NICHOLAS WOOLF & CO
SOLICITORS

87 CHANCERY LANE, LONDON WC2A 1ET
T. 020 7242 6018 F. 020 3602 5538 E. info@nicholaswoolf.com
www.nicholaswoolf.com

NO UNJUST FACTOR – NO UNJUST ENRICHMENT

By Nicholas Woolf, Director and Principal, Nicholas Woolf & Co and Sam Cheesbrough, Barrister, Nicholas Woolf & Co

In the recent case of *Philip Barton v Timothy Gwyn Jones and Ors [2018] EWHC 2426 (Ch)*, Nicholas Woolf & Co successfully defended a High Court claim in unjust enrichment.

Mr Gwyn Jones resolved to place his company, Foxpace Limited ("Foxpace"), into liquidation. Using a deemed consent procedure, Mr Gwyn Jones appointed two liquidators. Mr Barton objected to, and appealed against, this appointment, claiming that he was a majority creditor of Foxpace and, therefore ought to have been given a vote on the appointment of the liquidator (in practice, being able to choose his own liquidator).

Mr Barton's claim to be a creditor was based on a belief that he was entitled to the sum of £1.2 million, or some other sum quantified the Court, arising out of the introduction of a purchaser of a property owned by Foxpace in or about July 2013. The property was ultimately acquired by that purchaser in February 2014 at a price of £6 million.

Mr Barton claimed to be entitled to this sum on the basis of one of two alternate grounds:

1. Mr Barton's primary case was that there was a contract between himself and Foxpace that if he introduced a purchaser of the property at any price, he would be paid £1.2 million.

2. In the alternative, Mr Barton claimed that Foxpace was unjustly enriched at his expense, having freely accepted the benefit of the introduction of the purchaser, knowing that Mr Barton expected to be paid for it.

Mr Gwyn Jones denied these claims on four grounds:

1. That there was no contract; no terms were agreed and the discussions were subject to contract in any event.

2. That even if there was a contract, its terms were that Mr Barton would be paid £1.2 million in the event that the property sold for £6.5 million. As the property sold for £6 million, no liability arose under such contract.

3. That the only service freely accepted was the introduction of a person who purchased the property for £6.5 million.

4. In any event, the doctrine of free acceptance has no application where the parties reach a concluded agreement on the terms at which the introduction became payable, as liability is governed by that contract.

Following a four day trial, the Judge found the following:

1. That there was an oral contract made whereby Foxpace agreed to pay £1.2 million to Mr Barton if he introduced a purchaser to the property at a price of £6.5 million. The Judge took the view that none of the parties contemplated a price of anything other than £6.5 million.

2. As the property was sold for £6 million, albeit to a purchaser introduced by Mr Barton, the claim based in contract must fail.

3. That, the principle set out in *MacDonald v Costello [2011] EWCA Civ 930* should be applied, namely that the parties' mutual obligations in a case in which they concluded a contract should be limited to those which they have defined and allocated in the course of negotiating that contract, so as to give effect to the need for the court to uphold contractual arrangements. There were no arguments sufficiently compelling arguments in favour of the Court interfering in the allocation of risk provided for by the contract.

Mr Barton was therefore not a creditor of Foxpace, and there were no grounds for allowing the appeal.

Comments

This case raises interesting points about the limits of unjust enrichment and the doctrine of free acceptance in circumstances where there is a contract that governs the relationship between the parties. The Judge acknowledged that he had sympathy for Mr Barton's circumstances, and that there was a superficial attraction that he should be entitled to at least something, but that he nevertheless did not bring himself within the doctrine of free acceptance.

Despite its somewhat broad name, unjust enrichment is not about providing recompense for general "injustice". Rather, the claimant must show some "unjust factor", such as free acceptance, mistake or legal compulsion. These are, generally, defined doctrines that have been gleaned from historic cases that have been categorised as falling within unjust enrichment. As such, whilst a situation may feel unfair, if a claimant cannot show an "unjust factor", the situation is not, as a matter of law, "unjust".

Indeed, the Judge also acknowledged the difficulties that may be caused by the law extending to account for general perceived injustice; that there are two sides to every story. In particular, he outlined three points:

1. That it may be considered unfair to impose an obligation to make a payment on a party when the circumstances that arose were not contemplated by either party, and which arose through no fault of either party.

2. That if a contract has been formed, parties may be entitled to argue for an implied term, and it would be unfair to allow the claimant two bites of the cherry by employing the doctrine of unjust enrichment where there is no implied term.

3. The Court speculating about what parties may hypothetically have agreed in the course of contractual negotiations involves substituting the Court's assumptions as to how they would have behaved in place of their freedom to negotiate.

This case also highlights the importance of ensuring that contracts are drafted so as to leave neither party in any doubt as to the extent of their rights. The consequence of failing to do so can be lengthy, and costly, litigation.

18th December 2018

NICHOLAS WOOLF & CO
SOLICITORS

DISCLAIMER

This note comprises the view of the author as at 18th December 2018. This note is not a substitute for legal advice. Information may be incorrect or out of date, and may not constitute a definitive or complete statement of the law or the legal market in any area. This note is not intended to constitute advice in any specific situation. You should take legal advice in specific situations. All implied warranties and conditions are excluded, to the maximum extent permitted by law.