

Beauty Star Ltd v Janmohamed

Court of Appeal (Civil Division)

14 April 2014

Case Analysis

Where Reported

[2014] EWCA Civ 451; [Official Transcript](#)

Case Digest

Subject: Civil procedure **Other related subjects:** Dispute resolution

Keywords: Accountants; Accounts; Experts; Mediation settlement agreements

Summary: Where a court ordered parties to appoint an accountant pursuant to a mediation agreement they had reached, the appointment of the accountant was under the agreement rather than by court order. The accountant was not a court-appointed expert and the court was not entitled under [CPR Pt 35](#) or [Pt 40](#) to re-examine the accountant's approach.

Abstract: The appellant beauty product wholesaler (B) appealed against a decision to dismiss its claim for rescission or rectification of a mediation agreement made between it and the respondent beauty product retailer (J). B had issued a claim against J alleging non-payment of invoices. J counterclaimed on grounds including under-delivery and overpayment. B issued a reply and defence to counterclaim which had attached to it a record of the dealings between the parties. The parties reached a mediation agreement. That stated that B would confirm that the schedules attached to the reply accurately recorded all the invoices it had issued to J in the relevant period, and that if J then indicated that he was prepared to resolve the dispute, a binding account would be taken of all sums paid by J to B in that period. B gave its confirmation and J his agreement in accordance with the agreement. An account was taken and J was found to have overpaid. B alleged that that had overlooked the fact that some payments related to invoices which B had sent but which it had omitted from the schedules attached to the reply. The matter returned to court. The court ordered the parties to appoint an accountant pursuant to the agreement to prepare an account. The accountant took the account based on the schedules and found that J had overpaid. B again complained that the additional invoices had been omitted and alleged other inaccuracies. It issued proceedings for rescission or rectification of the agreement on the basis of mistake. The judge found that B had not proved that J knew of any mistake. She held that effect had to be given to the confirmation and agreement procedure set out in the agreement, meaning that the account was to be taken by reference to the invoices in the schedules. She further held that the accountant had been appointed under the agreement rather than by the court's order and that B, having agreed to be bound by the report, was not free to challenge it. B argued that (1) the judge's interpretation of the mediation agreement had unjust and uncommercial consequences, and that commercially one would expect an account to be taken by matching all the invoices rendered by B against all the payments made in respect of each invoice by J; (2) the court order as to the accountant's appointment meant that the accountant was a court-appointed expert, empowering the court under either [CPR Pt 35](#) or [Pt 40](#) to re-examine the accountant's approach.

Appeal dismissed. (1) An account taken involving matching all invoices and payments was one method of establishing the dealings between the parties, but it was not the method the parties had chosen when they entered into the mediation agreement. The agreement had specifically stipulated that, as a precondition of the specified account being taken, confirmation was required from B that the schedules attached to the reply and defence to counterclaim accurately reflected all invoices issued by B to J in the relevant period. B had given that confirmation. That conclusion did not lack commercial sense: under the confirmation and agreement procedure, the potentially expensive task of identifying the relevant invoices and matching payments to them had been removed, and by agreeing to that procedure, J had withdrawn his wider challenge to the invoices. The true interpretation of the agreement was plain; the judge had been right to construe it as she had (see paras 26-30 of judgment). (2) The order had not referred to the accountant being appointed as a court-appointed expert under Pt 35 or Pt 40. The terms of the order were against that: the parties had been ordered to appoint the accountant. That appointment had been expressed to be pursuant to the mediation agreement. That indicated that the account was to be that provided for by the agreement. Accordingly, the appointment of the accountant had been under the agreement. Even if the accountant's report contained mistakes, it was binding, because that was what the parties had agreed. Any remedy B had would be against the accountant (paras 32-35, 39).

Judge: Laws, L.J.; Davis, L.J.; Ryder, L.J.

Counsel: For the appellant: G Armstrong. For the respondent: P de la Piquerie.

Solicitor: For the appellant: YVA. For the respondent: Mackrell Turner Garrett.

All Cases Cited

Jones v Sherwood Computer Services Plc

[\[1992\] 1 W.L.R. 277](#); [\[1992\] 2 All E.R. 170](#); [\[1989\] E.G. 172 \(C.S.\)](#); [Times, December 14, 1989](#); CA (Civ Div); 1989-12-07

Significant Legislation Cited

[Civil Procedure Rules 1998 \(SI 1998/3132\) Pt 35](#)

[Civil Procedure Rules 1998 \(SI 1998/3132\) Pt 40](#)

Legislation Cited

[Civil Procedure Rules 1998 \(SI 1998/3132\)](#)

[Civil Procedure Rules 1998 \(SI 1998/3132\) Pt 35](#)

[Civil Procedure Rules 1998 \(SI 1998/3132\) Pt 40](#)

[Civil Procedure Rules 1998 \(SI 1998/3132\) r.40](#)

Mediation Agreement made on 12 March

Mediation Agreement made on 12 March para.13

Mediation Agreement made on 12 March para.2

Mediation Agreement made on 12 March para.3

Mediation Agreement made on 12 March para.3(i)

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