

Templars Estates Ltd v National Westminster Bank Plc

Queen's Bench Division (Commercial Court)

10 June 2016

Case Analysis

Where Reported

unreported;

Case Digest

Subject: Civil procedure **Other related subjects:** Banking and finance

Keywords: Delay; Financial Ombudsman Service; Prejudice; Stay of proceedings

Summary: A stay of proceedings was granted so that claimants could bring a claim against two defendant banks before the Financial Ombudsman Service. If it was not granted, the claimants would suffer prejudice as they would be prevented from pursuing their chosen route of complaint through the FOS, which was a much more informal and economical process.

Abstract: The claimants applied for a stay of proceedings against the defendant banks so that the Financial Ombudsman Service (FOS) could hear their complaint.

The claimants had brought proceedings against the two banks arising out of alleged negligence advice. The case had been due to proceed in the Mercantile court, where a trial would likely have been sometime in 2018. However, the claimants applied to the FOS for it to hear the dispute and it was a requirement that the FOS would not investigate unless there were no proceedings in court or a stay on proceedings had been granted. The banks did not consent to a stay.

The banks submitted that it was a stale claim, that there should not be any further delay, that there should be a speedy resolution of the claim and that granting a stay for potentially up to a year would prejudice them and their employees.

Held: Application granted.

It was not a case where the claimants had sat on their hands. The delay had not been their fault. They had been diligently pursuing their complaints against the banks. With regard to prejudice, the claimants would suffer prejudice if a stay was not granted because they would be prevented from pursuing their chosen route of complaint through the FOS, which was a much more informal and economical process, especially considering that the banks had more resources. The matter had to be resolved, but a stay of up to one year would not prejudice the banks. It would be regrettable, but if proceedings had been launched in the normal way it was unlikely that they would have been resolved by the courts until 2018. There was no evidence that any particular witness would be prejudiced by the stay, for example an elderly employee of the bank. The application was similar to a stay to allow mediation to avoid the consequences of expensive litigation and that was always encouraged by the court. If the claimants failed before the FOS they were permitted to come back to court to continue proceedings. That was not a ground for denying a stay. However, the banks had a legitimate worry that if the claimants won before the FOS, they were

still entitled to continue proceedings before the court. There had to be recognition of the maximum that the FOS could award. The claimants agreed that if a stay was granted and they obtained an award they would not return to the High Court to continue proceedings. On the basis of that undertaking, a stay was granted.

Judge: Burton J

Counsel: For the claimants: Lloyd Maynard. For the defendants: Sanjay Patel.

Solicitor: For the claimants: Charles Russell Speechlys. For the defendants: DLA Piper.

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