Smoke and errors–judgment set aside for fraud (Takhar v Gracefield Developments Ltd)

This analysis was first published on Lexis®PSL on 2 November 2020 and can be found here (subscription required)

Dispute Resolution analysis: The High Court has set aside a previous judgment after concluding the original decision was based on a forged document. The court was presented with expert handwriting evidence showing that the claimant's signature on a key contractual document had in fact been copy-pasted from a piece of correspondence. The judgment confirmed the test for materiality as a condition for setting aside a judgment on the grounds of fraud was as set out by Lord Justice Aikens in Royal Bank of Scotland plc v Highland Financial Partners LP and held that the forged document materially affected the original trial judge's decision. Written by Natalie Todd, partner, and Anastasia Tropsha, trainee solicitor, at PCB Litigation LLP.

Takhar v Gracefield Developments Ltd and others [2020] EWHC 2791 (Ch) (23 October 2020)

What are the practical implications of this case?

This case provides clear guidance on the correct test for materiality as a condition for setting aside a judgment on the grounds of fraud. The court analysed the law in some detail, and concluded that the analysis of Aikens LJ in *Royal Bank of Scotland plc v Highland Financial Partners LP* [2013] EWCA Civ 328 at para [106] is to be preferred over that of Sir Terence Etherton MR in *Salekipour v Parmar* [2017] EWCA Civ 2141 at para [93]. Consequently, where practitioners are presented with evidence that suggests a previous judgment was obtained by fraud, they should ask themselves whether the fraud was 'an operative cause of the court's decision to give judgment in the way that it did and that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision'.

The decision also underlines how crucial expert handwriting evidence can be in an appropriate case, and the need to apply for permission as soon as the need becomes apparent. If the claimant had had the benefit of handwriting evidence when the matter was first heard, it would almost certainly have prevented the significant litigation that followed thereafter.

What was the background?

The original action concerned a dispute over the true ownership of five commercial properties in Coventry ostensibly owned by the first defendant. The first defendant was a company which was initially owned and directed by the claimant and the second and third defendants, however the claimant's shareholding was later transferred to just the second and third defendants and the claimant ceased to be a director. The claimant asserted that the properties had been transferred to the first defendant on trust for herself. The second and third defendants contended that the properties had been transferred to the first defendant absolutely pursuant to an agreement whereby the claimant would ultimately receive £300,000 and 50% of the net sale proceeds after the second and third defendants had renovated the properties. The defendants' version of events was supported by a contractual document—the 'profit sharing agreement' (PSA). The PSA was said to have been signed by the claimant, who denied having signed it, but did not otherwise have documentary evidence to support her position.

At first instance, the claimant's application to adduce handwriting evidence, made late in the proceedings, was rejected and the trial judge (His Honour Judge Purle QC) ultimately found the signed agreement 'too compelling' to side with the claimant.

In this subsequent action, two handwriting experts confirmed that the claimant's signature on the PSA was forged by copying it from a letter signed by the claimant and pasting it into a draft of the PSA. The claimant argued that the PSA had been relied upon by HHJ Purle QC, who, if he knew of the forgery, would have given this and other evidence of the defendants' less weight. Therefore, it was submitted, the original judgment should be set aside.

The defendants agreed that the PSA signature was forged but argued that they were not responsible for the forgery, suggesting an alternative explanation that their accountants lost the original and forged another copy in a panic.

What did the court decide?

Having reviewed the case law on fraud and setting aside of judgments, Steven Gasztowicz QC (sitting as a Deputy Judge of the High Court) confirmed that the test for materiality in *Royal Bank of Scotland plc v Highland Financial Partners LP* [2013] EWCA Civ 328 was correct and did not set too high a bar.

The judge analysed handwriting expert reports and oral evidence and concluded that the signature was fraudulent and the defendants were responsible for the same. This amounted to 'conscious and deliberate dishonesty' (at paras [126]–[127]).

There was no reason to suspect that the defendants' accountants would have forged the document, where had the original been lost—they could have explained the position and confirmed the document's existence to the court.

The judge ultimately concluded that the forged PSA formed a key part of HHJ Purle QC's decision. Had he known that it was forged, this would have 'entirely changed the way in which the first court approached and came to its decision' and it was plainly an 'operative cause of the court's decision to give judgment in the way that it did' (see para [137]). The court therefore set aside HHJ Purle QC's order.

Case details:

- Court: Birmingham District Registry (Chancery Division), Business and Property Courts of England and Wales, High Court of Justice
- Judge: Steven Gasztowicz QC (sitting as a Deputy Judge of the High Court)
- Date of judgment: 23 October 2020

Natalie Todd is a partner at PCB Litigation LLP, and a member of LexisPSL's Case Analysis Expert Panel. Suitable candidates are welcome to apply to become members of the panel. Please contact caseanalysis@lexisnexis.co.uk.