



HIGH COURT OF AUSTRALIA

16 March 2022

STUBBINGS v JAMS 2 PTY LTD & ORS
[2022] HCA 6

Today, the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of Victoria. The appeal concerned whether the enforcement of the respondents' rights against the appellant, in the context of asset-based lending, was unconscionable.

The respondents were in the business of asset-based lending. Their system of lending operated on the basis that potential borrowers, such as the appellant, would meet with an intermediary working with a law firm. The law firm provided a service to clients, including the respondents, to facilitate the making of secured loans by those clients. It acted as agent for the respondents and, because of the intermediary, never dealt directly with the appellant.

The appellant was unemployed and had no regular income. He owned two properties, both of which were mortgaged. In 2015, the appellant sought to purchase another property and he met on a number of occasions with the intermediary. In accordance with the system of lending, the appellant acted as guarantor for a loan made to a company by the respondents, of which he was the sole director and shareholder, with the three properties as security for his guarantee. As part of the transactions, the law firm prepared a certificate of "Independent Financial Advice" and a certificate of "Independent Legal Advice" to be signed by an accountant and lawyer, respectively, whom the law firm referred the appellant to. The property was purchased in late 2015.

When the company defaulted on the third month's interest payments, the respondents commenced proceedings against the appellant, seeking to enforce the guarantee and their rights as mortgagees of the properties. The Court of Appeal overruled the primary judge, concluding that there was nothing inherently unconscionable about asset-based lending, and that the respondents' agent had neither actual nor constructive knowledge of the appellant's desperate personal and financial circumstances and was entitled to rely on the certificates of independent advice.

The High Court held that the respondents had acted unconscionably contrary to equitable principle. It was not in dispute that the appellant suffered from a special disadvantage, because of his poor financial literacy, inability to understand the nature and risks of the transactions, and bleak financial circumstances. The respondents' agent had sufficient appreciation of the appellant's vulnerability and the likelihood that loss would be suffered. A finding of actual knowledge was not essential to the appellant's case for relief. The dangerous nature of the loan, obvious to the agent but not the appellant, was sufficient to establish that the agent had exploited the appellant's vulnerability contrary to good conscience. It was open to the primary judge to infer that the certificates were mere "window dressing", so that they could not negate the agent's actual appreciation of the dangerous nature of the loans and the appellant's vulnerability. It was therefore unconscionable for the respondents to insist upon their rights under the mortgages.

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- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*