

Cases of Interest for Fraud Practitioners

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Welcome to the third edition of the Littleton Civil Fraud Group's newsletter, which captures cases of interest for civil fraud practitioners, from the last two quarters.

We all know how busy practice can be, therefore as previously, the purpose of this newsletter is not to analyse decisions, but to provide brief details of what each case is about and why it may be of interest.

We hope that these newsletters continue to be of benefit.

Andrew Maguire, Civil Fraud Group Member

29 November 2021

Case 1

Ashraf v Sattar [2021] 10 WLUK 414

Dan Squires QC sitting as a High Court judge

A defendant in a claim for damages for breach of contract, fraud and misrepresentation had failed to comply with an unless order to provide information about his assets pursuant to a worldwide freezing injunction and therefore was ordered to be subject to cross-examination in accordance with the order. It was held that the cross-examination should occur in a manner which was fair to him and that would be for the judge to ensure. The applicants did not object to indicating the topics to be explored in advance.

Case 2

Junction Shopping Mall Ltd v Kofi Jacquaye Estate Ltd [2021] WL 05045914

Moulder J DBE

The claimants were entitled to an anti-suit injunction to restrain proceedings by the defendant minority shareholder in Ghana alleging fraud and minority oppression in relation to the affairs of the

first claimant company, given that the disputes fell within arbitration agreements in shareholders' agreements which bound the defendant.

Case 3

XY v Persons Unknown and Binance Holdings Ltd [unreported]

HHJ Pelling QC sitting as a High Court judge, 27 October 2021

Theft of £83,000 worth of US Dollar Tethers by cyber criminals acting on social media and persuading applicant to open a Binance account and then transfer the USDT to a bogus electronic platform. Worldwide Freezing Order made against the unknown fraudsters and a proprietary injunction and Bankers Trust Order made against Binance (registered in Cayman Islands). Judge permitted a cross-undertaking in damages to be given although it was currently valueless and also permitted service by WhatsApp message.

Case 4

Serious Fraud Office v Litigation Capital Ltd [2021] EWHC 2803 (Comm)

Foxton J, 21 October 2021

The court determined the costs arising from a directed trial judgment dealing with competing claims to property held by a convicted fraudster. A group of claimants who had reached a settlement agreement to share the proceeds of any recovery made were treated as a single litigating unit after the settlement agreement, but before that date the costs allocation had to reflect the fact that they were adversaries advancing claims against each other as well as against the non-settlement parties. The court held that there was no good reason not to order a payment on account pursuant to CPR r.44.2(8). The approach to be taken was to estimate the likely recovery on a detailed assessment, subject to an appropriate margin for error. On the basis that there were potential issues of duplication between the work of the lawyers acting for the different settlement parties, it was appropriate to take a 55% figure for the purposes of payment on account.



Case 5

ECU Group Plc v HSBC Bank Plc [2021] EWHC 2875 (Comm)

Moulder J DBE, 1 November 2021

ECU had alleged wrongdoing against HSBC in connection with the foreign exchange markets over a period of three years between 2004 and 2006. ECU Group's alleged that certain HSBC entities had been responsible for manipulating the interbank spot FX rate in order to trigger stop loss orders which had been placed in connection with ECU Group's management of its clients' mortgage debts under their multi-currency mortgages with HBPB. The judge dismissed the claims on the ground of limitation, after a detailed consideration of s.32 of the Limitation Act 1980, holding that, contrary to its case, ECU Group was in a position to plead the majority of its claims in 2006, when it had made a formal complaint to the HSBC parties in connection with three FX transactions. The judge held that ECU Group had sufficient knowledge then to start time running. As regards the remaining claims, it was held that ECU Group could, with reasonable diligence, have discovered sufficient material to plead its case at around the same time.

Case 6

EUI Ltd v UK Vodaphone Ltd [2021] EWCA Civ 1771

Lewis LJ, Baker LJ and Francis J, 24 November 2021

The Court of Appeal held that the court did not have jurisdiction to make a Norwich Pharmacal order against a mobile phone service provider in respect of the disclosure of information relating to call records and cell-site data. There was no basis on which it could be said that the phone company was more than a mere witness or bystander or had engaged in the alleged wrongdoing so as to justify ordering pre-proceedings disclosure under the Norwich Pharmacal principle.

Case 7

Hussain and another v Secretary of State for the Home Department [2021] EWCA Civ 2781

Davies, Nugee and Snowden LJJ, 26 November 2021

The Court of Appeal dismissed a submission that disparate strands of evidence, not in themselves strong enough to establish corruption, cannot rationally be treated as reinforcing each other to make a sufficiently strong case. Instead it held that:

"92. No authority was cited for that proposition. I do not think it is either good sense or good law. It has been said that it is of the essence of a successful case of circumstantial evidence that the whole is stronger than the individual parts (JSC BTA Bank v Ablyazov [2012] EWCA Civ 1411 at [52] per Rix LJ). That applies in criminal cases where juries are often directed to avoid piecemeal consideration of a circumstantial case (see ibid); to allegations of contempt, as in the Ablyazov case itself; and in civil cases, such as those involving an allegation of scuttling (see, for example, The Atlantik Confidence [2016] EWHC 2412 (Admlty))." Per Nugee LJ.

Case 8

Park v CNH Industrial Capital Europe Ltd (trading as CNH Capital) [2021] EWCA Civ 1766

Sir Geoffrey Vos, Andrews and Edis LJJ, 24 November 2021

The Court of Appeal allowed the appellant farmer's appeal against the order of the County Court to strike out a claim brought by the appellant which sought to set aside a default judgment entered against him in earlier proceedings brought by the respondent finance company on the basis that it had been obtained by fraud. The key issue of the appeal was whether the judge was right to find that the appellant's claim to set aside the judgment for fraud was an abuse of process because the circumstances in which he had signed the deed had been known to him before the default judgment was entered. The Court held, among other things, that a party who seeks to set aside a judgment for fraud must establish that both he and the court were deceived by the party in whose favour judgment was entered. The principles which govern such applications were summarised by Aikens LJ in *Royal Bank of Scotland plc v Highland Financial Partners* [2013] EWCA Civ 328, [2013] 1 CLC 596 at [106], and approved by Lord Kerr JSC in the leading case of *Takhar v Gracefield Developments Ltd* [2020] UKSC 13, [2020] AC 450 at [57].

Case 9

Bank of Scotland Plc v Hoskins [2021] EWHC 3038 (Ch)

HHJ Paul Matthews sitting as a High Court judge, 17 November 2021

The High Court struck out a defence and £35m counterclaim and granted the bank's claim for possession. In relation to pleading fraud, HHJ Paul Matthews sitting as a High Court Judge provides a very useful summary of the applicable requirements and concluded:

"69. *In the present case, no allegation of the facts relied upon as the basis for an allegation of fraud has been made. Given the grave nature of such an allegation, the absence of allegations of supporting facts is a particularly serious matter. The defendant asks the court to infer that this can and will be remedied after disclosure has been given. But, unlike the American civil litigation procedure rules, where it is permissible to make very general claims without any particulars, and then plead a fully particularised case only following discovery, in our system the claimant must plead a full case before disclosure.*"

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