NEUTRAL CITATION NUMBER: [2022] EWHC 421 (Ch)

Case No: CH-2021-000256/QA-2021-000032

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

7 Rolls Buildings

Fetter Lane

London EC4A 1NL

Thursday, 3 February 2022

BEFORE:

MR JUSTICE MARCUS SMITH

BETWEEN:

MYLES HANTLER

Claimant/Respondent

- and -

(1) CLAIRE HIBBERT

(2) STUART HIBBERT

Defendants/Appellants

MR M HANTLER appeared in person

MR J RAMSDEN, QC appeared on behalf of the Defendants/Appellants

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APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

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MR JUSTICE MARCUS SMITH:

1.
I have before me the renewed application for permission to appeal by the second defendant, Mr Stuart Hibbert. The respondent to this application for permission is Mr Myles Hantler. Mr Hibbert is represented pro bonoby Mr Ramsden QC. Mr Hantler appears before me acting for himself.

2.
The history of this application is this. I in fact refused permission to appeal on the papers in respect of all four grounds of appeal, certifying that the application for permission was totally without merit.

3.
Subsequently, it became clear that I did not have before me the written submissions in support of the application for permission of Mr Ramsden QC. Not only did I not recall seeing them, but it is clear that I could have not seen them because those written submissions explicitly abandon two of the four grounds of appeal, which I would have noted in my order on the papers.

4.
Given that a material document was not before me when I considered the matter on the papers, it seemed to me appropriate that I hear the matter orally, if Mr Hantler wished to renew his application for permission to appeal.

5.
I make that clear because, if one looks simply at the order that I made last time, one might ask: why this hearing is taking place? I would invite Mr Ramsden, when he draws up the order that I am making today, to make it clear that, by my permission given informally in email, this renewed application is taking place with my permission and for these reasons.

6.
The two grounds that are live are, adopting the old numbering, ground 2 and ground 4. Ground 2 relates to the computation of quantum of loss by the judge and Mr Ramsden advanced the application for permission to appeal with, if I may say so, great skill. What he did was he commenced with what he contended was, on the face of it, a clear arithmetical error at [53] of the judgment of the judge below, and then sought to leverage that into a broad attack on the judge's view of the evidence and in particular how he had resolved the differences between the experts before him in his judgment.

7.
It is trite that, in any trial where factual matters have to be resolved by the trial judge, an appellate court is very slow to intervene. This is such a case. It seems to me that actually Mr Hantler, in his very short written submissions, has put the matter extremely well and I am going to read into the record his response to ground 2. What he says is this:

"It is averred by the claimant/respondent that the skeleton argument in support of ground 2 of the appeal goes beyond the remit of an appeal and is again an attempt to seek to relitigate the findings of fact made by HHJ Gerald. The appeal court should be aware that there were a number of factors

affecting the judge's calculation of the value of the shares. It is averred that the appellant seeks to place entire weight on one aspect of a calculation of the shares of Mr Ansell. There were a number of factors HHJ Gerald carefully considered, including potential offers in excess of the sum calculated by HHJ Gerald."

8.
This, I think, captures the point. This was a long and complex judgment. The judge took into account many matters. He did not base everything on a mathematical computation. Rather, paragraph 53 sets out one strand of his thinking and is not in any way fundamental to his thinking. It is material to his thinking. It seems to me that it would be a revisiting of the trial process to give permission in relation to ground 2. Appeals are not re-hearings, and I consider that there are no real prospects of ground 2 succeeding on appeal. I refuse permission to appeal.

9.
On the other hand, ground 4 is, to my mind, quite clearly something where permission to appeal should be given. What the judge did was order a rate of compound interest at 5 per cent per annum. He did so clearly treating the jurisdiction to award compound interest as the essential equivalent of simple interest under section 35A of the Senior Courts Act 1981. In doing that, it seems to me there is a real prospect of contending that the judge erred.

10.
It is the law, as I understand it, that, whilst one can make an argument for simple interest as a point of law unsupported by evidence, compounding requires a pleaded case of loss and an articulated reason as to why a particular compounded rate should be adopted by the court. I stress that I have not read the pleadings in sufficient depth to be clear about this but, for the sake of an application for permission to appeal, it seems to me that there is simply a bare averment of interest under section 35A and the judge made an order compounding based upon not a pleaded case and not evidence in support of it but simply his view as to what was right and proper in light of all of the facts that he had found.

11.
To be clear, given the facts that the judge found, it may very well be that the rate of interest he found and the period over which he ordered it was entirely right and proper. I say nothing about that. All I am saying is that it seems to me that there is a reasonable prospect of suggesting that the judge erred in paying insufficient regard to the need and importance of an interest claim, where compound interest is claimed, to be pleaded as a matter of damages. Therefore, so far as ground 4 is concerned, I give permission to appeal.

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