Third party rights: Chudley & Ors v Clydesdale Bank PLC

Published 22 May 2019

Summary

The recent judgment handed down by the Court of Appeal in *Chudley & Ors v Clydesdale Bank PLC* [2019] EWCA Civ 344 is of particular interest as the decision provides clarity as to how s.1(3) of the Contract (Rights of Third Parties) Act 1999 (the "Act") is to be applied, and more specifically it confirms that a Claimant is not required to plead and prove a counterfactual for a claim in breach of contract in order to succeed.

Facts

The case concerned funds provided by the Appellants (the "Claimants") to Yorkshire Bank ("the Bank") towards the development of Cape Verde resorts, in particular one known as Paradise Beach. Arck LLP ("Arck"), the development company, obtained the investmentsvia its existing account with the defendant Bank. A Letter of Instruction ("LOI") was issued from Arck to the Bank which contained statements about how the investors' deposits would be held. The LOI specifically envisaged that the deposits would be held in a segregated account on certain terms, including that a solicitor's undertaking would be required for the release of funds. Upon discovering that certain of Arck's schemes were fraudulent, and that funds had been released by the Bank without the solicitor's undertaking, the Claimants issued proceedings against the Bank for breach of the LOI.

First Instance

At First Instance the Commercial Court, found that the Claimants were unsuccessful for the following reasons:

- The LOI itself was not a contract to which the binding rights under the Act could attach This was based on the condition precedent (outside of the LOI itself) that had not been satisfied.
- Even if there was a binding contract, the investors had failed to establish that they had suffered loss, as there was insufficient evidence of what would have happened if the Bank had complied with its obligations.

The Claimants appealed the Judge's findings.

Court of Appeal

The Court of Appeal in favour of the investors for the reasons set out below:

1. The Court held that, in concluding that the LOI was subject to a condition precedent and thus not binding, the Judge made a finding that was unsupported by the evidence and hence he had erred in law. There was nothing to support the existence of a condition precedent, and for that reason, the LOI was binding.

2. The Court addressed the level of identification required in order for a third party to establish that a contract conferred a benefit upon them which they could then enforce under the Act. The relevant section of the Act is s. 1(3), which requires third parties to be "expressly identified in the contract by name, as a member of a class or as answering a particular description". The correct approach was to construe the contract as a whole in accordance with the principles in "The Laemthong Glory " (No. 2) [2005] 1 Lloyd's Rep 688. In that regard, it was not necessary for the LOI to mention a third party investor by name, as reference to "a client account" in the LOI together with the name of the investment scheme would be express identification of the class, namely clients of the Bank's customer who were investing in the scheme in question.

3. The Bank had successfully argued at first instance that the Claimants would have to prove what would have happened if the Bank had opened the relevant account and not paid moneys out of it. The Court of Appeal rejected this analysis. The Court held that it was not necessary for the investors to show what would have happened to the funds if there had not been a breach. At any rate, had it been necessary for the Claimants to demonstrate otherwise, that burden had been discharged.

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