Neutral Citation Number: [2011] EWCA Civ 404

Case No: B2/2010/2190

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
CENTRAL LONDON CIVIL JUSTICE CENTRE
His Honour Judge Hand QC
8CLO8756

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/04/2011

Before :

LORD JUSTICE LLOYD
LORD JUSTICE WILSON
and
LORD JUSTICE TOMLINSON

- -

Between :

Knight Frank LLP	**Appellant**
- and -	
Aston Du Haney	**Respondent**

- -
- -

Edward Denehan (instructed by **Freeman Box**) for the **Appellant**
Mark Tempest (instructed by **Haldanes**) for the **Respondent**

Hearing date : 9 March 2011

- -

Judgment

Lord Justice Tomlinson :

Introduction

1. The question in this case is whether an agent, who in the course of making a contract with a third party misrepresents the name of his principal, attracts either liability for breach of warranty of authority or personal liability on the contract in circumstances where the principal is nonetheless identified and his correct name capable of being established. His Honour Judge John Hand QC in the Central London County Court thought not, and dismissed the Appellant/Claimant surveyors' claim to recover from the Respondent/Defendant £70,500, being the agreed cost of preparation of a development appraisal in respect of a site in Salford, commissioned by the Respondent apparently on behalf of either Morecambe Investment Limited or Morecombe Investments Limited, neither of which exists. However it was not disputed before the judge or before this court that Morecambe Investment Company Limited does exist, or at least existed at all material times, and is or was a company registered in the British Virgin Islands. Perhaps for practical reasons the Appellant/Claimant has never sought to bring home liability to Morecambe Investment Company Limited, but on the basis of the judge's findings that company was the Respondent's principal, or at any rate it is not shown that it was not.

2. The judge seems to have thought that his finding that the Respondent had not acted dishonestly was determinative of liability under both heads of claim advanced, and he gave permission to appeal to this court in part to determine whether that is in fact so. The Appellant says that the judge misunderstood its case at trial, which was not based upon dishonesty, but it suggests that there was in any event ample evidence upon the basis of which the judge could have concluded that the Respondent had acted dishonestly or at least recklessly.

3. Upon reflection I am not sure that the judge did in fact, at the critical point in his judgment, regard the absence of dishonesty as determinative of at any rate the first issue, breach of warranty of authority, although in his reasons for giving permission to appeal he did say that he had found that if the agent's conduct is not deliberate and dishonest, there can be no breach of warranty of authority. Dishonesty is not usually of any relevance to this question, although it might be relevant to a consideration of whether in all the circumstances a person describing himself as an agent has contracted in such a manner as to attract personal liability on the contract. Liability for breach of warranty of authority is strict, attaching even where the agent has acted in good faith and carefully – see Bowstead and Reynolds on Agency, 19th Edition, Article 105 at page 581 et seq. Nonetheless, on the basis of his carefully made findings of fact, the judge in my view came to the correct conclusion that the claim could not succeed under either head advanced. Mr Edward Denehan for the Appellant did not place in the forefront of his vigorous submissions to us any suggestion that the judge should have found the Respondent to have acted dishonestly, or that the judge's findings were in any material respect inaccurate.

The facts

4. On 30 June 2006 Valley and Vale Properties Limited entered into a Call Option Contract with Morecambe Investment Company Limited relating to land and buildings at Middlewood Locks, Salford. It was a development site. By that contract

Valley and Vale as seller granted to Morecambe Investment Company Limited as buyer the right to require the seller to sell its interest in the site to the buyer for a price to be calculated in accordance with a contractual formula which would produce a figure in excess of £59M. The option was exercisable up to twenty days after grant of planning permission and the price of the option was £600,000.

5. The Appellant, Knight Frank LLP, is a well-known firm of chartered surveyors operating in several locations in the UK and elsewhere. In 2006 it had an office in King Street in Manchester. Simon Mackay was at the date of trial, although he is no longer, one of its partners. In 2006 he was an associate, having only just joined the firm the previous year after accumulating over twenty years' experience as a chartered surveyor in other firms. He was head of the Residential Development Consultancy Department in the Manchester office.

6. The Respondent's business card describes him as a land agent. He said in evidence that he had for some years been involved in property development.

7. In late October 2006 a Mr Bill McClintock approached an equity partner of Knight Frank in Leeds, Mr D'Arcy, and represented that he had an advisory role in relation to the Salford site. Mr D'Arcy asked Mr Mackay to make contact with Mr McClintock as there was a possibility of Knight Frank obtaining an instruction in relation to the site. Mr Mackay did not know Mr McClintock personally but he knew of him by reputation, Mr McClintock apparently being at the time Chairman of the Ombudsman for Estate Agents. Mr Mackay regarded him as a respected figure who was well-known to Mr D'Arcy. He telephoned him, and was asked to contact the Respondent in connection with the possible provision by Knight Frank of a development appraisal of the proposed Middlewood Locks development. Mr McClintock said that he was advising the Respondent on a potential purchase of the site and that he had recommended Knight Frank to him as being able to provide valuation advice. Mr Mackay duly telephoned the Respondent on 3 November 2006 and they agreed to meet. The Respondent informed Mr Mackay that a valuation of the site was required to assist in obtaining funding for the development of the site, not for the purpose of acquiring it. The Respondent also informed Mr Mackay that the terms of a basic deal had been agreed with the owner of the site, the purchase price being £60M. The judge seems to have accepted that the Respondent told Mr Mackay at this stage and subsequently that he was representing wealthy investors.

8. Mr Mackay and the Respondent met on 6 November 2006 in Manchester and again on 21 and/or 22 November. By the time of the latter of these meetings Mr Mackay knew that Valley and Vale Properties were the owners of the site. It was agreed that Knight Frank through Mr Mackay would provide a desktop appraisal for a fee of £5,000 plus VAT, which would have to be paid before the work was done.

9. On 24 November 2006 Mr Mackay sent to the Respondent a letter "to inform [him] of the basis upon which we [Knight Frank] would undertake a desktop valuation and appraisal on the above scheme" viz Middlewood Locks, Salford, Greater Manchester. The letter was addressed to Morecambe Investments Limited c/o 39 Lennox Gardens London SW1X 0DF For the attention of Aston Du Hanney. The Respondent's name and address were obviously derived from his business card which he presented at one of the meetings, no doubt the first. The judge seems to have found that the Respondent asked Mr Mackay to send the letter to him at this address. The

misspelling of the Respondent's name (which appeared in at least one other variant in subsequent documents generated by Knight Frank) seems to have been regarded by the judge as symptomatic of Mr Mackay's lack of attention to detail, whilst acknowledging that he could not supervise everything which went out from the office in connection with a project that he was managing. As to the apparent addressee of the letter, Morecombe Investments Limited, the judge found that at some stage Mr Mackay was told, and by inference the judge found was told orally, that the entity he was dealing with was Morecambe Investment Limited and that he must have kept a record of this in a note or daybook, which record reproduced the spelling of Morecambe with an "a". Again, by necessary inference, the judge must have found that Mr Mackay was given this information by the Respondent before the letter of 24 November 2006 was sent. The misspelling of Morecambe which was rendered as Morecombe in the letter was therefore a mistake on the part of Knight Frank, as was the use of the plural Investments. It was Mr Mackay's evidence that the Respondent dictated this name to him but that he could not say whether it was Morecombe or Morecambe. He assumed that this was the commercial vehicle to be used in the development. He was not particularly concerned about the name – he was going to be paid up-front for a desktop evaluation.

10. Ultimately the provenance of the spelling of Morecombe is I think a somewhat arid debate. The letter asked the addressee to sign and return the duplicate copy. The Respondent, his name misspelled at the end as well as at the beginning of the letter, was invited to sign above the rubric "For and on behalf of Morecombe Investments Limited". The Respondent did sign and return the duplicate, adding in manuscript after his signature the words "As Agent". The Respondent undoubtedly thereby represented that he was acting for an entity called Morecombe Investments Limited. It does not follow that he thereby warranted, in the sense of guaranteed, that he had correctly named his principal, a point to which I shall return.

11. The judge sets out what thereafter occurred at paragraphs 11-15 of his judgment which I reproduce below in full:-

> "11. In due course, the sum of £5,875.00 was paid. In the Defendant's diary for 11th December 2006 are two entries; ***"Knight Frank – Simon McKay re Chq"*** and ***"Fergus re Chq for K Frank"*** (see B/10/187-187A). The sum requested in respect of the desk top appraisal appears to have been paid by bank transfer on 12th December 2006. The diary entry for that day reads ***"Knight Frank EA – Simon McKay re payment for valuation – M Locks"*** (see B/10/190 and 191A). It seems likely that the payment preceded the invoice. The "Billing Request Form" seems to have been raised on 15th December (see B/10/191). It is address "***ATTN: Aston du Hanaey Morecombe New Haven c/o 39 Lennox Gardens, LONDON SW1X 1DF".*** The receipted invoice is dated 15th December and is similarly addressed (see B/10/192).
>
> 12. The desk top appraisal is dated 10th January 2007 (see B/10/196-209). It was addressed to ***"Morecombe Investments Ltd"***, care of the Lennox Gardens address and marked for the attention of ***"Aston du Haney"***. He received it there. He also

received an electronic version by e-mail (see B/10/210). After further conversations, it was agreed that the Claimant would proceed to prepare the full report. The Claimant wrote a letter setting out the terms of the retainer on 5th February 2007 (see B/10/217-218). In the same way that the letter of instruction had been addressed, the letter of the retainer was marked for the attention of ***"Aston du Haney"*** and addressed to ***"Morecombe Investments Ltd"*** care of the Lennox Gardens address. Despite the fact that the Defendant had added "As Agent" to the words "For and on behalf of Morecombe Investments Ltd" in the letter of instruction, the retainer letter repeated the same formulation and, once again, when it was returned duly signed by the Defendant, he had added the words ***As Agent"*** (see B/10/220).

13. The full appraisal took some time to prepare and appears to have gone th[r]ough a number of drafts. There is one draft in the bundle at B/10/242-292; it had a manuscript date of ***"14/5/07"*** and the manuscript initials ***"SM"*** on the frontispiece and the words ***Prepared for Morecambe Investments Limited"*** (my underlining) are also to be found there. The words ***"Prepared for Morecambe Investments Ltd – May 2007"*** appear at the foot of each page. An invoice was raised on 26th April 2007 (see B/10/239) addressed to ***"Morecambe Investments Ltd"*** care of the Lennox Gardens marked for the attention of ***"Aston du Haney"***. I am not entirely clear as to whether it was sent and, given that the report was still in draft then, it might have been thought premature to send it but the appraisal had been completed by 30th May 2007 (see B/10/295-390) and it has handed to the Defendant when he came to the Claimant's Manchester office on that date, together with a copy of the invoice, which I assume to have been the same as or similar to B/10/239. The appraisal in its final form, not surprisingly because it is the final version of the earlier draft, had the same frontispiece and the same footer with the same wording ***"Prepared for Morecambe Investments Limited"*** (frontispiece) and ***"Prepared for Morecambe Investments Ltd – May 2007"*** (footer).

14. It soon became apparent to Mr Mackay that all was not well. In early June 2007 he contacted a Mr David Earley, who he described as an "associate" of V & V, and was told that contracts for the sale and purchase of the land had not been exchanged, as he had thought was to be the case (see paragraph 5.1 of his witness statement – A/7/25), and attempts (or renewed attempts) were made to secure payment from the Defendant.

15. Nothing had been achieved by July 2007 and, despite his misgivings, Mr Mackay did make the appraisal available in

> electronic form to the Defendant. As the summer progressed it became apparent that this electronic form of the appraisal was achieving a wide circulation. Contact with the Defendant at the end of July revealed that he was unhappy because certain parts of the site had been included in the appraisal. In fact what was known as plot G had never been included but plot H had been, although Mr Mackay believed that to be in accordance with the Defendant's instructions. The Defendant was complaining as to the wide circulation of the report and also that the issue of non-payment of the Claimant's fees was also circulating in what might be described as the "public domain". In an effort to cut through these controversial matters, despite the fact he did not accept any of the criticisms, Mr Mackay offered to prepare an amended report, which excluded plot H, without charging a further fee, on the basis that the outstanding fees would be paid. This further report was forwarded to the Defendant in PDF format on 24th August 2007. Thereafter in January 2008 there appear to have been some discussions involving the fees; Mr McClintock seems to have been party to those discussions (see Mr Mackay's witness statement at paragraph 5.14 (A/7/28) and B/10/4150417A). The fees have never been paid."

12. It is unnecessary to go into the provenance of Morecombe New Haven, to which reference is made in paragraph 11 of the judge's judgment set out above. The Respondent may at some stage have told Mr Mackay that Newhaven Nominees Limited had some involvement as trustees for the Morecambe corporate vehicle, but nothing turns on this.

Discussion

13. In my view the dispute can in fact be resolved without reference to the further findings made by the judge as to the state of mind of Mr Mackay and the Respondent. The Respondent made it very clear that he was acting as agent only. The Respondent did not contract as a principal in his own right. The Respondent warranted that he was acting on behalf of the entity that was negotiating to purchase the site. As appears hereafter he was, or at any rate there is no reason to believe that he was not. It has not therefore been demonstrated that the Respondent was in breach of his warranty of authority. That is the end of the case. It is true that the Respondent represented that the name of his principal was, firstly, Morecambe Investment Limited and, secondly, Morecambe Investments Limited but he did not on either occasion warrant the accuracy of the name given in the sense that he effectively guaranteed that it was correct. For the avoidance of doubt the same would be true if his only representation on this topic had been that made by virtue of his countersigning and returning the letter "For and on behalf of Morecambe Investments Limited". The warranty which the Respondent gave was as to the fact of his agency, not as to the precise accuracy of the name which he attributed to his principal.

14. In *AMB Generali Holding AG v SEB Trygg Liv Holding Aktiebolag* [2006] 1 Ll Rep 318 this court held that whereas a solicitor who starts, defends or continues litigation or arbitration on behalf of a client warrants that he has authority to do so, he does not additionally and without more represent that he has named his client correctly. The

court's reasoning, at paragraphs 56-69 of the judgment of the court, derives in considerable measure from the particular and well-understood features of the position of a solicitor in such circumstances, for example that it is axiomatic that a solicitor gives no warranty as to the accuracy of his instructions. There is an obvious distinction between matters upon which the solicitor must simply rely on his client's instructions without having independent knowledge and matters within his own knowledge, such as his authority to act. But the court also regarded it as a further consideration against the imposition upon a solicitor of strict liability for incorrectly naming his client that the sort of loss caused by misnomer is unlikely to be large. The court also pointed out that the imposition of strict liability for the accuracy of the name of a client would involve liability for any case of misnomer including for example typographical errors or change of corporate name without a change of rights.

15. In my judgment similar considerations militate here against the imposition of strict liability for the accuracy of the name attributed by the Respondent to his principal. As pointed out in Bowstead and Reynolds at paragraph 9-066 "the basic warranty is only that the agent has authority from his principal: this is something peculiarly within the agent's knowledge. If the principal proves unreliable, that is something in respect of which the third party could have made enquiries." So here the Respondent identified and named his principal in a manner which was entirely adequate for all practical purposes and it is neither a sensible nor a necessary analysis that the Respondent is to be regarded as having warranted, in the sense of having guaranteed, the precise accuracy of the name supplied. The Appellant could if necessary have made independent enquiries as to the correct title of the principal identified by the Respondent.

16. However, if it is necessary to go beyond this, the further findings of the judge make it clear that in any event the Appellant was not induced by any representation by the Respondent as to the name of his principal to act in a manner in which it would not have acted in the absence of such a representation.

Further Factual Findings

17. I turn then to the judge's further findings. It was the Respondent's oral evidence that he was at all times aware that his principal was Morecambe Investment Company Limited and that the identity of his principal was of importance to him, although the Defence and the Respondent's witness statements are riddled with inconsistencies in this regard. The Respondent's evidence was that he knew that the name of the principal stated in the letter of instruction was wrong and that he was aware of this when he signed the duplicate of the letter of instruction and added the words "As Agent" to his signature. Indeed, the Respondent gave such vague and contradictory evidence at the trial and was so apparently oblivious of and unconcerned as to the impact that that might make that the judge wondered if he was "quite well". He concluded that he could "repose little confidence in the veracity or accuracy of his evidence". All this notwithstanding, the judge's final and considered conclusion was:-

> "Finally, despite my considerable reservations about the Defendant as witness, as expressed above, I do not regard the Defendant as having deliberately misstated the name of his principal. It seems to me that he had no motive for doing so.

> He was at pains to emphasise his role as agent by adding the words "as agent" to the counterpart letter of instruction. In law this was probably unnecessary but it illustrates that his state of mind was a wish to clarify his role and I have already indicated my finding that Mr Mackay never regarded the Defendant as anything other than an agent."

18. I can see no basis upon which we could depart from these conclusions, and as I have already mentioned Mr Denehan did not seriously press the suggestion that we should.

19. It is the judge's findings as to Mr Mackay's state of mind which are the more important in the resolution of this dispute. The judge did not find Mr Mackay an impressive witness either. His attention to detail in relation to a significant project had been "at times almost sloppy". He had shown a lack of curiosity as to the nature and identity of his client. The judge did however accept Mr Mackay's evidence that he had never at any material time been shown the Call Option Contract and that had he been shown it it is inconceivable that the fee invoices would have been addressed to anybody other than Morecambe Investment Company Limited, the name of the option holder in that contract. The contract would also have revealed that Morecambe Investment Company Limited is a BVI company, together with its company number and registered office.

20. In fact the Call Option Contract was disclosed by the Respondent in August 2009, which is when the Appellant first saw it. These proceedings had been begun in November 2008. The Defence of 10 December 2008 asserted that the Respondent had contracted on behalf of Morecombe Investments Company Limited, the company named in the Call Option Agreement registered in the BVI under company number 1000660 of PO Box 901, Road Town, Tortola BVI. I do not think that the misspelling of Morecambe or the misrendering of Investment in the plural is of any great moment. The Respondent's witness statement of 21 September 2009 said that the former was an error by his solicitors. At trial the latter error was acknowledged too. The trial did not take place until April 2010. At no time has the Appellant sought to bring proceedings against Morecambe Investment Company Limited nor even, so far as I am aware, has the Appellant pressed that company for payment of the outstanding fee. By the same token, I am not aware that Morecambe Investment Company Limited has ever denied that it was for relevant purposes the principal of the Respondent.

21. The judge made the following critical findings concerning Mr Mackay's attitude and state of mind:-

    i) He did not investigate the provenance of his client, by which the judge meant the nature, identity and creditworthiness of his client, because the introduction of the Respondent by Mr McClintock was a sufficient recommendation. The reputation of Mr McClintock with his colleagues was sufficient in itself to satisfy Mr Mackay that this "unknown quantity" [scilicet the Respondent's principal] could be relied upon;

    ii) He believed throughout that the Respondent was acting as an agent for the entity that paid for the option and for the people who lay behind it;

iii) He was not concerned about the precise identity of that entity or the people who lay behind it;

iv) It would not have mattered to him to have discovered that he had not been given the precise name of the single purpose vehicle (SPV) – inferentially the judge must also have found that Mr Mackay appreciated that the principal of the Respondent might be a single purpose corporate vehicle;

v) It would have made no difference to how Mr Mackay proceeded had he known or discovered that the SPV was an offshore company. The judge also found that in the modern world of property development the use of an offshore company would not be "that unusual";

vi) He did not need to investigate the substance of the people who lay behind the SPV in a conventional way because he could measure reliability by matters known to him or matters that he could find out in the world of commercial property development within which he moved and worked;

vii) He knew that there was a Call Option contract and that the option holder paid a very considerable amount of money for the option. He never saw the contract because he did not think that he needed to see it. He was satisfied that he had all the proof he needed of involvement of the Respondent's principal in the Middlewood Locks project;

viii) He understood that his fees would not be paid directly by the SPV or by individual members of the syndicate said to lie behind it – inferentially therefore the judge found that Mr Mackay understood that the liability of the entity that had paid for the option and the people who lay behind it would be discharged by someone else on their behalf, hence the possible discussion of Newhaven Nominees as an entity to whom invoices should be sent for payment on their behalf. However the judge also found expressly that Mr Mackay did not expect the fees to be paid by the Respondent.

Further discussion

22. It is possible to criticise those findings to the limited extent that the evidence makes clear that Mr Mackay did not in fact know at any material time that there was in place a Call Option contract. He did not see the contract until August 2009 and it seems clear that "Call Option" was not an expression with which he was familiar. On the other hand he did know at all material times that "a serious player" had put down a "reservation fee" of £600,000. Mr Mackay told the judge that he understood that the Respondent was representing a body "who were definitely buying that site". The judge's findings should therefore be read subject to that qualification, which makes no difference of substance.

23. As I have already mentioned, an essential element in the creation of the unilateral contract for breach of which the third party may sue where an agent is shown not to have had the authority which he represented himself to have had is inducement of the third party to act in a manner in which he would not have acted if that representation had not been made. The judge's findings demonstrate conclusively that whilst the Appellant justifiably placed reliance upon the Respondent's representation that he had

the authority of the entity concerned in the purchase of the site to act on its behalf, the Appellant was not induced to prepare and submit the appraisal report by its belief that it was contracting with either Morecombe Investments Limited or Morecambe Investment Limited. The precise name or location of the counterparty was a matter of no importance to it.

24. Mr Denehan suggested that the Appellant has suffered a loss in that (a) it had “chased after” Newhaven and Morecombe Investments Limited and (b) Morecambe Investment Company Limited may not exist. The latter suggestion overlooks that it is the Appellant which at all times bore the burden of showing that the Respondent in fact lacked the authority which he represented himself to have. It is for the Appellant to demonstrate that the Respondent had no principal and it has not attempted so to do. It has not attempted to show that Morecambe Investment Company Limited does not exist. Moreover, as Mr Tempest succinctly pointed out, the relevant enquiry is not whether the Appellant has suffered loss but whether it can show that but for the representation that the Respondent’s principal was Morecambe Investment Limited or Morecombe Investments Limited it would not have proceeded to undertake the work of preparing the appraisal and thereafter submitting it to the Respondent.

25. The second ground on which the judge gave permission to appeal was:-

> “It is unclear whether the principle of personal liability where the agent fails to identify his principal correctly as suggested by Roxburgh J in *Hersom v Bernett* [1955] 1QB 98 is sound or is really, depending on the facts, just a species of breach of warranty of authority. This is a secondary matter but merits consideration alongside 1. above [which was the question whether an agent can be liable for breach of warranty of authority in circumstances where there had been a negligent failure to correct the name of his principal].”

26. With respect I do not consider that *Hersom v Bernett* is in fact concerned with “incorrect identification of the principal” and I do not think that the judge so treated it in his judgment, in which he refers also to the discussion of that case in Bowstead and Reynolds at paragraph 9-092. *Hersom v Bernett* is an odd case concerned with the sale of stolen goods to an innocent plaintiff which went to trial on the basis that the defendant had contracted as agent and that his principal was Williams, albeit his name had not been disclosed at the time of the contract. The question was whether the plaintiff, who had had to surrender the goods to their true owner, could recover the price from the defendant. The question arose whether, the judge having found that the principal was not Williams, the defendant could thereafter assert that his principal was some other undisclosed person. Roxburgh J held that he could not, saying at page 103:-

> “. . . it seems to me that a fundamental principle of justice requires that a defendant who has given false evidence that his principal was X should not be heard to say through his counsel in argument that his principal may have been somebody else, but must thereafter be treated as having no principal; or, in other words, as being himself the principal.”

27. As is pointed out in Bowstead and Reynolds at paragraph 9-092 the propositions (i) that he must be treated as having no principal and (ii) that he must be treated as being himself the principal, are not equivalent. The judge appears to have applied the second, although he had already remarked earlier in his judgment at page 100 "I cannot hold as a fact that the Defendant was himself the principal, although he may have been". I would respectfully agree with the learned editors of Bowstead and Reynolds who say in the same paragraph that the preferable analysis is that in such circumstances the Defendant was to be treated as having no principal and therefore as liable for breach of warranty of authority. As there pointed out:-

> "The mere fact that the agent's act does not bind his purported principal does not mean that he is to be regarded as acting for himself; there must be evidence that he actually is doing so, or (as in *Hersom v Bernett*) other circumstances preventing him from denying this."

However none of this arises here. Notwithstanding the unsatisfactory aspects of his evidence, it was the pleaded defence of the Respondent to the claim made against him personally that he had acted for and on behalf of Morecombe Investments Company Limited, BVI company number 1000660. The misspelling and the redundant "s" are irrelevant misnomer. The Appellant has made no attempt to show that the Respondent did not in fact have the authority which he warranted, still less that he was not in fact acting as agent. There is no basis upon which the Respondent can be held under a personal liability to the Appellant.

28. I would dismiss this appeal.

Lord Justice Wilson

29. I agree.

Lord Justice Lloyd

30. I also agree.