ROYAL COURT (INFERIOR NUMBER)

1977/3

Before: Sir Frank Ereaut, Bailiff
Jurat R.F. Le Brocq,
Jurat H. Perrée.

F. Le Sueur & Son Limited — Plaintiff

v.

Granite Products Limited — Defendant

Advocate J.C.K.H. Valpy for the plaintiff

Advocate G. LeV. Fiott for the defendant

In November, 1974, a Mr. Howard asked Mr. L. Le Sueur, of the plaintiff company, for a cash loan of £1000. Mr. Le Sueur agreed to lend him £875, to which he added interest of £145, on condition that the total sum of £1020 was to be repaid at the rate of £56.67 per month by eighteen monthly instalments, beginning on 30th December, 1974. It was a further condition that the repayment of the loan should be guaranteed by Mr. Howard's employer, the defendant company.

For that purpose the plaintiff company completed a printed form headed "Guarantee and Indemnity" (hereinafter referred to as "the document") which was normally used to guarantee payments under a hire purchase agreement. There was no such agreement in this case and therefore the printed form should have been properly amended. Unfortunately it was not fully amended and so, when completed, the relevant part of the document, addressed to the plaintiff company, was in these terms:

" In consideration of your entering into a (sic) Agreement with Patrick Howard of 51 Marett Court, Havre des Pas (hereinafter called the Hirer) in respect of Cash Loan £875.00 + £145 charges repayable by 18 monthly payments of £56.67 commencing 30.12.74. I/We hereby (jointly and severally) guarantee payment of all sums payable thereunder. Should the Hirer fail to pay any amount on its due date I/We bind myself/ourselves to pay it to you personally on demand.

I/We also undertake (jointly and severally) as a separate agreement to indemnify you against any loss sustained or incurred by you by reason of your having entered into the said Hire Purchase Agreement. "

It is further agreed that if you grant any time or other indulgence to the Hirer, such arrangement shall not affect this Guarantee and Indemnity. "

The document was then sent to Mr. F.L. Duquemin, a director of the defendant company, who signed it in that capacity on 7th November, 1974, and returned it to the plaintiff company, who then gave to Mr. Howard the loan of £875.

It was agreed between the parties and Mr. Howard that the defendant comapny would deduct the monthly payments from Mr.Howard's wages and remit them to the plaintiff company. In confirmation of that agreement, on 8th January, 1975, the Secretary of the defendant company forwarded to the plaintiff company a cheque for £56.67 being the payment for December, 1974, and attached the following letter:

" Re: Mr. Howard.

We confirm that we will deduct from the above £56.67p. per Calendar month and pay same to you at the end of each month for a period of 18 months or less if the abovenamed should leave our employ. "

On the 8th January, the plaintiff company acknowledged the cheque and added:

" We would, however, point out that your Company has stood guarantor for this Loan, irrespective of whether or not Mr. Howard remains in your employ.

Your observations will be appreciated. "

It appears that the defendant company did not acknowledge that letter.

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The defendant company made six monthly deductions from Mr. Howard's wages up to and including May, 1975, and remitted them to the plaintiff company, thus reducing the debt to £679.98. Mr. Howard then left the defendant company's employment, and so no further deductions were made.

Attempts were made by both parties to trace Mr. Howard, but his whereabouts are not known, although it is believed by both parties that he has left the Island. The plaintiff company now calls on the defendant company to honour its guarantee and indemnity.

In its pleadings, the defendant company denied liability on two grounds.

First, that by the law and custom of Jersey a lender must, unless there was an express agreement to the contrary, have recourse against the assets of the debtor and exhuaust his remedies against him before looking to the guarantor for payment; in this case the plaintiff had failed so to do.

The plaintiff company argued that that law and custom could only apply where the debtor was in the Island or had assets here. Mr. Howard was not in the Island, nor, so far as was known, did he have assets here. In any event, the terms of the guarantee and indemnity clearly were that the defendant company was liable to pay if Mr. Howard did not.

At the hearing counsel for the defendant company did not pursue this defence and we therefore do not find it necessary to consider it.

The second line of defence was that the document was of no validity because its wording misled Mr. Duquemin into believing that there was an agreement of hire purchase between the plaintiff company and Mr. Howard and that Mr. Howard was therefore in possession of an asset in respect of which there would be some equity, whereas it was in fact a pure loan at a high rate of interest.

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In evidence Mr. Duquemin told us that when Mr. Howard entered the defendant company's employment he said that he had previously been a taxi-driver and he asked if he could keep his badge and continue to drive a taxi after working hours; Mr. Duquemin agreed to this. Later, Mr. Howard asked Mr. Duquemin if he would guarantee a loan, and in this connexion said that he wished to buy a taxi to drive after hours. Mr. Duquemin therefore had no doubt that the loan was required to buy a taxi on hire purchase, and when he saw the wording on the document with its reference to "hirer" and "hire purchase agreement" he felt confirmed in his belief that he was in effect being asked to guarantee a hire purchase agreement in respect of a taxi, (although he agreed he never saw such an agreement or asked the plaintiff company for further details). He was therefore prepared to commit the defendant company to the guarantee because he believed that there would be an asset. Had he known that Mr. Howard wished to borrow "straight cash" he doubted if he would have agreed to sign a guarantee.

When Mr. Howard told him he was leaving the company's employment, Mr. Duquemin asked him for the log book for the taxi so that there would be an asset to fall back on. Mr. Howard then told him that there was no taxi, and that he had borrowed the money to pay off his debts.

We are satisfied that Mr. Duquemin was an honest witness, and we therefore have to decide what legal results follow from his evidence.

It is not disputed that the printed form comprising the document is for use with a hire purchase agreement, and counsel for the plaintiff company concedes that all references to "hire purchase agreement" and "hirer" should have been altered. However, he argues that the wording of the document is clear - the defendant

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company was guaranteeing a "cash loan" and that is exactly what the transaction was, and that was made clear in the plaintiff company's letter of 8th January, where the word "loan" was used. It was in consideration of that guarantee that the loan was made. Mr. Duquemin accepted that the document amounted to a guarantee that the defendant company would repay the loan if Mr. Howard did not. Moreover, if Mr. Duquemin thought that Mr. Howard was entering into a hire-purchase agreement that was a belief induced by Mr. Howard, not by the plaintiff company, for Mr. Duquemin never verified his belief with the plaintiff company.

Counsel for the defendant argues that the document, because it was prepared by the plaintiff company, should be interpreted against that party. The document was a "nonsense", or alternatively it was so ambiguous as to mislead Mr. Duquemin into thinking that the transaction was different from what it really was. The transaction was in fact more onerous than he thought it was, and he should therefore not be bound by it.

We find that in the circumstances of this case the wording of the document constituted a misrepresentation, albeit entirely innocent, of such a nature as to entitle the defendant company to relief, for the following reasons.

Firstly, we think that the document looked at as a whole was calculated to give the impression, and did in fact give the impression to Mr. Duquemin, that the loan was made in connection with a hire purchase agreement, and we find that that misrepresentation was a substantial reason for his having signed the document.

We accept that the erroneous statement of Mr. Howard was also an important contributory factor, but the authorities are clear that a plaintiff in the circumstances of a case such as this

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cannot avoid the consequences of his misrepresentation by showing that there were other contributory causes which induced the defendant to make the contract. Once it is shown that a representation was calculated to influence the judgment of a reasonable man, and we think that the wording of the document was so calculated, then the presumption is that the representee was so influenced, and that presumption is not rebutted by showing that there were other contributory causes which played a substantial part, perhaps even a more notable part, in the formation of his intention.

Moreover, it follows that the fact that one of the contributing inducements was the representee's own mistake is no defence. Thus, the failure of Mr. Duquemin to verify the true position is immaterial.

Secondly, we accept Mr. Duquemin's statement that if he had known that Mr. Howard wished to borrow "straight cash" he doubted if he would have agreed to sign a guarantee, because then there would have been no asset having a potential equity. We cannot say that Mr. Duquemin was unreasonable in drawing that distinction, and we understand and accept his reasoning.

It is an elementary principle that a guarantor must not be misled, however inadvertently, as to the full nature of the transaction, and we are satisfied that if a guarantor is led to believe that a loan is made in connection with a hire purchase agreement, when in fact it is not, then he is misled as to the full nature of the transaction.

We have not overlooked the letter of 8th January, but it does not affect our finding because the reference to a "loan" did nothing to remove the false impression given to Mr. Duquemin by the document.

For the above reasons, we hold that the contract between the parties to this action must be rescinded, and we therefore order that the defendant company be discharged from the guarantee and from this action.