

complaint

L, a limited company, complains that Clydesdale Bank Plc didn't release security over its properties when it settled the debt owed. L says Clydesdale didn't apply the sales proceeds to the secured loan. It then sold the debt to a third party. L also complains that Clydesdale didn't close L's business account when it asked it to. L is represented by its director, who I will call Mr L.

background

L had a business account, a development facility and a term loan from Clydesdale. It gave security by way of a charge over eight properties and a personal guarantee. L was unable to repay the development facility when it became due. A refinancing fell through. L received offers for the properties. Mr L says Clydesdale agreed to remove the charge over all of L's properties if it paid £755,000 as final settlement of the debt. Mr L says L made the payment in early 2014 but Clydesdale refused to release the charges on two properties retained by L.

Mr L says Clydesdale didn't provide statements showing how the sales proceeds were used or showing an outstanding balance. In August 2015 L received a letter from a third party saying it had bought the debt from Clydesdale. This debt was the outstanding balance of the term loan. Mr L says the term loan should have been repaid from the sales proceeds.

Mr L says Clydesdale didn't respond to his request to close L's business account or his complaint about this. He says Clydesdale caused difficulties in releasing the personal guarantee.

The adjudicator didn't recommend that the complaint should be upheld, saying:

- An email in September 2013 said all properties would be sold. The email chain from late September 2013 onwards always referred to all properties being sold.
- Mr L sent a letter in March 2014 which referred to the sale of six properties. This suggests he was aware of the terms of the settlement. If Mr L thought the terms of the settlement had changed, he could have asked for clarification.
- Clydesdale had security over the properties and it was reasonable to use them to recover the debt.
- Clydesdale was entitled to transfer the debt to a third party. We can't consider any complaints about the third party here.

L didn't agree. In summary, Mr L said Clydesdale hadn't provided statements for all of the accounts. Mr L says Clydesdale didn't specify all of the properties had to be sold, and he didn't agree that emails and letters in 2013 and 2014 said that all properties had to be sold. Mr L said he took Clydesdale's email (in September 2013) summarising the settlement offer at face value.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other

words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

L raised complaints with Clydesdale at different times and Clydesdale gave them separate reference numbers. As the complaints are related I will deal with them together here.

Mr L says L met the terms of a settlement agreement offered by Clydesdale. He refers to an email in September 2013 in which Clydesdale says it will accept £755,000 in full and final settlement of the debt and release the security over L's properties. While Mr L says he took this email at face value, I don't think it's reasonable to say that previous discussions between the parties weren't relevant.

I think when Clydesdale sent the September 2013 email it expected L to sell all of the properties. It asked L's adviser to confirm this and said this was the basis on which it agreed to proceed. Emails sent by L's advisers in September say the buyer *"is prepared to buyout all the remaining properties"*, the buyer's solicitors *"confirm all the properties are involved"* and *"the portfolio is being totally sold"*.

When Clydesdale found out that two of the properties wouldn't be sold as expected, it asked for an explanation. It didn't release the charges on these properties, write off the balance or cancel the personal guarantee. I don't think this was unreasonable in the circumstances.

I think Mr L knew that the amount raised when properties were sold was less than the amount owed by L. While Mr L says he didn't receive statements, correspondence between solicitors acting for Clydesdale and Mr L referred to an outstanding balance and a significant shortfall. I think it's likely Mr L was aware there was an outstanding debt.

L provided the charges on the properties as security for the development facility and term loan. I don't think it's reasonable to say Clydesdale should only have applied the proceeds to the term loan or that this would somehow mean L's whole debt would have been repaid.

I think it's reasonable for Clydesdale to try to recover the debt owed to it, including through the sale of secured properties. I don't think it's unreasonable for Clydesdale to apply interest to the debt while it remains outstanding. I think Clydesdale was entitled under the terms and conditions of L's account to transfer the debt to a third party.

I think Clydesdale's response to L's complaints, including about why it hadn't closed its business account, was reasonable. I don't think it's reasonable in the circumstances to require Clydesdale to provide copies of its correspondence with its own solicitors to Mr L.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 15 March 2017.

Ruth Stevenson
ombudsman