

Park v CNH Industrial Capital Europe Ltd (t/a CNH Capital) [2021] EWCA Civ 1766

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29 November 2021

'Successfully setting aside judgment entered in default when obtained by fraud'

Introduction

In its Judgment, handed down on 24 November 2021, the Court of Appeal held that a judge had been wrong to refuse to set aside a judgment in default on the basis that it had been obtained by fraud in the circumstances where there was evidence that both the defendant and the court had been deceived.

Facts

The appellant, who ran a farm, Park Hall Farm, through a limited company, Park Organic Farms Limited, appealed against the order of His Honour Judge Khan in Blackpool County Court striking out his claim which sought to set aside the default judgment entered against him in earlier proceedings brought by the respondent. The respondent was a finance company which had entered into four unregulated hire purchase agreements with the appellant relating to farming equipment.

The appellant had also signed a personal guarantee in respect of “all agreements entered into” with the respondent and “the named customer below”. The named customer was a non-existent company, ‘Park Hall Farms Limited’, which was handwritten by the respondent’s sales manager.

In July 2014, the respondent terminated the first two hire purchase agreements due to the appellant’s failure to make punctual payments.

In December 2014, almost five months after the respondent had terminated two of the hire purchase agreements, the respondent’s sales manager visited the appellant’s farm (without prior arrangement and at 10pm by way of climbing over a locked gate) and procured the appellant’s signature to a Deed of Rectification (‘the Deed’). The Deed recorded that the original hire purchase agreements had incorrectly named Park Hall Farms Limited as a party, whereas it had always been intended that the appellant would be the named party. Consequently, the Deed noted an agreement that “all references to Park Hall Farms Limited in the agreements mean [Mr Park] trading as Park Hall Farms”.

The appellant claimed that the respondent’s sales manager had only presented him with the final page of the Deed, while informing him that his signature was in fact needed in relation to equipment which was in storage to enable its sale. The appellant maintained that had he understood that the purpose of the Deed was to make him personally liable under the hire purchase agreements, he would not have signed it.

The respondent’s sales manager claimed he had explained to the appellant that the agreements should have been in his personal name rather than ‘Park Hall Farms Limited’.

In 2015, the respondent terminated the remaining hire purchase agreements. Subsequently, the respondent brought proceedings against the appellant personally claiming outstanding payments due under the four agreements.

In response to the claim, the appellant served a handwritten defence which failed to address the Deed of Rectification. The appellant did not comply with case management directions for the service of witness statements and filing a pre-trial checklist and, as such, his defence was automatically struck out. The

appellant's application for relief from sanctions was refused and judgment in default was entered against him.

The appellant applied to set aside the default judgment on the basis that it had been obtained by fraud. However, the judge held that the appellant's application was an abuse of process because his fraud claim was based upon facts that were known to him at the time he was served with the respondent's claim.

The Decision

On appeal, the appellant's evidence was that his limited company, Park Organic Farms Limited, was always intended to be the hirer in respect of the agreements with the respondent, and Park Organic Farms Limited needed to be substituted for the non-existent company named on the agreements, 'Park Hall Farms Limited'. The appellant's recollection was that he had only been presented with the final page of the hire purchase agreements to sign and believed that the respondent's sales manager or someone else from the respondent would fill in the rest of the details.

The court held that the obvious explanation for the respondent preparing the Deed was that, after they had terminated the two hire purchase agreements and litigation appeared to be a realistic prospect, the respondent had discovered that the named hirer 'Park Hall Farms Limited' was non-existent and, as such, none of the signed agreements, including the guarantee, were in fact enforceable.

Accordingly, the court found that it was "deceived and the deception was an operative cause of the judgment in default being entered. The entire action was based on the Deed, and absent the Deed, [the respondent] had no basis for a claim against [the appellant]. It was an essential element of [the respondent's] claim that the deed gave effect to the common intention, present from the outset, that [the appellant] should undertake personal liability under the hire purchase agreements."

Despite the same, the key question on appeal was:

'Was the judge correct in finding that the appellant's claim to set aside the judgement for fraud was an abuse of process on the basis that the circumstances in which he came to sign the Deed were known to him before judgement in default was entered?'

The short answer was no; the judge reached the wrong conclusion by way of failing to follow *Takhar v Gracefield Developments Limited* [2019] UKSC 13. In *Takhar*, the Supreme Court held that in a case where the alleged fraud was not in issue in the previous proceedings, the person seeking to set aside a judgment is not obliged to show that the fraud could not have been discovered beforehand by reasonable diligence on his part; there are no good policy reasons to allow the fraudulent party to rely upon the passivity or lack of due diligence of his opponent.

Accordingly, the Court of Appeal held that:

"The Judge was wrong in principle to characterise the fraud action as an abuse of process. This is not a case in which [the appellant] took a deliberate decision not to investigate a suspected fraud or that he would not rely on the material which is now before the court. On his version of events, he had no reason to connect the document he signed late at night at the behest of [the respondent's sales manager] with a Deed of Rectification which made him personally liable under the hire-purchase agreements, at least until after he saw [the respondent's sales manager's] witness statement. Even then, he did not have the benefit of legal representation."

Conclusion

In its ruling, the Court of Appeal noted that it was "regrettable that, in the teeth of compelling evidence to

the contrary, including from its own key witnesses, [the respondent] has persisted in maintaining the lie all the way to the Court of Appeal”.

This decision importantly affirms the rejection of a reasonable diligence requirement as recognised in *Takhar* and confirms that whilst there must be finality to litigation, fraud unravels all.