

## IN THE COURT OF APPEAL (CIVIL DIVISION)

***Southern Rock Mortgage Company Ltd v Alistair***

Peter Crook applied to Southern Rock Mortgage Company Ltd for a loan of £450,000. His address stated in the application was Bangers Yard, which was also that of his business, Crooks Motors and he declared his annual income to be £150,000. The loan was to be secured by a charge on Crooked Cottage, a property he owned jointly with Jennifer Crook, and he instructed Alistair, a solicitor, to handle the legal work. Following a valuer's report, the application was approved by Southern Rock, who sent a formal Offer letter to the Bangers Yard address, conditional that Jennifer Crook should be a Party to the loan agreement and the charge on Crooked Cottage.

Southern Rock instructed Alistair by letter, noting he was acting for Mr and Mrs Crook and also to report on the fitness of the Title of Crooked Cottage as security for the loan. The letter included that he should "*report any information which may indicate a material change in the borrowers' financial circumstances*". Peter Crook also confirmed instructions for himself and Mrs Crook on Crooks Motors notepaper and enclosed copies of their driving licences as proof of ID, both of which cited Bangers Yard as their address. They later attended together at Alistair's office, where Alistair checked the originals of their licences and took them through the transaction documents, which he watched them sign. Afterwards Mr Crook asked Alistair if he could advise him on a prospective car dealership agreement with a new manufacturer, as the current franchise had terminated, with consequent loss of income.

Alistair investigated title and noticed from the valuer's report that Crooked Cottage may be affected by a planning impediment, but didn't investigate any further. He reported to Southern Rock that Crooked Cottage had good and marketable title with vacant possession. Southern Rock advanced the funds to Alistair who deducted his fees and sent the balance to Peter Crook at Bangers Yard, and sent the Charge off for registration. HMLR returned the application as there was a notice of pending action by one Jennifer Crook, who claimed to be Peter Crook's mother, the co-owner of Crooked Cottage and its sole occupant, with an interest which overrides Southern Rock's Charge. Alistair checked his file, to find that the name on the driving licence for the woman who had attended his office was Jenifer Crook.

There is no trace of Peter or Jenifer Crook other than a postcard from the Cayman Islands to Mrs Crook senior, and Southern Rock received no repayments on the loan.

Southern Rock brought a claim against Alistair. At first instance, Wobbly J found the following facts:

1. Peter Crook was the co owner of the Crooked Cottage with his mother, Jennifer Crook; and she had been the sole occupant for 10 years.
2. Jenifer Crook was Peter Crook's long term partner.
3. It was not possible for Southern Rock to take possession of Crooked Cottage.
4. The Southern Rock staff were in habit of ignoring solicitors' reports except where they concerned the legal title, and rarely paid attention to comments about borrowers' circumstances.
5. The planning issue ignored by Alistair concerned an extension, and as such was damaging to the value and saleability of Crooked Cottage.
6. Although Alistair did breach his duty of care to Southern Rock for failing to notice the odd spelling of Jenifer Crook's name on the driving licence and for ignoring the planning issue, these breaches did not in fact cause Southern Rock to make the loan advance, and even if they had, Southern Rock's damages would have been substantially reduced for contributory negligence.

Wobbly J found in favour of Southern Rock Mortgage Company on the following grounds:

1. Alistair was strictly liable for breach of the warranty of authority implied into Alistair's contract of engagement by Southern Rock (that he had the authority to act on behalf of Peter and Jennifer Crook).
2. Alistair was strictly liable for breach of an express term of his engagement contract for failing to tell Southern Rock about Mr Crook's altered financial circumstances.

Alistair now appeals to the Court of Appeal on the following grounds:

1. Alistair was as much a victim of the younger Crooks' deception as Southern Rock, and strictly enforcing the implied warranty liability was contrary to natural justice (*SEB Trygg Liv AB v Manches* [2006] 1 WLR 2276 and *Midland Bank v Cox McQueen* [1999] Lloyds PN 223).
2. The written instruction to report changes in the borrowers' financial circumstances was not an express term of Alistair's engagement and the causation and contributory negligence defences, upheld in respect of the other duty of care breaches, should be available.