Case No: KA-2023-000009, KA-2023-000200 and KA-2023-000201

IN THE ROYAL COURTS OF JUSTICE
HIGH COURT APPEAL CENTRE
ON APPEAL FROM CAMBRIDGE COUNTY COURT
Her Honour Judge Walden-Smith

NCN: [2024] EWHC 2502 (KB)

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 21 May 2024

BEFORE:

MRS JUSTICE MAY

BETWEEN:

RUSSELL JONES

Claimant/Appellant

- and -

DAWN HAGGER

Defendant/Respondent

MR JONES appeared in person
MS HAGGER was not present or represented

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

MRS JUSTICE MAY:

Introduction

1. This is an appeal against the order of Her Honour Judge Walden-Smith dated 28 November 2022 awarding judgment in favour of the claimant, Mr Jones, in the sum of £10,668.91 plus interest. There are conjoined cost appeals in respect of which further directions are sought, brought by both parties against her subsequent order for costs dated 23 October 2023.

Facts

2. The facts can be stated shortly. The parties were in partnership to run a pawn shop and lending business known as Cash 4 U in Westcliff-on-Sea. The business had previously been located in Bexley Heath, where it had been operated by Mr Jones in partnership with his daughter. When his daughter was no longer able to run the business, Mr Jones turned instead to a friend of theirs, the defendant, Ms Hagger. Ms Hagger ran Cash 4 U from the new premises in Westcliff-on-Sea, from July 2013 to December 2014 when the business ceased operating.

3. By the time it ended, indeed the reason for its ending was that, the relationship between Mr Jones and Ms Hagger had entirely broken down. A substantial dispute developed over how much Mr Jones was owed by Ms Hagger, as his share of the partnership during the period in which the business had been operated by her. He issued proceedings in 2016. There were delays. After Ms Hagger breached an unless order dated 13 March 2017, judgment was entered against her on 2 October 2017 for a contract sum of £24,500 plus interest, with an account to be taken of the monies owed to Mr Jones under the partnership.

4. A single joint expert was instructed. The initial expert, Mr Adam Ansty, was subsequently replaced by Professor Barnes. Professor Barnes' initial report dated 6 September 2021 was superceded by a revised report dated 14 January 2022. As is usual, various questions about his report were asked of him by the parties, to which he

responded in advance of the hearing before HHJ Walden-Smith. That hearing took place over two separate dates on 27 January 2022 and 8 July 2022.

The hearing and the judgment below

5. At the hearing, HHJ Walden-Smith heard from Mr Jones, his daughter and Ms Hagger. The judge had before her Professor Barnes' report, together with his answers to the various questions which had been directed to him before the hearing by the parties. It is clear both from his report and from her judgment that the business records of the Westcliff-on-Sea business were in a very sorry state. There were many gaps in the daily transaction sheets (DTS). There was no business bank account, no reliable record of any gold deals, FX transactions or loans and no audited accounts (it seems that the accountants had not been paid).

6. Having heard the evidence, this highly experienced judge took the view that the blame for the poor state of the business records was not to lie solely at Ms Hagger's door. She concluded that in the absence of setting up proper systems, Mr Jones had not established to the necessary standard of proof that the business had failed through Ms Hagger's mismanagement. In her words:

> "The difficulty for Mr Jones is that by running the business through others, and by not having appropriate systems in place, Mr Jones cannot now establish that any losses were actually caused by Ms Hagger and were not either result of normal vicissitudes of the business or some other cause." (at [29)

7. The judge concluded that the best and only way to resolve the taking of an account of the partnership was to rely upon the conclusions of the single joint expert. She took, or sought to take, the figure which Professor Barnes arrived at in his report as owing to Mr Jones. In fact, she appears to have taken the figure from Professor Barnes' first report rather than the slightly lower figure from his revised report.

Grounds of Appeal

8. Mr Jones issued a notice of appeal raising a number of matters challenging Professor Barnes' method and conclusions, and the arithmetic which led the judge to arrive at the

figure of £10,668.91. His very lengthy grounds, together with the skeleton argument attached to his notice of appeal, were considered by the single judge; permission was initially refused on the papers. Following a hearing before Pepperall J, at which Mr Jones orally renewed his application for permission. Pepperall J gave very limited leave as follows:

> "Permission is granted to appeal on the following matters (a) whether the judge was right to assess the total net loss of the business at £48,106.46 pence rather than the sum of £50,106.46, as set out in Professor Barnes's report. (b) whether the judge was right to find that the appellant's share of such net loss amounted to £10,668.91. Save as above permission to appeal is refused."

9. So concerned was Pepperall J at the volume of material produced by Mr Jones on the application for permission (his order refers to five lever arch files and an over-long skeleton argument) that Pepperall J ordered a fresh skeleton argument and bundle to be prepared and lodged for the hearing of the appeal. Whilst the appeal bundle, which I have seen, is shorter, being confined to a single bundle, the new skeleton argument continues to range widely over areas such as the accuracy and reliability of Professor Barnes's methodology and conclusions, for which Mr Jones has not been given permission. His attempt to have the Court of Appeal review the very restricted permission given by Pepperall J failed, as the Court of Appeal does not have jurisdiction to entertain such an application.

10. My powers on this appeal are accordingly limited to those matters for which Pepperall J gave permission, and only those. In essence, this requires me to focus solely on the figure of £10,668.91, which HHJ Walden-Smith ordered to be paid. I do not have the jurisdiction to entertain any argument about the methodology, accuracy or reliability of Professor Barnes's conclusions, or to take account of any other evidence, whether in the further accountancy report which Mr Jones has obtained from another forensic accountant or otherwise. The time for evidence relevant to the taking of the account was at the hearing before HHJ Walden-Smith. An appeal is a review only. It is not an occasion for a retrial, or a rerun of points which were, or which could have been, taken at an earlier hearing.

11. I cannot entertain Mr Jones' criticisms of the content of Professor Barnes' report or the approach which he took. In the words of the judge below at paragraph 42 of her judgment: "Had Mr Jones wished to obtain permission of the court to instruct a further accountant to undertake a further report on the information available, he could have applied to the court to do so before the trial. Whether he would have obtained permission is another matter. He did not. It is not appropriate for him to ask in his closing submissions for the court to appoint another single joint expert to look at the accounts again."

12. That was what she said of the position at the hearing before her. It is all the more so before this court on appeal. It is far too late now for Mr Jones to seek to introduce a further report. I leave to one side, therefore, all arguments which Mr Jones sought to make concerning Professor Barnes's methodology or conclusions, save only to the extent that they may have involved a basic arithmetical graphical error.

13. Having looked at his first report and his second report, I am unable to find that Professor Barnes' reports contain any typographical or arithmetic error. Mr Jones submitted that there was an error in the application of the correct partnership split. In her judgment HHJ Walden-Smith records this as an undisputed 65/35 split, to Mr Jones and Ms Hagger respectively (at paragraph 2). Before me, Mr Jones has asserted that the correct split was in fact 70/30. In the first place this point is outside the scope of Pepperall J's permission to appeal. Secondly, it goes behind what was the agreed position at the hearing below; thirdly, and in any event, as the amount which Mr Jones was awarded was based on a share of loss, not a share of profit, he stands to get less on a 70/30 split. .

Decision

14. I can see no error of principle or of arithmetic in Professor Barnes's report, or in the judge's conclusions on the additional claims which Mr Jones sought to make before her. The judge and Professor Barnes were both facing the very difficult task of arriving at the most accurate conclusion they could, on lamentably deficient financial information, of what monies were owed by Ms Hagger to Mr Jones after taking an

account of the monies introduced into the business by each, together with net profit and loss over the relevant period.

15. The parties were able to ask Professor Barnes questions about his report, and make their criticisms of it to the judge, which Mr Jones certainly seems to have done. He appears to have tried to substitute another expert before or even at the hearing, which the judge quite rightly declined to entertain. Disputes which come to court must have an end somewhere. That is what the final hearing on the taking of the account was for. Mr Jones does not like the judge's final conclusions, but I cannot find that she erred. All the points he sought to make to me about Professor Barnes report had already been made to the judge below and she rejected them, giving her reasons for doing so. That is doubtless why the single judge on the papers, and Pepperall J on appeal, refused permission to appeal save on one very restricted point.

16. As I have already pointed out, my remit on this appeal was set by the terms of Pepperall J's order giving leave. The only slight error which I can find in the judge's conclusion was that she appears to have taken the final figure of the amount owed from Professor Barnes's first report rather than his revised report. Had she taken the figure from his final revised report, she would have ordered payment of £9,368.91 rather than £10,668.91. No one took this point under the slip rule prior to her judgment being handed down, and as the difference is so minor and not in Mr Jones' favour, I do not propose to change it on this appeal.

17. As to his substantive points, there was every opportunity for the parties, in particular Mr Jones, to challenge Professor Barnes's approach to his conclusions or the figures which he took from such business records as there were, before or at the hearing of the account. Indeed, it is evident from her judgment that the judge considered and rejected many of the points which Mr Jones now relies on to criticise Professor Barnes's methodology and conclusions. But he was the agreed sole joint expert. Having heard and considered all the evidence and all Mr Jones' submission is made to her at the hearing the judge concluded that that was the best evidence of the amount which was owed to Mr Jones upon the taking of an account. The only minor error she appears to have made was in taking the figure from Professor Barnes's first report rather than his

revised report. Since the effect of that error is small, as I have said, and in Mr Jones' favour, I do not propose to interfere with her order. The appeal is dismissed.

Costs

18. There are two related appeals by which each party seeks to challenge the consequential costs order made by HHJ Walden-Smith, following the receipt of further costs submissions from both sides, upon her having handed down her judgment. I have not seen the submissions which were made to her. But in view of the award which she made and her rejection of large parts of Mr Jones' case in doing so, I cannot see that she erred in determining that he should receive 50 per cent of the costs assessed on a standard basis as she identified in her order.

19. Ms Hagger did not attend to argue her cross appeal. I have nevertheless considered the points she raised in her notice of appeal. As the overall result of the hearing of the account was to order her to pay money to Mr Jones, I cannot see that she has any proper ground of complaint at the order for costs which was made by the judge. Sir Stephen Stewart directed that the costs appeals should be considered following the substantive appeal, on the basis that if the underlying order made on the hearing of the account were to be revised on appeal, then consideration might need to be given to the proper costs order. As I have dismissed the appeal against the substantive order made on the account taking of the account, the costs appeals will both also be dismissed.

Order: Application denied.

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