

Redemption Survives Default: Commercial Court Restricts Lenders' Enforcement of Pledged Shares

by Paul Durban and Joseph Lewin

Overview

In *Rajiv Shukla v St James Bank & Trust Company Ltd & Anor* [2026] EWHC 851 (Comm), the Commercial Court held that contractual provisions purporting to prevent a borrower from repaying a non-recourse secured loan and from recovering its pledged security were void under English law. The Court also held that the lenders' failure to cooperate with repayment (including by refusing to provide a redemption figure and payment instructions) constituted a breach of an implied contractual duty, and gave rise to a claim in damages.

The doctrine of the equity of redemption provides that a borrower has an inherent right to repay a secured loan and to recover its pledged security. That right cannot be excluded by contract; any provision which purports to do so is characterised as a "*clog*" or "*fetter*" and is void and unenforceable.

The decision is of considerable significance for the securities-backed lending market where non-recourse lending arrangements are widely used and for lenders operating in participated or syndicated structures.

Background

In October 2023, Mr. Rajiv Shukla (the "**Claimant**") entered into a non-recourse lending arrangement with St James Bank & Trust Company Ltd ("**SJB**") (the "**Agreement**"). The loan was secured against certain listed shares. Although the Agreement created a personal debt obligation on the Claimant, SJB's recourse was limited to the pledged shares. SJB also transferred a 100% participation in the loan to Omega & Corinth Group Ltd ("**Omega**").

Under the Agreement, an Event of Default occurred where the five-day average trading volume of the shares fell more than 20% below the contractual threshold. This occurred between 16 November 2023 and 30 January 2024, although neither party was aware at the time.

In June and July 2024, the Claimant sought to repay the loan and to redeem the pledged shares (or alternatively to substitute the pledged shares for another collateral). SJB, which by this point had become aware of the Events of Default, asserted that they had caused the Agreement to terminate automatically. It maintained that it was therefore entitled to deal with the pledged shares as absolute owner and refused to provide a redemption figure or facilitate repayment.

The Claimant sought declarations requiring SJB and Omega (the "**Defendants**") to redeliver the pledged shares on repayment of the sums due under the Agreement and sought damages for loss suffered as a result of the Defendants' failure to redeliver the shares in accordance with the Agreement.

In relation to whether the pledged shares should be returned, the Defendants argued

Related People

- Paul Durban
- Joseph Lewin

Related Capabilities

- Commercial Litigation
- Lending Transactions

that:

1. The non-recourse structure of the loan meant that the transaction was, in substance, a sale with a repurchase option, not a secured loan, with the result that the equity of redemption did not arise.
2. Alternatively, even if the Agreement was properly characterised as a loan, the equity of redemption had been excluded by an express contractual waiver, which the Court should respect as a bargain between sophisticated commercial parties.

As to the claim for damages, the Defendants argued that:

1. There was no separate claim available for a breach of contract where the lender refuses to cooperate in redeeming the security, the Claimant's only remedy being a redemption action.
2. Alternatively, there was no implied duty on the Defendants to cooperate with the Claimant to enable him to repay the loan and redeem the shares, any implied terms having been excluded by way of an entire agreement clause.
3. Even if there was an implied duty to cooperate, the Defendants were not in breach because the Claimant did not make a valid tender for repayment of the sum required to redeem the pledged shares.

Judgment

1. Was the Agreement a loan or a sale?

The Court held that the Agreement was properly characterised as a secured loan.

Applying ordinary principles of contractual interpretation and confining itself to the written terms of the Agreement, the Court focused on the Agreement's express wording, including references to a "loan", interest payments, custody arrangements, an express obligation to repay on the maturity date or upon an Event of Default, and an express obligation to return the shares upon repayment.

The Court rejected the Defendants' argument that the non-recourse structure transformed the transaction into a sale with a repurchase option, confirming that non-recourse lending remains a recognised form of secured loan under English law. The fact that enforcement is limited to collateral does not negate the existence of a debt obligation.

2. Could the Defendants exclude the equity of redemption?

Once characterised as a secured loan, the equity of redemption arose as a matter of law.

Although the borrower's right to redeem may be regulated (for example, by a maturity date), provisions which purport to exclude the equity of redemption are void as "*clogs*". This includes: (1) provisions that expose the secured assets to dealings that could generate third-party rights capable of defeating redemption in practice; (2) provisions that restrict the borrower to damages only in relation to the pledged shares, thereby obstructing the ability to recover the secured property; and (3) provisions that purport,

whether directly or indirectly, to waive the right of redemption altogether.

The Court acknowledged academic and judicial criticisms of the doctrine forbidding “clogs” on the equity of redemption, particularly in the context of bargains entered by parties of equal bargaining power. However, the Court confirmed that the doctrine remains binding law and must be applied, notwithstanding such criticisms about its suitability in sophisticated commercial financing. The Defendants reserved the right to argue that English law should be different on appeal.

3. Did the Defendants have to cooperate with repayment?

The Court held that the Defendants had an implied duty to cooperate with repayment, including by providing a redemption statement, account details, and releasing the security upon full repayment.

In doing so, the Court held that although a redemption action is the usual remedy where a lender refuses repayment, it was not the only remedy. In a commercial loan secured over assets (such as publicly listed shares in this context, where refusal to accept repayment may cause significant loss) it would be inappropriate to limit the borrower to a redemption action, and a claim for damages for breach of contract may also arise.

The Court rejected the Defendants’ argument that the entire agreement clause excluded the implied duty to cooperate with repayment. In the absence of express wording excluding implied terms, an entire agreement clause will not ordinarily prevent the implication of terms necessary for the performance of the contract.

Further, a technically compliant tender was not a prerequisite to the Defendants being in breach of that implied duty. Once repayment was due, the duty to cooperate arose immediately. The Court held that it would be incongruous to allow a lender to withhold the information a borrower needs to make a proper tender and then rely on the absence of one as a defence.

Outcome

The Court granted summary judgment and ordered an interim payment provisionally assessed at US\$5 million. It further directed the Defendants to disclose any profits derived from their possession of the shares from 1 October 2023.

A significant feature of the judgment is that the Court held both SJB and Omega liable. The participation agreement did not operate as a novation and did not release SJB from its obligations to the Claimant.

Key Points to Note

The judgment will be of interest to lenders, borrowers, and other parties involved in securities-backed lending. It highlights several practical points:

1. **Failure to facilitate repayment can itself be a breach:** Courts are prepared to imply

duties requiring lenders to cooperate in redemption, including providing redemption figures, payment details, and releasing security. Entire agreement clauses will not usually exclude the implication of such duties where they are necessary for performance. Refusing to provide information necessary for repayment may amount to an independent breach of contract, even without a formal tender.

2. **The equity of redemption cannot be excluded:** Once a transaction is characterised as a secured loan, the equity of redemption arises. Provisions inconsistent with it will be void regardless of the clarity of the drafting or the sophistication of the parties.
3. **Non-recourse lending remains secured lending:** The fact that a lender's enforcement rights are limited to the collateral does not transform a loan into a sale. Lenders relying on non-recourse structures to argue that no equity of redemption arises are unlikely to succeed.
4. **Substance prevails over form:** Courts will characterise transactions based on their substance, rather than by their label or form. Arrangements framed as sales with repurchase rights may nonetheless be characterised as secured lending where, on proper construction, they operate as such.
5. **Account of profits may be available:** Where a lender wrongfully retains or benefits from pledged assets, the Court may order an account of profits, in addition to compensatory damages.
6. **Participating lenders remain potentially liable:** Selling a participation in a loan does not automatically release the original lender from its obligations to the borrower. Parties structuring loan participations should consider whether a formal novation (where the documentation permits it) is needed to achieve a clean transfer of liability.