

Charlie Newington Bridges wins in the Court of Appeal in *Monnow Developments v Morgan* [2016] EWCA Civ 1437

Charlie Newington-Bridge

St John's Chambers

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Charlie Newington-Bridges of St. John's Chambers was instructed by Neil Morgan, partner at Darwin Gray Solicitors, to represent the successful Respondent, Monnow Developments Limited.

Summary: The Appellant, Mr Morgan, borrowed £250,000 from the Respondent, Monnow Developments, a property development company. The loan was intended to allow Mr Morgan to invest £750,000 in a financial services company, Pure Options, which was an enterprise investment scheme with potential tax benefits for investors. The investment in Pure Options was also in the form of a loan, the terms of which were specified in loan notes. The terms of the loan notes included an interest rate of 8%, but interest was to be paid when cash flow allowed. Pure Options became insolvent before any interest had been paid. Mr Morgan repaid the capital borrowed from Monnow but no interest.

The issue at first instance was whether under the agreement between the Appellant and Monnow, the Appellant was legally obliged to pay interest to Monnow in circumstances where he had received no interest on his loan to Pure Options. He contended that he was not. At first instance it was held that on a proper construction of the agreement Mr Morgan was obliged to pay interest. In the alternative, the Appellant argued that the agreement as drafted failed to reflect the true intention of the parties, namely that no interest should be paid in these circumstances and should be rectified to achieve that result. This counterclaim was also rejected by the judge.

In the appeal, it was submitted on Mr Morgan's behalf that the judge was wrong on both counts; either he ought to have construed the contract in the Appellant's favour or, if that was not possible, he should have rectified it to achieve the result that no interest was payable. Elias LJ, giving the leading judgment, found that on the proper construction of the loan agreement between Monnow and Mr Morgan interest was payable at the rate of 8% and that the criteria for rectifying the loan agreement were not satisfied on the facts.

The appeal judgment is interesting in at least three respects. Firstly in relation to interpretation, the court was not prepared to accept arguments that strained the language of the contract and which would lead to artificial results; it placed emphasis on the interpretation that accorded with commercial reality. Secondly, the court was concerned about the use of pre-contractual negotiation documentation in the interpretation case, but nonetheless was prepared to find that certain terms in the pre-contractual negotiations could be used in the interpretation process as they reflected common usage in the background to the contract. Thirdly, on rectification, the court was focussed on the evidence of the parties and their witnesses to determine whether or not there was an outward expression of accord; finding none, it rejected the rectification argument.

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