



5 November 2014

PRESS SUMMARY

AIB Group (UK) plc (Appellant) v Mark Redler & Co Solicitors (Respondent) [2014] UKSC 58
On appeal from [2013] EWCA Civ 45

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Wilson, Lord Reed, Lord Toulson

BACKGROUND TO THE APPEALS

In 2006, AIB Group (UK) plc (the “*Bank*”) agreed to lend Mr and Mrs Sondhi £3.3m to be secured by a first legal charge over their home, valued at £4.25m. This was on the condition that the existing first legal charge in favour of Barclays Bank plc (“*Barclays*”) (borrowings on Barclays’ accounts amounting to £1.5m) was to be redeemed on or before completion of the Bank’s mortgage advance. Mark Redler & Co Solicitors (the “*Solicitors*”), also acting for Mr and Mrs Sondhi, were instructed on this basis and retained to act on the Bank’s behalf.

Having requested the Bank to forward the funds because completion was imminent, the Solicitors: (i) remitted to Barclays an amount they thought was the total necessary to redeem the Barclays mortgage; and (ii) remitted the balance of the £3.3m less expenses to Mr and Mrs Sondhi. In fact, the Solicitors mistakenly remitted to Barclays an amount which was approximately £300,000 less than was necessary to redeem the Barclays mortgage. As a result, the Bank did not obtain a fully enforceable first charge over the property. When the Bank found out about this, there were negotiations between the Bank and Barclays. As a consequence, the Bank executed a deed of postponement acknowledging the primacy of Barclays’ charge and Barclays consented to the registration of the Bank’s charge as a second charge.

Subsequently, Mr and Mrs Sondhi defaulted and their property was repossessed and sold by Barclays in February 2011 for £1.2m. The Bank received £867,697, approximately £300,000 less than it should have done if the Solicitors had remitted the correct amount to Barclays.

The Bank brought proceedings against the Solicitors claiming, amongst other things, breach of trust. In terms of relief, the Bank argued that it was entitled to recover the full amount of its loan less the £867,697 recovered (approximately £2.5m). HHJ Cooke, at first instance, found that although the Solicitors had acted in breach of trust, the Bank could only recover the amount the Solicitors in fact paid to Mr and Mrs Sondhi but which should have been paid to Barclays (approximately £300,000). The Court of Appeal agreed with HHJ Cooke’s decision on the relief to which the Bank was entitled. In doing so, it applied what it understood to be the reasoning of *Target Holdings Ltd v Redfern* [1996] AC 412 (“*Target Holdings*”) in relation to equitable principles of compensation.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Toulson finds that the Bank is only entitled to the amount by which it suffered loss (approx. £300,000). Lord Reed writes a separate judgment coming to the same conclusion and with reasons which are substantially the same. Lord Neuberger, Lady Hale and Lord Wilson agree with both Lord Toulson and Lord Reed.

REASONS FOR THE JUDGMENT

Having considered the House of Lords judgment in *Target Holdings* [21]-[36], Lord Toulson finds that it would be a backward step to depart from, or re-interpret, Lord Browne-Wilkinson's fundamental analysis of the principles of equitable compensation in that case [63]. A monetary award which reflects neither loss caused nor profit gained by the wrongdoer, such as the one argued for by the Bank, would be penal [64]. Moreover, to argue that the Bank has suffered a "loss" of £2.5m in this case is to adopt an artificial and unrealistic view of the facts [65]. Rather, one must look at the rationale of the monetary remedy for breach of trust; given that the beneficiary of a trust is entitled to have it properly administered, he is entitled to recover losses suffered by reason of the breach of duty [66]. Here, that loss was approximately £300,000 of the Bank's loan which it failed to obtain security over.

In *Target Holdings*, Lord Browne-Wilkinson stated that, "[u]ntil the underlying commercial transaction has been completed, the solicitors can be required to restore the client account monies wrongly paid away" [72]. In the current case, although the Solicitors did not "complete" the transaction in the manner in which it was required, the transaction was, nevertheless, "completed" as a commercial matter when the loan monies were released to Mr and Mrs Sondhi [74]. The fact that the Solicitors may also have breached the Solicitors' Accounts Rules does not affect the analysis [75].

Lord Reed undertakes a broader analysis of the relationship between equitable compensation and common law damages. He considers, first, the Canadian Supreme Court case of *Canson Enterprises Ltd v Boughton & Co* (1991) 85 DLR (4th) 129 ("*Canson Enterprises*"), focusing mainly on the judgment of McLachlin J [80]-[89].

Lord Reed then considers *Target Holdings* [96]-[116]. In that case, Lord Browne-Wilkinson did not intend to say that equitable compensation is to be assessed in the same way as common law damages [115]. He was not departing from the orthodox view that where a breach of trust occurs, an equitable obligation arises to restore the trust fund to the position it would have been in but for the breach and that the measure of compensation should be assessed on that basis [116].

A number of common law jurisdictions have subsequently followed the general approach of McLachlin J in *Canson Enterprises* and Lord Browne-Wilkinson in *Target Holdings* [121]-[133]. This is that where trust property has been misapplied, the doctrine of equitable compensation requires the trustee to restore the trust fund, or to pay the beneficiary where the trust has ended, to the position it would have been in if the trustee had performed his obligation [134].

Despite structural similarities when assessing equitable compensation and common law damages, liability of a trustee for breach of trust is not generally the same as liability in damages for tort or breach of contract [136]. The nature of the obligation breached and the relationship between the parties affect the measure of compensation [137].

In the present case, the Bank's argument is based on three fallacies: (i) it assumes that the Solicitors misapplied the entire £3.3m as opposed to approximately £300,000 (however, the Court of Appeal's decision to the contrary was not challenged before the Supreme Court); (ii) it assumes that the measure of the Solicitors' liability was fixed at the date of the breach of trust; and, (iii) it assumes that liability does not depend on a causal link between breach of trust and loss. (ii) and (iii) were rightly rejected in *Target Holdings* [140]. The Bank should recover its loss, which was approximately £300,000 [141].

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