Christopher Snell

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Practice Overview

Chris has a broad practice encompassing, primarily, commercial litigation, banking and financial services, excise and taxation, property and trusts.

He is a frequent contributor to LexisNexis PSL, both as author of regular commercial case updates and as a *"Panel Expert"* for property and taxation issues.

Recent cases of note include advising Duff & Phelps, as joint liquidators of the Connaught Income Series 1 Fund, following the collapse of an unregulated collective investment scheme worth in excess of £100m. The most recent FCA statement can be found here.

In addition, Chris frequently acts for a number of well-known retail and investment banks in diverse contentious disputes ranging from guarantees and factoring through to derivative products and allegations of fraud.

Commercial Litigation

Commercial Litigation
Chris's practice covers all aspects of commercial litigation; although most frequently involves contractual disputes, banking and finance and restitutionary claims. In addition to Court work Chris has also been instructed in a number of arbitrations, arising out of (amongst other things) the dissolution of partnerships and disputes relating to the provision of energy (electricity).

Recent and on-going instructions include:

- Acting for HSBC Bank PLC at the trial of its claim for realisation of a security asset following the administration of one of its customers.

- Advising Bank of Scotland on the enforcement and recovery of historic facility arrears when the debtors' only assets were situated in Kenya.

- Representing Western Power Distribution at the trial (and as Respondent to the subsequent appeal) of its claim for contractual and tortious damages as a result of damage sustained to a large electricity distribution unit.

- Advising and representing Volvo Group UK at its application for Summary Judgment against a former senior employee.

- Advising and representing Severn Trent Water as Defendant to a claim arising under the Water Industry Act 1991 following a major outage of domestic water supply.

Excise and Taxation
In addition to commercial litigation, Chris has significant experience of advising and representing clients in relation to both contentious and non-contentious taxation issues.

Frequently, such matters relate to indirect taxation (primarily VAT); taxation arising out of the cross-border supply of goods and services; the seizure of goods at the border and subsequent excise duty assessments; and condemnation and forfeiture proceedings.

He is currently acting as junior counsel (led by Geraint Jones QC) for a business with a turnover in excess of £100m in its appeal against an HMRC decision to: (i) withdraw its WOWGR licence as a result of allegations of fraud; and (ii) to raise two substantial VAT assessments. A number of the reported interlocutory decisions appear variously at *[2018] UKFTT 252 (TC); [2017] UKFTT 650 (TC); [2017] UKUT 181 (TCC) and [2017] UKFTT 143 (TC)*. Trial is expected to last 6 -8 weeks.

Chris also appeared unled for 2 of the Appellants in a conjoined appeal to the Divisional Court concerning the correct interpretation of forfeiture provisions contained in the Customers and Excise Management Act 1979: reported at *[2016] Lloyd's Rep. F.C. 391; [2016] 1 W.L.R. 1889*. The decision clarified the law relating to preparations for fraudulent evasion of excise duty and appears in the most recent editions of *Archbold Criminal Pleading Evidence and Practice.*

Civil Fraud

A significant amount of the commercial litigation work that Chris undertakes includes allegation of fraud. As a result, he is well versed in applications for interim remedies including applications for worldwide freezing injunctions.
Recent experience includes:

- Acting for the 2nd and 5th Defendants in *Solid Property Grundstucks Gmbh v Singh & Others [2018] EWHC 960 (QB),* an application for the continuation of a £3.5m worldwide freezing order.

- Acting for one of a number of Defendants in preliminary hearings prior to the decision in *The Republic of Angola v Perectbit & others [2018] EWHC 965 (Comm)*, an application to discharge a number of proprietary

injunctions and worldwide freezing orders in relation to a fraud estimated to be in excess of $500m.

- Obtaining a freezing injunction in support of foreign proceedings (Germany and the Netherlands) following the alleged misappropriation of a significant amount of alcohol (led by Richard Jones QC).

Aside from interim relief applications, Chris has experience of and is involved in claims relating to allegations of dishonest assistance in breach of trust; knowing receipt and breach of fiduciary duty. He is presently instructed by the owners of a large collection of classic cars in a claim for breach of trust following the administration and liquidation of a well-known sales garage.

He acted (as junior Counsel) in the first ever committal application in respect of an NCA Officer's Part 8 witness evidence in Civil Recovery Proceedings, a case which the NCA unsuccessfully sought to strike out. The committal application is reported at *[2017] EWHC 570 (QB)*.

Much of Chris's practice in contentious tax involves allegations of involvement in fraudulent activity designed to cheat the public revenue; or constructive knowledge of such activities. To this end he was retained as junior Counsel (led by Adrian Keeling Q.C) in a 2 month trial during Summer 2017 in which HMRC sought to establish a large scale conspiracy to cheat the public revenue. The case attracted mainstream press interest (view article).

Property

Chris has a broad experience of property related disputes and he has appeared before both the Courts and the specialist property tribunals on many occasions.

Although well versed in claims for forfeiture, possession (predominately to enforce contracts of guarantee) and TOLATA claims, he is frequently instructed in matters relating to registration and claims relating to competing interests in land. This includes successfully representing a Defendant Company incorporated in Belize in defeating a claim for a declaration that it was entitled to equitable charges over land transferred to the Company by a large developer that had entered into administration.

Chris also appeared for the successful Respondent in *Orchard Investment Properties Ltd v Violante [2013] EWHC 2558 (Ch)* which continues to be included in the White Book (25.13.13) as one of the key authorities governing the Court's discretion to grant security for costs outside of the scope of the usual Part 25 procedure.

Insolvency

Chris has expertise in both corporate and personal insolvency matters.

He has acted for and against directors in relation to claims for misfeasance, wrongful trading, transactions at an undervalue and preferences.

A significant amount of Chris's insolvency instructions overlap with property disputes and involve issues such as the rights of a freeholder to forfeit a lease following an administration order; or applications for vesting orders when an inferior lease has passed bona vacantia following the dissolution of a corporate tenant.

Cases

Name: Setting Aside Orders Made in A Party’s Absence: Relief from Sanction Needed

Reference: Balengani v Sharifpoor [2020] EWHC 1571 (QB)

Date: 19th June 2020

Court: High Court

Facts:
Mini-summary:
The Court refused to set aside two orders which had been made in the Claimant's absence as long ago as 2014. The first order struck out the Claimant's claim and granted Judgment on the Defendant's counterclaim. The second order awarded damages to the Defendant in an amount determined at the hearing. The Court held that the Claimant needed to satisfy the *Denton* principles in relation to each of the orders - despite different CPR rules applying to the application to set aside each order - but that the Claimant was unable to do so on the facts.

Please click here to read the full analysis.

Judge: Mr Justice Goose

Name: Loss and Mitigation in Bailmen; Security Value Irrelevant

Reference: Scipion Active Trading Fund v Vallis Group Ltd (formerly Vallis Commodities Ltd) [2020] EWHC 1451 (Comm)

Date: 5th June 2020

Court: Queen's Bench Division

Facts:
Mini-summary

The Commercial Court delivered its Judgment in a claim for damages arising out of a Collateral Management Agreement following the loss of a large amount of copper scrap from a storage facility In Morocco. The Defendant held the copper scrap as security for a loan made by the Claimant to a third party. The Defendant admitted physical loss of the copper; but asserted that the Claimant had not suffered loss because the security was invalid as a matter of Moroccon law. The Commercial Court rejected that argument and held that the Claimant was entitled to recover damages equivalent to the market value of the lost copper, measured as at the time of the loss, because of its possessory rights as bailor.

Scipion Active Trading Fund v Vallis Group Ltd (formerly Vallis Commodities Ltd) [2020] EWHC 1451 (Comm)

What are the practical implications of this case?

Although much of the Judgment is fact sensitive, Henshaw J's Judgment does contain a number of findings and propositions of law which are likely to be of more general application and thus of primary interest to commercial litigators.

Firstly, on the facts of this case, a bailment relationship arose on the terms of the CMA because: Mac - as ultimate owner of the scrap copper - had bailed that scrap to Vallis; and in turn Valliss (as bailee) had transferred

possessory rights to Scipion; albeit that Valliss had agreed to hold the goods on Scipion's behalf. In those circumstances, Scipion could be considered a bailor with possessory rights.

As Scipion's claim to recover the value of the goods lost arose in the law of bailment, the law applicable to the governing contract (here the CMA) was applicable; and not the law applicable to the Pledge. Thus, the fact that the Pledge was invalid as a matter of Moroccon law did not have a negative effect on the ability to recover a loss that arose in the law of bailment.

In such circumstances, the correct measure of damages is the value of the lost goods on the date that they are lost, plus statutory interest.

What was the background?

Scipion Active Trading Fund ("**Scipion**") commenced a claim against Vallis Group Ltd ("**Vallis**") for damages which it alleged it had suffered following Vallis' breach of a Collateral Management Agreement ("**CMA**") which had resulted in the loss of approximately 1,900 MT of copper scrap from a production and storage facility situated in Morocco.

Vallis was the collateral manager of that site and its obligations were governed by the CMA. However, the CMA was a tripartite agreement to which Mac Z ("**Mac**") was also a party. Under the terms of the the intention of creating security for a loan made by Scipion to Mac (the "Facility"): that stock was subject to a pledge granted by Mac to Scipion which was governed by Moroccan law.

In October 2017 Vallis reported a loss of copper scrap from the site; and ultimately Vallis gave Scipion notice of termination of the CMA on 30 November 2018.

Despite having denied any loss of copper scrap in its pleaded case, part way through the trial Vallis admitted that there had been a physical loss of copper stock that had been in its possession at the site. Vallis similarly admitted that such loss was caused by its breach of obligation under the CMA.
However, Vallis contended that as the pledge was invalid under Moroccan law its breach of the CMA did not cause the losses now claimed by Scipion.

Scipion, however, contended that it was entitled to recover substantial damages from Vallis without having to establish that the Pledge was valid under Moroccan Law: (a) by virtue of its possessory rights; and/or (b) by reason of its position as bailor; and/or (c) because Vallis was estopped under the terms of the CMA from denying that Scipion had sufficient rights in relation to the lost copper in order to recover significant damages.

Judge: Mr Justice Henshaw

Comment:
What did the court decide?

Although the Court concluded that the pledge was, in fact, invalid pursuant to Moroccan Law, that did not prevent Scipion from being able to recover the value of the lost copper scrap from Vallis.

The Court concluded that Scipion was entitled to pursue Vallis for the full value of the lost copper scrap by reason of its right as bailor of those goods under the terms of the CMA, without the need to show that the Pledge was valid.

Scipion's position was that its loss was, prima facie, to be measured by the value of the lost goods. However, both parties' experts agreed that the market value of the lost goods exceeded the amount of the outstanding facility afforded to Mac by Scipion. Thus, and so as to avoid any need to account to Mac for the surplus, Scipion limited its claim to the amount due under the facility plus its consequential loss. In so far as there were any goods that remained available to Scipion at the CMA site, it had to give credit for the value of those goods

Henshaw J accepted that position, holding that the correct approach to the quantification of loss was as follows:

- The primary measure of Scipion's loss was the value of the lost goods;
- The value of the lost goods was to be taken as at 9 October 2017, that being the date on which Vallis accepted that it was in breach of the CMA;
- Any goods that remained at the CMA site after that date fell to be valued at the dates on which, and in the amounts for which, they were in fact sold except in so far as Valliss could show Scipion failed to mitigate its loss;
- Any goods that remained at the CMA site but which had not been sold should be valued at the date of trial.

As regards mitigation:

Scipion did not fail in its duty to mitigate in failing to accept various offers that were made to purchase scrap left at the site. The duty to mitigate did not extend to accepting the best offer to purchase that scrap; but to give proper consideration to the offers received. Scipion could demonstrate, as a matter of evidence, that it had properly and fairly considered offers received to purchase scrap remaining at the site. Any delay in sale did not indicate a failure to mitigate.
Scipion did not fail in its duty to mitigate by reason of its inability to recover certain other copper granules removed from the site without authorisation. It had tracked those granules to a Port but had not managed to receive any proceeds of sale. Again, Scipion had taken reasonable steps to attempt to mitigate.

Name: Loss and Mitigation in Bailment; Security Value Irrelevant. Scipion Active Trading Fund v Vallis Group Ltd (formerly Vallis Commodities Ltd) [2020] EWHC 1451 (Comm)

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Date: 5th June 2020

Court: Commercial Court

Facts:
Mini-summary
The Commercial Court delivered its Judgment in a claim for damages arising out of a Collateral Management Agreement following the loss of a large amount of copper scrap from a storage facility In Morocco. The Defendant held the copper scrap as security for a loan made by the Claimant to a third party. The Defendant admitted physical loss of the copper; but asserted that the Claimant had not suffered loss because the security

was invalid as a matter of Moroccon law. The Commercial Court rejected that argument and held that the Claimant was entitled to recover damages equivalent to the market value of the lost copper, measured as at the time of the loss, because of its possessory rights as bailor.
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What are the practical implications of this case?

Although much of the Judgment is fact sensitive, Henshaw J's Judgment does contain a number of findings and propositions of law which are likely to be of more general application and thus of primary interest to commercial litigators.

Firstly, on the facts of this case, a bailment relationship arose on the terms of the CMA because: Mac - as ultimate owner of the scrap copper - had bailed that scrap to Vallis; and in turn Valliss (as bailee) had transferred possessory rights to Scipion; albeit that Valliss had agreed to hold the goods on Scipion's behalf. In those circumstances, Scipion could be considered a bailor with possessory rights.

As Scipion's claim to recover the value of the goods lost arose in the law of bailment, the law applicable to the governing contract (here the CMA) was applicable; and not the law applicable to the Pledge. Thus, the fact that the Pledge was invalid as a matter of Moroccon law did not have a negative effect on the ability to recover a loss that arose in the law of bailment.

In such circumstances, the correct measure of damages is the value of the lost goods on the date that they are lost, plus statutory interest.

What was the background?

Scipion Active Trading Fund ("**Scipion**") commenced a claim against Vallis Group Ltd ("**Vallis**") for damages which it alleged it had suffered following Vallis' breach of a Collateral Management Agreement ("**CMA**") which had resulted in the loss of approximately 1,900 MT of copper scrap from a production and storage facility situated in Morocco.

Vallis was the collateral manager of that site and its obligations were governed by the CMA. However, the CMA was a tripartite agreement to which Mac Z ("**Mac**") was also a party. Under the terms of the the intention of creating security for a loan made by Scipion to Mac (the "Facility"): that stock was subject to a pledge granted by Mac to Scipion which was governed by Moroccan law.

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- Scipion did not fail in its duty to mitigate by reason of its inability to recover certain other copper granules removed from the site without authorisation. It had tracked those granules to a Port but had not managed to receive any proceeds of sale. Again, Scipion had taken reasonable steps to attempt to mitigate.

Name: Woodward & another v Phoenix Healthcare Distribution Limited

Reference: [2019] EWCA Civ 985

Date: 12th June 2019

Court: Court of Appeal

Facts:
On 12 June 2019 the Court of Appeal, consisting of Lord Justice Bean; Lady Justice Asplin and Lady Justice Nicola Davies, handed down Judgment in the case of Woodward & anor. v Phoenix Healthcare Distribution Limited ("Phoenix").

The appeal to the Court of Appeal was a second appeal; HHJ Hodge QC (sitting as a Judge of the High Court), having previously allowed Phoenix's appeal against the 1st instance decision of Master Bowles whereby the Master acceded to the Appellants' application to retrospectively validate steps taken to serve Phoenix with the claim form pursuant to CPR 6.15(1) and (2).

The central question that the Court of Appeal was asked to consider was in what circumstances is it appropriate, on an application for retrospective validation of service under CPR 6.15, to allow a defendant to take advantage of a mistake on the part of a claimant giving rise to defective service where any new claim would be time-barred.

That question arose because the Appellants, who at the material time were represented by Collyer Bristow, had issued a claim form on 19 June 2017 pursuing causes of action that were potentially time barred as of 20 June 2017. In accordance with CPR 7.5(1), the Appellants thus had until midnight on 19 October 2017 to serve the claim form on Phoenix (represented by Mills and Reeve). On 17 October 2017 Collyer Bristow purported to effect service on Phoneix by posting the claim form, particulars of claim and annexes to Mills and Reeve. The same documents were also emailed to Mills and Reeve on 17 October 2017 and a read receipt was received on the same day.

The claim form expired at midnight on 19 October 2017. On 20 October 2017 Mills and Reeve wrote to Collyer Bristow stating that service on them had been defective as they were not instructed to accept service; and neither Mills and Reeve nor Phoenix had ever confirmed in writing to Collyer Bristow that Mills and Reeve were instructed to accept service on behalf of Phoenix. Consequently, the claim form had expired and with it the proceedings by efflux of the limitation period.

View judgment here

Judge: Lord Justice Bean, Lady Justice Asplin, Lady Justice Nicola Davies

Comment:
The Court of Appeal, affirming the decision of HHJ Hodge QC, held that the Master had erred when concluding that the steps taken to bring the proceedings to the attention of Phoenix via service on Mills and Reeve, ought to be retrospectively validated as amounting to good service.

Whilst accepting that the Master was carrying out an evaluative exercise and thus, as was made by clear by the Supreme Court in Barton v Wright Hassle LLP (2018) 1 WLR, an appeal Court should only interfere in the exercise of the CPR 6.15 discretion where the Judge had erred in principle or reached a conclusion that was plainly wrong, here the Master had erred in principle and the Judge had been right to interfere because:

(1) The Master had found that Phoenix/Mills and Reeve had failed to comply with the overriding objective (CPR 1.3) in failing to warn Collyer Bristow of the mistake in respect of service. Whilst it was correct to say that Sumption JSC did not address the impact of CPR 1.3 viz. a duty to warn of mistakes inter partes, the Supreme Court's finding in Barton that there was no positive duty to advise an opposing party of its own error was inconsistent with the Master's reasoning that there had been a breach of CPR 1.3 occasioned by the failure to

warn.

(2) The reasoning in Denton, to the end that it is inappropriate to take advantage of mistakes made by opponents, is significantly less important on an application under CPR 6.15 when compared to an application for relief from sanctions. CPR 6.15 does not have any disciplinary element; rather it is concerned with the conditions which must be satisfied before a Court will take cognisance of a claim.

(3) The Master had incorrectly found that there had been technical game playing on the facts. On the facts, Mills and Reeve has acted legitimately in taking its client's instructions as to how to proceed, and, ultimately acting on the way that it did. Nothing that Mills and Reeve or Phoenix did contributed to Collyer Bristow's error.

In the circumstances, the Judge had been correct to interfere with, and overturn, the Master's decision in the way that he did.

This case again affirms the view taken by the majority in the Supreme Court (Barton) that there is no duty to warn of an error inter partes. The position may be different where one party has contributed to another's mistake; but on the facts that did not arise. CPR 1.3 cannot be said to encompass a duty to further the overriding objective by warning an opponent of a procedural mistake. It is, therefore, crucial that the rules on service are adheres to rigoursly, most especially when limitation is approaching.

Chris Snell was instructed by Lexlaw Solicitors & Advocates of 4 Middle Temple Lane, London.

Practice Area: Commercial Litigation

Articles

Date	Title	Contributors
29th August 2018	Letters of request and ongoing criminal proceedings (Aureus Currency Fund and Credit Suisse Group AG v Mitesh Parikh) Published In *Lexis PSL - August 2018*	Christopher Snell
8th August 2018	Jurisdiction via unconventional routes (Eurasia Sports Ltd v Aguad) Published In *Lexis PSL - August 2018*	Christopher Snell
1st August 2018	Stay of proceedings for arbitration and worldwide freezing orders (Sodzawiczny v Ruhan) Published In *Lexis PSL - August 2018*	Christopher Snell

Date	Title	Contributors
23rd July 2018	Court of Justice: Brussels I and International Transport of Goods (Zurich Insurance plc and another v Abnormal Load Services (International) Ltd) Published In *Lexis PSL - July 2018*	Christopher Snell
5th July 2018	ISDA standard form Master Agreements and competing jurisdiction clauses (BNP Paribas SA v Trattamento Rifiuti Metropolitani SPA) Published In *Lexis PSL - July 2018*	Christopher Snell
4th January 2017	In brief: Forbearance is good consideration for a promissory note (Banque Cantonale De Genève v Sanomi) Published In *Lexis PSL - January 2017*	Christopher Snell

Publications

Date	Title	Contributors
13th May 2020	CASE ANALYSIS - Lexis®PSL Dispute Resolution: Case analysis (Ref 1819). Out of time challenge to jurisdiction results in default judgment (Plekhanov v Yanchenko) LexisPSL	Christopher Snell
20th April 2020	Covid-19 Extensions of Time; CPR PD 51ZA (Muncipio De Mariana and others v BHP Group plc (formerly BHP Billiton) LexisPSL	Christopher Snell