

Focus on fraud and asset tracing: United Kingdom Supreme Court clarifies the law of knowing receipt

Insights - 11/01/2023

In our article published on 19 January 2023 we drew attention to the recent decision of the English Court of Appeal in *Byers v Saudi National Bank*, [1] in which it was held that a continuing proprietary interest was required in relevant assets for a knowing receipt claim to succeed. On 20 December 2023, the United Kingdom Supreme Court (UKSC) dismissed Mr Byers's appeal on this issue and confirmed the decision of the Court of Appeal. [2]

Byers has still not been considered in any reported or unreported decision in the Cayman Islands, but as we said in our earlier article, the Cayman Islands courts are likely to follow *Byers* if a similar situation arose in the jurisdiction. [3]

Decision of the United Kingdom Supreme Court

In dismissing the appeal in *Byers* the UKSC clarified a number of principles relating to a claim for knowing receipt. [4]

First, a transfer of property by a trustee in breach of trust to a purchaser acting in good faith and without notice of the breach of trust extinguishes or overrides the equitable interest held in the property by the beneficiary of the trust.

Secondly, if the bona fide purchaser for value without notice later becomes aware that the property was transferred in breach of trust, that does not revive the equitable interest. That interest is also not revived when the original bona fide purchaser for value without notice transfers the property to a further recipient, who, at the time of the transfer, is aware that there has been a breach of trust. [5]

Thirdly, it is well established that a plaintiff cannot make a claim for knowing receipt in either of

the above two situations because their equitable interest in the property has been extinguished or overridden.

Fourthly, the above conclusion cannot be displaced by comparing the claim in knowing receipt to a claim for dishonest assistance, which is conceptually different. A personal claim in knowing receipt comes into play when the transferee, who is not a bona fide purchaser for value without notice, no longer has the property.

Fifthly, the extinction or overriding of an equitable interest in property by the time the recipient received the property prevents a plaintiff from bringing a proprietary claim against the recipient.

A money launderer's charter?

The UKSC dismissed a submission that to require a continuing proprietary interest for a claim in knowing receipt would create a money launderer's charter. Lord Briggs said in paragraph [44] of his judgment that, in contrast to a claim in knowing receipt, a claim for dishonest assistance did not require any continuing equitable interest and that, "[m]ost cases of cross-border fraud will involve dishonesty by all concerned in a common design." Lord Burrows agreed and added in paragraph [173] that he would expect the relevant criminal law (as enforced by international cooperation) to act as a better disincentive to such conduct than the civil law.

Application to directors and other fiduciaries

Byers was a case in which there was a trust, "at the start of the story," but the UKSC confirmed that the same principles would apply where an asset had been transferred in breach of fiduciary duty even though, at the start, the plaintiff had no equitable proprietary interest in the asset under a trust. The most prominent example of this is where a director (or other officer) of a company, in breach of fiduciary duty to the company, has misapplied assets of the company by transferring them to the defendant. In this situation the director (or other fiduciary) should be regarded, at the point of committing the breach of fiduciary duty in relation to the assets, as constructive trustee of the assets.[6]

Conclusion

Whether a claim for dishonest assistance, or the criminal law, would entirely fill the gap left by a plaintiff's inability to bring a claim in knowing receipt where the equitable interest has been extinguished is perhaps debatable. However, the UKSC's clarification of the relevant principles and conformation that they apply equally in cases of breach of duty by directors (and other fiduciaries) is to be welcomed.[7]

[1] [2022] EWCA Civ 43.

[2] [2023] UKSC 51.

[3] It remains the case, therefore, that anyone seeking to pursue a claim for knowing receipt where property is situated in, or has passed through, another jurisdiction should obtain expert advice about the law of the jurisdiction in question to ensure that the claim will not be defeated on the grounds that the property was not subject to a trust when the recipient received it.

[4] See the summary of the judgments of Lord Briggs and Lord Burrows in the judgment of Lord Hodge (with whom Lord Leggatt and Lord Stephens agreed).

[5] There is an exception where the recipient is the trustee who transferred the property in breach of trust in the first place: See Lord Hodge at paragraph [3].

[6] See paragraphs [175] to [188] in the judgment of Lord Burrows.

[7] There was a difference of opinion between Lord Briggs and Lord Burrows as to the juridical basis for a claim in knowing receipt, but the court did not have to resolve it because it did not alter their shared view that a claim in knowing receipt is precluded where the claimant's proprietary equitable interest has been extinguished or overridden by the time the recipient receives the property.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



James Clifford

Consultant

Cayman Islands

E: james.clifford@ogier.com

T: [+1 345 815 1876](tel:+13458151876)

Key Contacts



Jennifer Fox

Partner

Cayman Islands

E: jennifer.fox@ogier.com

T: [+1 345 815 1879](tel:+13458151879)

Related Services

Fraud and Asset Tracing

Dispute Resolution

Legal