



21 May 2014

PRESS SUMMARY

Clyde & Co LLP and another (Respondents) v Bates van Winkelhof (Appellant) [2014] UKSC 32

On appeal from [2012] EWCA Civ 1207

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Carnwath

BACKGROUND TO THE APPEAL

The appellant is an English qualified solicitor. In February 2010, she became a member of Clyde & Co Limited Liability Partnership (“LLP”). She signed a Deed of Adherence to the LLP’s Members’ Agreement. The other parties to the Deed were the LLP and each of the Members individually.

In November 2010, the appellant reported to the LLP’s money laundering reporting officers that the managing partner of the Tanzanian law firm, with whom the LLP were doing business, had admitted paying bribes to secure work and to secure the outcome of cases. She claims that these were “protected disclosures” within the meaning of section 43A of the 1996 Employment Rights Act (“the 1996 Act”). She also claims that she was subject to a number of detriments as a result, including suspending her and ultimately expelling her from the LLP in January 2011. These claims are denied by the LLP and have not yet been tried.

In February 2011, the appellant brought claims in the Employment Tribunal against the LLP and one of its Senior Equity Members under the whistle-blowing provisions of the 1996 Act. The respondents objected to her whistle-blowing claim on the ground that she was not a “worker” within the meaning of section 230(3) of the 1996 Act and, as such, does not benefit from the protection given to “whistle-blowers”. There are two definitions of worker for the purpose of that Act. Limb (a), not relevant to this case, covers an individual who has entered into, works under, or has worked under “a contract of employment” and Limb (b) of section 230(3) covers an individual who has entered into or works under or worked under “*any other contract...whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer...*”.

The main question in this appeal is whether a member of a LLP can be a “worker” within the meaning of section 230(3)(b) of the Employment Rights Act 1996?

The Employment Tribunal found that she was not a “worker”. The Employment Appeal Tribunal held that she was a “worker”. The LLP’s appeal to the Court of Appeal was successful, but on a completely different ground from those argued in the Tribunals. The Court of Appeal, cited section 4(4) of the Limited Liability Partnership Act 2000 (“the 2000 Act”), which states that “*a member of a limited liability partnership shall not be regarded...as employed by the [LLP] unless, if he and the other members were partners in a partnership, he would be regarded for that purpose as employed by the partnership*”. The Court of Appeal held that the phrase “employed by” included limb (b) contracts and, thus, the appellant was not a “worker”.

JUDGMENT

The Supreme Court unanimously allows the appeal and holds that the appellant is a “worker” within the meaning of the 1996 Act. As such, she is entitled to claim the protection of its whistle-blowing provisions. Lady Hale gives the lead judgment.

REASONS FOR THE JUDGMENT

- The Court finds that there is no need to give such a strained construction to section 4(4). It is saying that, whatever the position would be if the LLP members were partners in a traditional partnership, then that position is the same in an LLP. The Court holds that that is how section 4(4) is to be construed [21].
- The phrase “employed by” in section 4(4) covers a person employed under a contract of service [22]. The Court holds, however, that it does not also cover those who “undertake to do or perform personally any work or services for another party to the contract...”. Section 4(4) of the 2000 Act does not mean that members of an LLP can only be “workers” within the meaning of section 230(3) of the 1996 Act if they would also have been “workers” had the members of the LLP been partners in a traditional partnership [23 - 28].
- Next the Court considers the analysis of the Court of Appeal that “underlying the statutory definition of worker is the notion that one party has to be in a subordinate relationship to the other”. The Court of Appeal suggested that a member of a LLP would not by virtue of that status alone constitute either an employee or a worker. If by this, the Court of Appeal meant that those members who undertake personally to work for the LLP cannot be workers, then this Court does not agree. While subordination may sometimes be an aid to distinguishing workers from other self-employed people, it is not a freestanding and universal characteristic of being a worker [30 - 40].
- As the appellant has protection under the 1996 Act as interpreted in a conventional way, the Court does not find it necessary to decide whether her convention rights would require and permit it to interpret the Act compatibly [41 - 45].
- In a concurring judgment, Lord Clarke agrees with Lady Hale that by the terms of the appellant’s contract with the respondent LLP, she undertook to perform personally certain work or services for it and her status was not by virtue of the contract that of a client or customer [47]. Lord Clarke adds that, in his opinion, the effect of the relevant provisions of the 1996 Act and the 2000 Act, read together, is that a person who is a limb (b) worker within section 230(3) is a person “regarded for any purpose as employed” by the LLP within the 2000 Act [49 - 54].
- In a concurring judgment, Lord Carnwath emphasises that, in his view, the conclusion in this case turns on the special characteristics of a LLP, which is something of a hybrid as between a conventional 1890 Act partnership and a limited company. It does not necessarily have any direct relevance to the resolution of equivalent issues in relation to other forms of partnership, under English or Scottish law [55 - 59]. The main judgment leaves open the question of what the position would be in a traditional partnership.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.uk/decided-cases/index.html