

complaint

Mr J complains that Clydesdale Bank Plc (trading as Yorkshire Bank) failed to honour its agreement to transfer a charge on a property to him on repayment of a debt.

background

Mr J and his business partner gave personal guarantees to Yorkshire Bank for the debts of their companies, which I shall call "Company K" and "Company L". Security for Company L's debts was also provided by charges over Mr J's and his partner's properties.

Mr J's partner was made bankrupt in 2008. The bank obtained judgments against Mr J for debts in respect of Company K and Company L, and an interim charging order on another property.

Mr J took steps to pay down the debts, including selling one of his properties and seeking to be subrogated to the bank's charge on his partner's property. There were discussions between the bank's solicitors, Mr J and his solicitors about how the proceeds of the property sale would be applied. Mr J said that the bank's solicitors agreed, by telephone, that the proceeds would be used solely to pay down the debt from Company L in order to pave the way for the subrogation. Later that day the bank's solicitors emailed Mr B's solicitors to set out the terms under which it would allow the property sale to go ahead.

The property was sold and the bank used the proceeds to reduce the debts from both companies. Mr J was unhappy with this, because it meant the remaining balance on Company L's debt – which needed to be cleared before the subrogation – was higher than he had expected.

Later in 2008 a final settlement figure for the debts was agreed and Mr J sold another property. The bank agreed to transfer the charge on his partner's property to Mr J, and it sent the appropriate Land Registry form to his solicitors to enable them to effect this. But before the process was completed Mr J was made bankrupt.

Mr J said the bank's failure to transfer the charge meant that he was unable to settle another creditor's claim, which led to the bankruptcy proceedings.

Our adjudicator did not recommend that the complaint should be upheld. Briefly, she said:

- Mr J was entitled to be subrogated to the bank's charge over the partner's property once Mr J had repaid all the debt on Company L.
- In her view, the bank and its solicitors co-operated with Mr J's solicitors' requests for information and documents for the transfer. But by the time Mr J completed repayment of the debt it seems it was not possible for Mr J's solicitors to make arrangements for the transfer in time to stop his other creditors from pursuing bankruptcy proceedings.
- The bank denied there was any agreement to apply the proceeds of the first property sale solely to the Company L debt. Whatever was said in conversations, the bank's solicitors' email stated that the bank would use the sale proceeds to reduce the indebtedness in respect of both judgments. On the basis of this clear statement of the bank's position, the adjudicator did not feel able to make a finding that funds were to be used only to reduce the Company L debt.

Mr J disagreed with the adjudicator's findings. He said, in summary:

- He failed to see that ‘co-operation’ was the primary principle here when case law had established that the bank has a duty of care and a fiduciary duty to its customer.
- The supporting security which the bank took originally was twice the value of the advance.
- The bank has clearly failed to carry out its obligations to ensure that Mr J was subrogated to the charge over the property. The adjudicator’s conclusion means that despite Mr J fulfilling his obligations to the bank in ensuring it was repaid in full, the bank’s counter-obligations to him have been rendered null and void for reasons that have not been explained.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

First I should deal with Mr J’s point about the value of the security on the original advance. I do not consider this relevant to the matters in his complaint because the bank was seeking repayment of the debt, not recovery of the total value of all the equity in the security. The bank was entitled to retain the security until the debt was repaid in full.

There are two main issues in this complaint – first, whether the bank broke an agreement to apply the proceeds of the first property sale solely to the Company L debt, and secondly, whether the bank failed to take sufficient actions to see through the subrogation process after the debt was settled.

As for the allocation of the proceeds of the property sale, I agree with the adjudicator that the bank’s solicitors’ email clearly set out the terms under which the bank would permit the sale to go ahead. The email said that the bank would accept the balance of funds from the sale “in reduction of the outstanding indebtedness due to them in respect of the two judgments”. I therefore do not consider that the bank agreed to apply the proceeds solely to the Company L debt, so I do not find that it broke such an agreement.

Later, when the debt was repaid, it was Mr J’s responsibility, not the bank’s, to take the necessary action in relation to his claim for subrogation. The bank’s solicitors responded correctly to Mr J’s solicitors’ request for the appropriate forms and I can see no delay on the part of the bank. Unfortunately the bankruptcy proceedings overtook the subrogation process, but that was not the bank’s fault. So I do not find that the bank failed in its obligations to Mr J regarding the subrogation process.

my final decision

My final decision is that I do not uphold this complaint. I realise that this will be a disappointment to Mr J and I appreciate the strength of his feelings about this matter, but I do not find that Yorkshire Bank has acted unfairly or unreasonably.

Colin Brown
ombudsman