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Case Summaries

Re BHS Group Ltd and other companies (all in liquidation) Chandler v Wright and others

[2022] EWHC 2205 (Ch), [2022] All ER (D) 06 (Sep)

The Chancery Division allowed the appellant's application for his renewed application for permission to appeal from a decision which had dismissed the application to strike out certain parts of the respondents' statements of case in the proceedings. The appellant relied on the grounds that the judge (i) had misdirected himself as to the issue which he had to determine on the application; (ii) he erred in law in not striking out the overarching case; (iii) he erred in law in finding that office holders were not ordinary litigants for the purposes of pleading claims; and (iv) he erred in the exercise of his discretion in refusing to strike out the alternative date claims and/or the overarching case. The court held, among other things, that the judge had discretion when he dealt with the strike out application, but the exercise of that discretion was flawed.

Catchwords

INSOLVENCY – APPLICATION – STRIKING OUT

Background

The respondents comprised the joint liquidators of four companies that were formerly part of the BHS group of companies (the companies). The respondents brought claims against the appellant and others for relief pursuant to ss 212 and 214 of the Insolvency Act 1986 (IA 1986). Under IA 1986 s 212, the respondents alleged that the appellant, and the other defendants to the action, had breached their duties as directors and thereby brought about the deterioration in the financial position of the companies. Under IA 1986 s 214, the respondents alleged that the appellant, and the other defendants, had wrongfully allowed the companies to continue to trade when they knew or should have concluded that there was no reasonable prospect that the companies would have avoided going into insolvent liquidation. The appellant sought to strike out parts of the claims against him under r 12.1(1) of the Insolvency (England and Wales) Rules 2016 on the grounds that parts of the claims referred to as 'the knowledge date' and 'cessation date' of the alleged wrongdoing were referred to by the use of unspecified dates, or provided for alternative dates or subsequent dates of the alleged wrongdoing, and that it was not permissible for the respondents to have advanced claims based on open ended dates. The Deputy ICC Judge dismissed the application to strike out those parts of the claim holding that there was insufficient substance in the criticisms of the claim.

The appellant appealed, submitting, among other things, that the judge should have found that the case under IA 1986 ss 212 and 214 could not have been pleaded by reference to an unspecified series of dates or within a specified period and that causation and quantum were not pleaded either in relation to the knowledge date of the respondents' alternative case on the cessation date.

Issues and decisions

Whether the judge had erred in refusing to strike out part of the claims.

The instant case was a complex case, involving very substantial claims. It was unsatisfactory in the instant case if the knowledge date of the alleged wrongdoing was allowed to remain at large over the whole specified period. It was unsatisfactory for that to be permitted. Leaving the knowledge date at large was not permissible as a matter of pleading.

Therefore, in the circumstances of the instant case, the respondents were not permitted to run their claim under IA 1986 s 214 on the basis of a knowledge date that was left at large for the entirety of the specified period. The respondents needed to be more specific. The same applied as to the cessation date. There was clearly a link between the respondents' case on the knowledge date and their case on the cessation date. Further, causation and quantum had to be pleaded as essential elements of a claim under IA 1996 s 214. If that claim was pleaded by reference to alternative knowledge dates, the relevant pleading had to set out the case on causation and quantum by reference to each alternative knowledge date. Therefore, it was necessary for the respondents to identify what their case was on causation and quantum on the hypothesis of an identified knowledge date. In that regard, the alternative date claims fell to be struck out on the grounds that causation and quantum were not pleaded. In the circumstances, the judge did err in part in dismissing the application to strike out. The appellant did not know what alternative dates the respondents were replying upon, respectively, as the knowledge date and the cessation date. The appeal would be allowed and the judge's order refusing to strike out the pleadings set aside. The relevant parts of the respondents' pleadings would be struck out unless the respondents' cured the defects in their pleaded case (see [102]-[104], [108]-[110], [114], [119], [121], [124], [135], [136], [141], [143], [147], [165], [179] of the judgment).

Continental Assurance Co of London plc (in liq), Re [2007] 2 BCLC 287, [2001] Lexis Citation 2161, [2001] All ER (D) 229 (Apr) applied.

Decision of Deputy ICC Judge Schaffer [2021] EWHC 3501 (Ch) set aside in part.

Judgment date

19 August 2022

Judge

Judge Johnson (Chancery Division Court)

Representation

Daniel Lightman KC and Charlotte Beynon (instructed by Olephant Solicitors) for the appellant.
Joseph Curl KC and Ryan Perkins (instructed by Jones Day) for the respondents.

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