



COLLIER v P & M J WRIGHT (HOLDINGS) LTD (2007)

[2007] EWCA Civ 1329

CA (Civ Div) (Mummery LJ, Arden LJ, Longmore LJ) 14/12/2007

EQUITY - CONTRACTS

AGREEMENTS : PROMISSORY ESTOPPEL : STATUTORY DEMANDS : ALLEGED AGREEMENT TO ACCEPT FROM JOINT DEBTOR HIS PROPORTIONATE SHARE : RELIANCE : REPRESENTATION : ACCORD : REAL PROSPECT OF SUCCESS : CONSIDERATION

A statutory demand was set aside where the debtor had an arguable case of promissory estoppel.

The appellant (C) appealed against a decision not to set aside a statutory demand served on him by the respondent (W). W had obtained a judgment by consent against three partners of whom C was one. The partners' liability was joint. The consent order provided for the three partners to pay the judgment debt by monthly instalments. C had paid a third of the debt by instalments. His partners had become bankrupt. W served a statutory demand on C for the balance of the judgment debt. C applied to set aside the demand relying on an alleged agreement by W that if C continued to pay his share of the judgment W would not look to him but only to his partners for the balance. C submitted that (1) his alleged agreement with W was binding because by agreeing to accept sole responsibility for his one-third share he gave consideration for W's promise to accept him as a debtor for only a one-third share of the judgment debt; (2) a promissory estoppel prevented W from proceeding against him for more than a one-third share of the debt.

HELD: (1) The mere fact that a creditor agreed with a joint debtor to accept payment from him alone of his proportionate share did not result in a binding agreement. The alleged agreement made between C and W was merely to accept a lesser sum from C than that which was due and that was not a binding agreement in law since it had no consideration to support it, *Foakes v Beer* (1883-84) LR 9 App Cas 605 HL applied. (2) There was a real prospect of success on the promissory estoppel issue. It was arguable that there was an agreement or representation by W not to sue C for the full judgment sum. It could be sufficient reliance for the purpose of promissory estoppel if a lesser payment was made as agreed, provided there was an accord, *D&C Builders Ltd v Rees* (1966) 2 QB 617 CA considered. It was arguable that it would be inequitable for W to resile from its promise, *D&C Builders Ltd v Rees* considered.

Appeal allowed

Counsel:

For the appellant: David Uff

For the respondent: Siward Atkins

Solicitors:

For the appellant: Betesh Partnership (Manchester)

For the respondent: Christine Sharpe & Co (Heywood)