

IN THE HIGH COURT OF JUSTICE

1996-L-No. 1583

QUEEN'S BENCH DIVISION

BETWEEN :

LLOYDS BANK PLC

Plaintiff

and

JEFFREY WOLFE SIMON LAMPERT

Defendant

---

THIRD AFFIDAVIT OF STEPHEN CHARLES BALL

---

I, STEPHEN CHARLES BALL of Bank House, Wine Street, Bristol, BS1 2AN MAKE OATH and SAY as follows:-

1. I am the same Stephen Charles Ball who swore affidavits herein on 20 January 1997 and 1 May 1997. I am authorised to make this further affidavit on behalf of the Bank in response to the affidavit of the Defendant, Mr Lampert, sworn herein on 19 September 1997. Save where I indicate to the contrary, the facts and matters to which I depose are within my own knowledge and are true to the best of my information and belief.
2. In his affidavit, Mr Lampert refers to a letter dated 14 June 1991 enclosing the letter to which I referred in paragraph 3 of my second affidavit. He says that that letter from his former solicitors "confirmed" a "common understanding" between the Bank and himself that his guarantee "was to be one of last resort". He says further that the Bank

was therefore not entitled to make demand under the guarantee before exhausting all its remedies against Heritage.

3. Mr Lampert overstates the effect of McKenna & Co's letter, which states no more than that *Mr Lampert* regarded the guarantee as one of "last resort" and that the Bank would proceed against the Company before *calling* the guarantee, and that the writer *believed* that that was also the understanding of the Bank.
4. I would say first that it is in my submission that it is most unlikely to have been understood by the Bank, let alone agreed, that the original side letter of 22 October 1990 would be cancelled on terms effectively the same as those which were being cancelled. That would make no sense. Nor, as Mr Lampert well knows, was it what happened.
5. Although Mr Lampert does not mention it, the Bank responded to the letter from McKenna & Co in a letter dated 1 August 1991, a copy of which is exhibited hereto marked "SCB 3". That letter stated as follows:

"With regard to the circumstances where repayment would be sought under the guarantee, the Bank would look initially to company assets for recovery of indebtedness. If after reasonable efforts, full recovery had not been made, the Bank would seek to recover the outstanding indebtedness under the Guarantee of Jeffrey Lampert.

It should be noted however that demand may be made on Jeffrey Lampert under the Guarantee immediately after demand upon the company to enable interest to run from the date of demand even though recovery under the Guarantee would be in accordance with the preceding paragraph of this letter".
6. I have spoken to Mr Clive Brooks, the Manager who wrote that letter. Mr Brooks is now the Senior Manager of the Bank's Epsom Branch. He tells me, and I believe, that the letter exactly reflects the discussions with Mr Lampert which Mr Lampert says he

is unable to recall. The background was that Mr Lampert was, understandably, concerned that in the event of the collapse of Heritage, the Bank would enforce his guarantee, thereby requiring him to sell his house, in circumstances where it then became clear that the sale had not been necessary because the assets of Heritage were sufficient to cover its indebtedness. In those circumstances, although Mr Lampert would not in the end have to pay any money to the Bank, he would have had to sell his house, to which he was attached. Accordingly, he wanted reassurance that the Bank would only enforce its guarantee in circumstances where it was clearly necessary for it to do so.

7. Therefore Mr Brooks wrote to Mr Lampert to confirm that, notwithstanding the cancellation of the original side letter of 2 October 1990, under which the Bank was expressly precluded from seeking to make any recovery under the guarantee for 3 months, the Bank would nonetheless look first to the assets of the company to recover its indebtedness. However, the Bank was entitled to make demand upon Mr Lampert immediately after making demand on the company, in order to preserve its position as regards interest.
8. The events of July 1996 and thereafter followed exactly the course that had been set out in that letter. The Bank made demand on Heritage on 10 July 1996. It made demand on Mr Lampert on 23 July 1996, thereby starting interest running under his guarantee. The Bank did not take any steps to recover monies from Mr Lampert (by commencing the present proceedings) until 10 December 1996. By that time it was quite clear that the assets of the company would be nothing like sufficient to recover the Bank's indebtedness.
9. The truth of that last statement is demonstrated by the reports of the Administrative Receivers of the various companies in the Heritage Group, copies of which are exhibited hereto marked "SCB 4". In particular, I would refer to the reports dated 6 September 1996 (page 2 of "SCB 4") and 19 November 1996 (page 7 of "SCB 4"), both of which predate the commencement by the Bank of its attempt to enforce Mr Lampert's guarantee. As will be seen it was apparent from the outset that the

proceeds of the receivership would leave the Bank with a shortfall of more than £1.5 million.

10. In paragraph 18 of his affidavit of 28 March 1997, Mr Freeman asserts that the Bank has not pursued all its remedies against Heritage, in that (he says) it has not sold stock, recovered book debts or sold the company's premises at Unit 3 Marshgate Lane. Mr Freeman is in error. The Administrative Receivers have realised all those assets. Moreover, the actual or estimated proceeds of such realisations have at all times been taken into account when calculating the likely shortfall to the Bank, on the basis of which calculation the Bank commenced these proceedings under the guarantee in December 1996. As regards stock, as the Administrative Receivers' report of 6 September 1996 states, that was sold in September 1996. As regards debtors, the bulk of recoverable debts had also been recovered by September 1996, and efforts to recover the balance continued thereafter. As regards the premises, those were marketed at a price advised by the agents retained by the Administrative Receivers of between £1.6 and £1.7 million. After a year, they were sold for £1,365,000, which was regarded as a good price.

11. In my submission, even if, as Mr Lampert says, the Bank was required to look first to the assets of the company before looking to him to honour his guarantee liability (and it is to be borne in mind that, as the letter of 1 August 1991 made clear, the Bank was entitled to make immediate demand on Mr Lampert albeit it would not seek to make recovery pursuant to that demand until it was clear that such recovery would be necessary), it has been clear from the very outset that the assets of the company would not be enough to cover its indebtedness. By the time that the Bank sought to make recovery from Mr Lampert, in December 1996, even though all reasonable steps had been taken to realise the company's assets, there was an anticipated shortfall of more than £1.5 million, or three times the amount sought from Mr Lampert under his guarantee. As at today's date, when all the assets (specifically the company's premises) have been sold for the best prices obtainable, that shortfall remains. In those circumstances, I can only say yet again that I do not believe that Mr Lampert has any

5

defence to the Bank's claim.

*Ball*

Sworn by STEPHEN CHARLES BALL )  
at MONS DANON, 81000 )  
YVERDON 48-52 Avenue de l'Etat )  
Suisse 15100 )  
this 26 day of September 1997 )

Before me,

*Junete Yaker*

.....  
A Solicitor/Commissioner for Oaths

Ptf. : S C Ball : .09.97 : 3<sup>rd</sup> "SCB 3 - 4"

1996-L-No. 1583

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BETWEEN :

LLOYDS BANK PLC

Plaintiff

and

JEFFREY WOLFE SIMON LAMPERT

Defendant

---

THIRD AFFIDAVIT OF  
STEPHEN CHARLES BALL

---

Hammond Suddards  
Moor House  
119 London Wall  
London  
EC2Y 5ET

Tel : 0171 448 1000  
Fax : 0171 448 1001  
Ref. : IS/LLO.38-174