B2/2014/2216

Neutral Citation Number: [2015] EWCA Civ 1199
IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM TRURO COUNTY COURT
(HIS HONOUR JUDGE COTTER QC)

Royal Courts of Justice
Strand
London, WC2

Thursday, 8th October 2015

B E F O R E:

LORD JUSTICE FLOYD

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BENNETTS

Claimant/Applicant

-v-

CHRIS HARRISON LAW

Defendant/Respondent

(Digital Audio Transcript of
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A Merrill Communications Company
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Official Shorthand Writers to the Court)

The Applicant appeared in Person

J U D G M E N T
(Approved)

1. LORD JUSTICE FLOYD: This is a renewed application for permission to appeal from the decision of His Honour Judge Cotter QC, dated 10th February 2014. In his decision the judge dismissed an action by Mr Bennetts, the claimant and applicant, for negligent misrepresentation against the defendant and respondent firm law firm, Chris Harrison Law, to whom I shall refer as "CHL".

2. The judge held that a misrepresentation had been made but that it was made in circumstances where CHL owed no duty of care to Mr Bennetts. The misrepresentation in question was contained entirely in a letter from CHL to a third party called the Bankruptcy Protection Fund Ltd, to whom I refer as "BPFL". BPFL had been engaged by Mr Bennetts to secure an annulment of his bankruptcy, essentially, as I understand it, by making him a secured loan and at the same time paying off the outstanding liabilities in his bankruptcy. In this connection they had written to CHL, who were the solicitors for the petitioning creditors and had asked them in their letter for a summary of the outstanding balance in the bankruptcy broken down into debt and costs as appropriate.

3. By the letter in question, dated 14th January 2008, CHL provided a list of supposedly outstanding amounts. Item number 8 in the list was said to be "Bennetts' forfeiture claim" and related to a total amount of £22,002.98 pence. The letter ended by asking BPFL to "confirm Mr Bennetts' unequivocal acceptance of the above debts". Some further enquiries by BPFL of CHL followed as to the amounts claimed in the letter of 14th January.

4. Mr Bennetts' assertion, which was accepted by the judge, was that item 8 was not a liability of Mr Bennetts but a liability of a limited company which, although owned by him, of course had separate legal personality.

5. The judge approached the case by reference to the decision of the House of Lords in

Caparo Industries v Dickman [1992] AC 605. From that he deduced, rightly, that it was necessary, before a duty of care could be recognised, that (a) it was forseeable that damage could be caused to the claimant; (b) there should be a relationship of proximity or neighbourhood and (c) it was fair and just and reasonable to impose a duty. He warned himself that he should not apply these criteria as rigid and distinct requirements but rather as a helpful and pragmatic approach to determining whether a duty arose in individual circumstances.

6. Taking foreseeability first, the judge held that it was not foreseeable that the incorrect statement of debts would cause harm. He relied on the fact that the letter expressly asked for unequivocal confirmation that Mr Bennetts accepted that the debts were his. Moreover, it was reasonable to assume that the sums would be checked not only by Mr Bennetts but also by those acting for him which included, in addition to BPFL, a firm of solicitors.

7. According to Mr Bennetts' evidence, he was not asked by BPFL to check the figures. However, rather than making a claim against BPFL or his own solicitors he has chosen to bring this action against CHL, who were not acting for him. He does so largely, as I understand it, because the alternative prospective defendants are no longer in business.

8. If it be correct that Mr Bennetts was not asked to check the figures then it was very imprudent of BPFL. The judge's findings that it was foreseeable that Mr Bennetts would be asked to check the figure is however not affected in any way by that fact.

9. The judge also considered that there was insufficient proximity for essentially the same reason, namely that it was not known to CHL, actually or inferentially, that the information would be relied on by the recipient without independent inquiry. The judge also said that it was not fair or reasonable to impose a duty here. He held that care should be taken when imposing a duty care on a solicitor with respect to his opponent in litigation.

10. This morning Mr Bennetts has argued that the judge was wrong in those findings. He has provided me with a much expanded skeleton argument in which he seeks to address not only the errors made by the judge but also the reasons given by Lewison LJ when he refused permission to appeal on the papers. Essentially, his arguments seem to be these. Firstly, that he instructed BPFL to procure an annulment of his bankruptcy. The scope of their agency did not extend to verifying debts. That may well be correct and I assume it is. Nevertheless it seems to me that looks at the matter through the wrong end of the telescope. The question is what was reasonably forseeable to someone in CHL's position when they specifically asked for confirmation of acceptance of particular debts.

11. Next Mr Bennetts argues that there was no valid reason to suspect that BPFL would check the debts. Again, it seems to me that ignores the terms of the letter and the other circumstances on which the judge relied including of course the final paragraph of the letter and the fact that Mr Bennetts had other independent sources of advice.

12. Mr Bennetts also relies on aspects of the Insolvency Rules and the procedures relating to bankruptcy. He says that it for the Official Receiver to accept or reject proof of debts, not for an agent such as BPFL. No doubt that is true as a general proposition but of course in this case BFFL was specifically asked whether they confirmed the debts. It was reasonable to suppose, in those circumstances, that they would take instructions on that question.

13. Mr Bennetts, perhaps recognising that the final words of the letter do present his case with difficulties, suggests that those words in the letter were simply included in order, as he puts it, for CHL to cover themselves. I am not quite sure what Mr Bennetts's means by that. But the fact is that the inquiry here is an objective one having regard to all the surrounding circumstances. A reasonable sender or recipient of that letter would I think immediately appreciate that it was necessary to check the accuracy of the figures with the person whose

debts they were alleged to be.

14. Next, Mr Bennetts argues that the principle that a duty care is not owed to an opponent in litigation only applies to hostile litigation and that he was not engaged in hostile litigation with CHL or their clients. In fact he was not engaged in litigation at all as he was bankrupt and not permitted to pursue any such action in his own name. I do not think there is anything in that point. It seems to me that the circumstances in this case arise out of the particular terms of the letter and the position of BPFL and the nature of the exercise in which the parties were involved does not give rise to a duty of care.

15. Mr Bennetts also draws attention to the fact that CHL were paid for providing the debt figures. By this I think he refers to the fact that included in the costs claimed were the costs of providing the figures. But of course a party is often required to pay the costs of a particular exercise to the other side but he does not thereby engage the other side's solicitors as his solicitor and create a relationship which gives rise to a duty of the care. The primary liability for those costs was no doubt the client of CHL and the fact that Mr Bennetts was required to pay those costs of his bankruptcy does not, it seems to me, give rise to a duty of care.

16. I am unable to fault the judge's reasoning. It is true that in some cases the court has widened the class of those who may rely on a solicitor's advice to those beyond the immediate client - see for example White v Jones, in which the intended beneficiary of a provision in a Will was entitled to complain of the negligence of a testator's solicitor in drafting the Will. But the present case is miles away from that. The judge, in my view, was entirely right to hold that it was not foreseeable that harm would be caused by the misrepresentation and in those circumstances no duty to Mr Bennetts arose. An appeal would not have a realistic prospect of success.

17. Had I been prepared to grant permission to appeal, I would have extended time, as would Lewison LJ. It seems to me that broadly speaking the delays in serving the notice of appeal were not Mr Bennetts' fault. But in the circumstances, I will simply make an order refusing permission to appeal.