

CA on appeal from the Central London County Court (His Honour Judge Preville QC ) before Otton LJ & Robert Walker LJ. 17<sup>th</sup> June 1999.

**LORD JUSTICE OTTON:** I will ask Lord Justice Walker to give the first judgment.

**JUDGMENT : LORD JUSTICE ROBERT WALKER:**

1. This is an application for permission to appeal by Mr Kulwant Singh Sandhu, who is not represented otherwise than by his wife. She has made submissions on his behalf. Mr Sandhu seeks permission to appeal from an order of His Honour Judge Preville QC made at the Central London County Court on 28 January 1999. That order gave judgment in favour of the first and second plaintiffs for the sum of £32,000 odd principal and £17,600 interest, making a total of almost £50,000. The order also dismissed Mr Sandhu's counterclaim against the first and second plaintiffs and awarded Mr Sandhu the sum of over £700 for principal and interest in a counterclaim that he had against the third plaintiff.
2. The order of Judge Preville marked the second stage in protracted and expensive litigation arising out of a regrettable family dispute over an unsuccessful venture into the retail trade in a small supermarket at Ickenham, Hillingdon. The first and second plaintiffs, Mr and Mrs Chauhan, lived then at Gravesend. The third plaintiff, Mr Manjit Dhillon, who is an accountant, is a nephew of Mrs Chauhan. Mr Sandhu is the brother-in-law of Mr Dhillon. Those are the family connections.
3. Mr and Mrs Sandhu have at all material times had one other mini-supermarket which is very close by at Ickenham. Judge Preville found (although Mrs Sandhu has urged on us that the evidence did not support this) that part of their intention was to obtain better terms from NISA, the well-known wholesale supplier of small independent retail businesses, by obtaining the advantage of large-scale purchases. Apparently advantageous terms are available for small businesses which have an aggregate turnover of over £1m per year.
4. Whether or not that is right, what is clear and common ground is that early in 1988 Mr Sandhu was negotiating to acquire from Budgens the retail premises at 2 Long Lane, Ickenham. Originally they were to be acquired for £90,000, subject to contract, but Mr Sandhu successfully negotiated down the purchase price from £90,000 to £67,000.
5. Mr and Mrs Chauhan then come into the picture. Their case was that Mr Sandhu persuaded them that they should take on the business at these premises, despite the facts that it meant raising a mortgage on their house at Gravesend, that they had no experience in the retail trade and that they were vegetarians. (One of the features of the premises was a large and successful delicatessen counter.)
6. The dispute concerned the terms of the bargain between Mr and Mrs Chauhan and Mr Sandhu. It has never been suggested that the terms of the agreement were reduced to writing. The agreement was therefore unenforceable under section 40 of the Law of Property Act 1925, but neither side chose to plead that. The County Court was therefore not concerned with the doctrine of part-performance, and no reliance was placed on the absence of writing. However, that made it a more difficult task to establish what the bargain was.
7. It was common ground that the leasehold premises were to be acquired in the name of Mr Sandhu. He was in a position to provide satisfactory references to the landlord, and he and his wife had the benefit of agreements with NISA and later with Londis for supplies. The case of Mr and Mrs Chauhan was that they paid the sum of £67,000 (the whole purchase price for the leasehold premises), and also paid for the stock at valuation. It is not in dispute that they did indeed pay that. Their case was that a further term of the oral agreement was that they would pay the sum of £11,500, representing half the difference between £90,000 and £67,000, if the business proved successful in their hands. Success was to be measured by a turnover of £7,000 a week. It was also part of their case that Mr and Mrs Sandhu were to give them advice and assistance in this new venture, and also (and most pertinently) that Mr Sandhu would take back the business if it proved unsuccessful.
8. Mr Sandhu's case was that the sum of £67,000 was no more than a deposit, and that the sum of £11,500 was to be paid unconditionally when the leasehold interest was eventually assigned to the Chauhans. His case was that there was no agreement to take back the business if it proved unsuccessful.

9. In April 1988 the purchase of the lease by Mr Sandhu from Budgens was completed. The Chauhans started trading. Some help was provided to them by the Sandhus, but the business, far from prospering, proved far less successful than it had been. The delicatessen counter was closed. In September 1988, after unsuccessful attempts to sell the leasehold interest and the business on the open market, Mr and Mrs Chauhan sold their equitable interest in the premises and the business, as the court found, to Mr Dhillon for the sum of £50,000. Later, in July 1989, problems arose about the lease since a rent review was due. Mr Sandhu, as the legal owner of the lease (albeit in the position of a trustee) was in the position of being liable for the rent and having to cope with the rent review.
10. Mrs Sandhu in her submissions to us, which have been made with great courtesy and some skill, has submitted that the agreement alleged by Mr and Mrs Chauhan was improbable, unbusinesslike and one-sided. For my part it seems to me that, on either side's case, the agreement was curious and unbusinesslike. In the absence of writing, the outcome had to depend very much on the credibility of the witnesses.
11. I am, however, persuaded by Mrs Sandhu's submissions that, as between the two competing versions of the alleged agreement, that alleged by Mr and Mrs Chauhan was, if anything, even more improbable than that alleged by Mr and Mrs Sandhu and that it required close examination.
12. The first part of the litigation took place in February 1992, before Judge Barr at Uxbridge County Court. He accepted Mrs Chauhan's evidence. He found her to be an honest witness who was not dislodged under proper cross-examination, and he found the evidence of Mr Sandhu and his wife to be unreliable. He found that the sum of £11,500 was a family arrangement to be paid if the business prospered; but the business did not prosper. Judge Barr did not say in terms that it was not, however, intended to be legally binding. Judge Barr made a declaration that Mr and Mrs Chauhan had been the beneficial owners of the leasehold premises, and that Mr Sandhu held the premises in trust for them. However, he left the position of Mr Dhillon unresolved, and he also adjourned the claim for damages made against Mr Sandhu because of his refusal to take back the leasehold premises and the business. In her submissions to us Mrs Sandhu has urged that it would have been much better if the case had been tried all in one. With that I heartily agree. It seems to me it would have been much more satisfactory as well as being much more economical. However, the fact is that it was tried in two parts and there was no appeal against the order of Judge Barr.
13. The second part of the litigation took place before Judge Previtte and occupied no less than five days. Again there was a conflict of evidence. Judge Previtte heard evidence from Mrs Chauhan (her husband was in India) and from Mr and Mrs Sandhu. Judge Previtte also preferred the evidence of Mrs Chauhan to that of Mr and Mrs Sandhu. He found that there had been a collateral contract under which Mr Sandhu would take back beneficial ownership of the leasehold premises and would take over the stock in trade, goodwill and other assets of the business if it did not prosper. He found that there had been a breach of that collateral contract, and he established the loss by subtracting from the sum of about £82,100 (the total sum which the Chauhans had paid in April 1988) the sum of £50,000, which had paid to them by Mr Dhillon in September 1988.
14. There are to my mind many unsatisfactory features about the litigation, apart from the fact that it was heard in two parts when it would have been better if a single judge had heard all the evidence and reached conclusions on all the points. When I read the skeleton argument it seemed to me that this application for permission to appeal amounted no more than an attempt to re-litigate points which have already been exhaustively examined in the two hearings before Judge Barr and Judge Previtte. In the draft notice of appeal it is said that the judge placed excessive reliance on the plaintiff's evidence and took insufficient account of the defendants' evidence. However, the fact is that the judge had to decide which evidence he preferred in a case in which, lamentably, there had been no written agreement, resulting in all the family unhappiness which had followed.
15. However, having heard Mrs Sandhu's oral submissions, I have, with some hesitation, come to the conclusion that the agreement alleged by Mr and Mrs Chauhan, and found by Judge Barr and Judge Previtte to have been established, is an agreement in such unusual and unbusinesslike terms that it would require a particularly high standard of proof for the court to be satisfied that that was indeed a

binding legal agreement entered into between the parties. Not without some hesitation, I have come to the conclusion that it would be right to grant permission to appeal on that limited point.

16. However, as my Lord, if he agrees with me, will indicate in more detail in a moment, this is deplorably protracted and expensive litigation about what is really a family dispute, and it is very much to be hoped that some form of alternative dispute resolution might lead to a result which brings the litigation to an end.

**LORD JUSTICE OTTON:**

17. I agree. Mrs Sandhu has persuaded me that the effect of the agreement as found by the judge is so one-sided as to be inherently implausible. This being so, I have a feeling of unease as to whether the evidence justified the judge's conclusion on this aspect. It does seem that Mr and Mrs Sandhu have suffered a devastating outcome from a family business venture which went sour. I, too, would allow the application and grant permission to pursue this single ground of appeal only. It seems to me that this may have been a case where the parties were not playing on a level playing field (to use Lord Woolf's graphic phrase). The plaintiffs were represented by experienced counsel and the defendants were in person. In spite of Mrs Sandhu's obvious skill, she could not have been a match for the other side, particularly when it is borne in mind that the evidence lasted from Monday 18 January until Friday the 22nd, and that judgment was given on 25 January. In the course of the hearing, Mrs Sandhu was taken ill and taken off to hospital. She therefore missed part of the evidence.
18. This may still be a case where the differences between the parties could -- and I emphasise should -- be resolved through the Court of Appeal mediation services. The court will alert those who run it to the existence of this case.
19. In the meantime, the judgment will be sent to Mr and Mrs Sandhu probably within 14 days or so. Immediately they receive it they should come back to this building and go to the Citizens Advice Bureau service with the judgment for advice, particularly as to the suggestion regarding mediation, and with the possibility that the case can be considered by the pro bono scheme which operates alongside the Citizens Advice Bureau.
20. I hope you have understood all that, Mrs Sandhu, and I am sure you will explain that to your husband. You have been given a very limited basis for an appeal, and I should make it clear that no other ground will be advanced in front of the Court of Appeal without their leave. Do you follow? You are highly intelligent and articulate, if I may say so, and you stand shoulder to shoulder in many respects with many professional advocates. However, this case is too big for you and you really must take advantage of the small window of opportunity we have afforded you. You must not entertain any hope or expectation.
21. The transcript of the judgment is to be supplied to Mr and Mrs Sandhu at public expense.