Services Authority v Martin & Anor* [2005] EWCA Civ 1422 where he confirms at [21] that there are two preconditions to the court making an order under section 380(2) Financial Services and Markets Act being:

“(i) a relevant contravention; and

(ii) steps intended to and reasonably capable of remedying that contravention”.

- 23 If those two preconditions are satisfied, the court has jurisdiction to make a remedial order. However, even where jurisdiction is established, the wording of section 380(2) makes it clear that the court's power is discretionary in nature.
- 24 The breaches of section 29 of the Consumer Credit Act which I have held to exist are contraventions of a relevant requirement as a result of section 380(6)(a)(ii) of the Financial Services and Markets Act which I have already referred to, together with Article 49 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013. Breaches of section 19 of the Financial Services and Markets Act amount to contraventions of a relevant requirement pursuant to section 380(6)(a)(i) of the Financial Services and Markets Act. The first threshold condition is therefore clearly satisfied.
- 25 In principle, I accept that the proposed steps, being the cancellation and removal of the registered charges and restrictions, are reasonably capable of remedying these contraventions, or at least mitigating their effect within the meaning of section 380(5) Financial Services and Markets Act.
- 26 Mr Ulyatt has, however, quite rightly drawn attention to two potential complications. The first is that Reddy had a consumer credit licence prior of August 2012 and so loans made by Reddy before that date would not be in contravention of the relevant requirements. The second is that some of the loans entered into by the defendant companies were exempt from regulation.
- 27 Looking first at Reddy Corporation, the evidence from the Financial Conduct Authority is that it has carefully reviewed the Land Registry entries relating to Reddy and is satisfied they all either relate to agreements entered into entered into after August 2012, or to cases where the lender was a company other than Reddy, with the result in either case that there is a contravention of the relevant requirements.
- 28 This does, however, raise the question, which has previously been raised by Reddy itself in an appeal before the First-tier Tribunal against the Office for Fair Trading's refusal to renew its licence in 2012, as to whether the loan agreements in question were entered into by other companies as agent for Reddy or whether they were entered into by those companies on their own behalf.
- 29 Mr Ulyatt took me to an example of one such agreement. It is a short standard-form typed agreement with the seventh defendant, Barons Bridging Finance 1 Limited, shown as the lender. The signature block, however, contains the words "as agent for Reddy Corporation Limited".
- 30 Mr Ulyatt referred to the agreed statement of facts in relation to Mr Gopee's criminal prosecution which records that Reddy Corporation Limited has no assets other than its share capital. He invites me to infer from this that the lending companies cannot have been acting as agent for Reddy if Reddy had no assets.
- 31 I accept this submission. If Reddy was the true lender, it would clearly have assets being money with which to make loans and the benefit of the loans it had previously made. As it does not, it cannot have been the case that the other companies were acting as agent for Reddy despite what the signature blocks on the relevant loan agreements record.
- 32 This conclusion is, in my mind, supported by the fact that, on the face of the loan agreements, the lender was a different company. Given that Mr Gopee owned and controlled all of the relevant companies, no commercial purpose is served by having various

companies acting as agent for Reddy. There was no reason why Reddy could not have entered into the agreements on its own account.

- 33 It is also supported by the fact that the Land Registry entries relating to these transactions are in the name of both the lending company and Reddy. If the lending company were acting as agent for Reddy, it would be sufficient for Reddy to be shown as the beneficiary of the entry.
- 34 Mr Ulyatt referred to the fact that the First-tier Tribunal, in the appeal that I mentioned earlier, concluded that the lending companies were not acting as agent for Reddy. This is not admissible evidence in these proceedings, however, and so I have not taken it into account in reaching my conclusion.
- 35 Notwithstanding this, I accept that the agreements entered into before Reddy's licence lapsed were made by other companies on their own behalf and not as agent for Reddy, and were therefore made in contravention of the relevant requirements.
- 36 Turning to the issue of the exempt agreements, it is accepted by the Financial Conduct Authority that a small number of the agreements entered into by the defendant companies were exempt agreements being business loans or loans relating to investment properties. The Financial Conduct Authority has attempted to identify the exempt loans as part of the confiscation proceedings against Mr Gopee which took place in December 2019.
- 37 Mr Gopee initially provided a list of 336 loans he claimed were exempt. The Financial Conduct Authority reviewed the underlying documents in relation to approximately 180 of these loans. It was ultimately agreed that 30 of these loans were exempt and a further four might be exempt. Subsequent investigations have shown that of these remaining four loans, three were not, in fact, exempt. However, all of the loans which were found to be exempt have been excluded from the present claim.
- 38 The Financial Conduct Authority relies on the fact that it is up to the creditor to prove that an agreement is exempt (*Wood v Capital Bridging Finance Ltd* at [26]). Mr Ulyatt submits that, on this basis, the court should accept that the remaining loans in respect of which the claim has been made, are not exempt given that the twelve defendant companies do not contest the proceedings.
- 39 Mr Ulyatt also draws attention to the fact that in the confiscation proceedings, Mr Gopee did not pursue his suggestion that any of the other loans were exempt apart from the 34 loans which it was agreed should be excluded. He also observed that although Mr Gopee and Ms Koossa suggested in their witness statements filed in support of the application made by Prithvi Equity Release Limited to be joined to these proceedings (which I have refused) neither has identified any specific loans which were exempt nor provided any evidence to support this.
- 40 It is apparent that the Financial Conduct Authority has not reviewed the remaining 156 loans out of the original 336 identified by Mr Gopee. It is therefore possible that some of these loans are exempt. However, in the absence of any evidence to the contrary and on the basis that Mr Gopee did not pursue this point in the negotiations relating to the confiscation order, and that the defendant companies do not contest these proceedings (which it would be the duty of the liquidators to do if the proposed order would damage the interests of those companies) and are not therefore suggesting that any of the loans are, in fact, exempt, I find on the balance of probabilities that these loans are not exempt and that they were therefore made in contravention of the relevant requirements.

41 This only leaves the question as to whether the court should, in fact, exercise its discretion to grant the injunction sought by the Financial Conduct Authority. Mr Ulyatt makes the following points:

- (i) The purpose of the injunction is to enable affected borrowers to deal with their property free from the restrictions which have been registered against their titles.
- (ii) If the order is not made, each individual borrower (of whom there are almost 250) would have to take their own proceedings (involving an application for permission to bring the proceedings under Section 130 Insolvency Act 1986, a claim to establish that their particular agreement is unenforceable (in respect of which, in the past, Mr Gopee has frequently tried to intervene, thus driving up costs) and then an application to HM Land Registry).
- (iii) The purpose of the legislation is to protect consumers entered into by unlicensed or unauthorised traders and the removal of the Land Registry entries will promote that statutory purpose.
- (iv) Significant court time would be wasted if individual borrowers have to bring their own claims.

42 I accept all of these points. In my view, it is clearly appropriate for the court to make the order sought by the Financial Conduct Authority for the reasons which Mr Ulyatt has put forward.

43 I have been informed that on 12 July 2021, Mr Gopee applied to the Administrative Court for permission (under a general civil restraint order which was imposed on Mr Gopee in October 2019) to apply to be joined to the present proceedings. That application identifies 17 properties in which Mr Gopee claims to have a beneficial interest and forms the basis of his application. Four of these properties were not, in any event, part of this claim. However, as a result of this, the Financial Conduct Authority proposes to exclude the remaining 13 properties from any order made by the court. Based on this, I have decided that it is appropriate for the court to determine the claim and to make the orders sought, even though Mr Gopee's application for permission to intervene in these proceedings has not yet been decided.

44 The Financial Conduct Authority specifically reserves its position in relation to these remaining properties and may wish to make a further application to the court in these proceedings once it has gathered further evidence in respect of those properties. For this reason, I accept that it is appropriate for any order to give the Financial Conduct Authority liberty to apply both in respect of these properties and any other properties which may come to light in respect of which there are entries at the Land Registry which should be removed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.