

Liability for “Pure” Knowing Receipt

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SUMMARY

In *Byers & Ors v. Samba Financial Group* [2021] EWHC 60 (Ch), Fancourt J dismissed a knowing receipt claim and held that the liability of a knowing recipient depends on the recipient’s knowledge that the property he receives is trust property and is to be dealt with in that way. Where there is no allegation of dishonesty, liability for knowing receipt can only arise if the property is trust property at the moment of receipt; there can be no liability where the recipient is entitled from the outset to treat the property as his own. Further, the judge held that a “pure” claim in knowing receipt (i.e., where no dishonest assistance is alleged) under English law will fail if, at the moment of receipt, the beneficiary’s equitable interest is destroyed or overridden under the law governing the transfer of the underlying asset. The full judgment can be found [here](#).

RELEVANT FACTS

The first two claimants were the joint official liquidators of the third claimant, Saad Investments Company Limited (“SICL”), a Cayman Islands-registered company (together, the “Claimants”). The Claimants sought to recover the value of shares in five Saudi Arabian companies (the “Disputed Securities”) which were transferred to the Defendant, Samba Financial Group (“Samba”), a Saudi Arabian bank, in September 2009 (the “September Transfer”). SICL was the beneficiary of a Cayman Islands trust that held the Disputed Securities. In breach of trust, the trustee had transferred the Disputed Securities to Samba to discharge part of a debt that he owed to it. Samba retained the Disputed Securities. The Claimants did not claim them in specie; instead, they claimed equitable compensation from Samba (i) by way of an account of the value of the Disputed Securities on either the date of the September Transfer or the date of judgment together with (ii) income derived from the Disputed Securities since the date of the September Transfer and interest.

Saudi Arabian law governed the September Transfer as the *lex situs* of the Disputed Securities. It was common ground that SICL had an equitable proprietary interest in the Disputed Securities before the transfer but that it would not have been recognised as such by the Saudi Arabian courts. The Claimants argued that it was irrelevant whether under Saudi Arabian law Samba's title extinguished or overrode SICL's proprietary interest. Their case was that Samba had received the Disputed Securities with sufficient knowledge that they had been transferred in breach of trust such that Samba was liable for knowing receipt in either Cayman or English law, whichever law was found to govern the claim. It was unnecessary to decide whether English or Cayman law governed the claim because it is common ground that the applicable legal principles are the same. Alternatively, the Claimants argued that under Saudi Arabian law, the effect of Samba's registration as owner of the shares was not to deprive SICL of the ability to assert an equitable interest against Samba.

THE ISSUES

The judge had to decide three issues:

- whether Saudi Arabian law, as the governing law of the September Transfer, extinguished SICL's rights in the Disputed Securities even if Samba had knowledge of SICL's interest (the "Saudi Arabian Law Issue");
- whether the knowing receipt claim would fail if SICL's interest was so extinguished (the "Knowing Receipt Issue"); and
- the value of the Disputed Securities at the date of the September Transfer and at the date of judgment (the "Valuation Issue").

THE DECISION

The Saudi Arabian Law Issue

The Claimants had to prove that as a matter of Saudi Arabian law they still retained a proprietary interest in the Disputed Securities following the September Transfer, such that—assuming Samba knew of the breach of trust—Samba became liable to deal with the Disputed Securities as a trustee. Fancourt J decided that issue in the defendant's favour on the expert evidence. He concluded that, as a matter of Saudi Arabian law, SICL did not have a continuing proprietary interest in the shares after they had been transferred to Samba. As SICL had no continuing proprietary interest in the shares that

was capable of supporting a claim against Samba in knowing receipt, the claim had to fail.

The Knowing Receipt Issue

The Knowing Receipt Issue fell to be decided as a matter of English law. Fancourt J distinguished between dishonest assistance and knowing receipt. Dishonest assistance is fault-based, whereas liability for knowing receipt depends on the recipient's knowledge that the property received is trust property and is to be dealt with in that way. The Judge summarised the nature of the knowing recipient's liability at paragraph 110 of the judgment:

"The knowing recipient's liability depends on his knowledge that the property he receives is trust property and is to be dealt with in that way. His receipt is not wrongful in the sense that he has acted dishonestly or culpably (unless he has also dishonestly assisted in the breach of trust), but his liability to deal with the property as if he were a trustee arises at the moment of receipt because of his knowledge that the property is trust property. If the transferee then deals with the property otherwise than as a trustee should (whether by failing to restore it to the trust or by dealing with it as his own) he is at fault and will be liable for the consequences. In those circumstances, a personal claim against the transferee can properly be said to be fault-based, but the reason for liability is that the transferee has knowingly dealt with (or retained) property that belongs to the trust inconsistently with his duty. If the property is not trust property, there cannot be liability of that kind." The judge observed, at paragraph 114, that there is scope for a difference of view about the principle that should apply "on a 'pure' knowing receipt claim, in particular whether the beneficiary's ownership immediately prior to receipt together with the recipient's sufficient knowledge of a transfer in breach of trust should establish liability." He held that "as the law stands, authority and the greater weight of judicial observation appears to support the conclusion for which Samba contends, namely that a claim in knowing receipt, where dishonest assistance is not alleged, will fail if, at the moment of receipt, the beneficiary's equitable proprietary interest is destroyed or overridden so that the recipient holds the property as beneficial owner of it."

In reaching his conclusions, the judge gave detailed consideration to the relevant cases at paragraphs 38–74 of the judgment. He applied the principles that Millett J (as he then was) established in *Macmillan Inc v. Bishopsgate Investment Trust plc (No.3)* [1995] 1 WLR 978, where a distinction was drawn between (a) personal claims for equitable compensation that assert an equity based on a proprietary interest, which cannot succeed where the defendant has acquired a title superior to that of the claimant, and those that (b) assert an equity based on a prior relationship or dishonest involvement in a fraud. Fancourt J held that knowing receipt claims fall into the former category. If the recipient is entitled to deal with the property as his own from the outset, then the knowing receipt claim cannot succeed.

Therefore, the judge held that—unless dishonesty is alleged—a claim in knowing receipt would fail if, at the moment of receipt, the beneficiary’s equitable proprietary interest was destroyed or overridden so that the recipient acquired good title in priority to the beneficiary’s interest. The judge held at paragraph 115 that it was true that *“liability as a knowing recipient will then depend in such cases on the law applicable to the transfer of the trust property. Where it is English law, the beneficiary’s proprietary interest will be undisturbed unless the recipient is equity’s darling or the statutory equivalent. Where foreign law applies, the result may be different.”*

The Valuation Issue

The judge’s conclusions on the issues of the Saudi Arabian Law and Knowing Receipt Issues disposed of the claims. The judge nevertheless gave his views on the Valuation Issue and held that when valuing trust property, the court should adopt a valuation method that properly reflected the nature of the property as trust property. The monetary equivalent of the trust property was the money that would be realised by a trustee on a sale that was authorised by its powers of management, not in breach of trust. Had it been necessary to determine valuation in the case at hand, the market value basis of valuation would have been appropriate, with a discount from the quoted market price on the relevant dates to account for the size of the Disputed Securities relative to the shareholdings’ average daily traded volumes.

COMMENT

Had there been dishonesty on the recipient’s part, the Claimants would not have been required to establish the beneficiary’s continuing proprietary interest in the trust property at the moment of receipt by Samba. However, as no dishonesty was alleged, the equity had to be based on a proprietary interest for the purposes of establishing a knowing receipt claim, which was a hurdle that the Claimants could not overcome on the facts of this case.

Fancourt J gave the Claimants permission to appeal on the Knowing Receipt Issue and refused permission on the Saudi Arabian Law and Valuation Issues. Given the judge’s comments about scope for difference of view as to whether a claimant in a “pure” knowing receipt claim (i.e., where dishonesty is not alleged) needs to have a continuing beneficial interest in the property, the Court of Appeal’s decision on this issue is keenly anticipated.

Please do not hesitate to contact us with any questions.

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