

AIB Group (UK) Ltd v Mark Redler & Co Solicitors [2014]

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The long awaited Judgment of the Supreme Court provided clarity on Wednesday, 5 November 2014 on the nature and extent of equitable compensation in breach of trust and fiduciary duty claims, which will be welcomed by professional indemnity insurers.

Background

Mark Redler & Co, the solicitor defendant, was instructed to act on behalf of Mr & Mrs Sondhi and their lender, AIB Bank, in the remortgage of their family home for £3.3m. The family home was subject to two existing charges in favour of Barclays Bank in the approximate sums of £1.2m and £275,000.

The solicitors only redeemed one of the two Barclay charges in error resulting in a failure to redeem the smaller of the two charges. The balance of the remortgage money was paid to the Sondhi family.

The Sondhis defaulted, the property was repossessed and sold by Barclays for £1.2m of which AIB received £867,697 as charge holders registered second in priority.

The question arose as to how much AIB was entitled to recover from the solicitors in the claim for professional negligence brought against it. AIB claimed it was entitled to the full amount of its loan less the amount recovered by it. The solicitors claimed that AIB's loss was limited to the amount by which the bank suffered loss by looking at the position it would have been in if the solicitors had done as they should in redeeming both Barclays' charges. The difference in terms of figures was the difference between approximately £2.5m and £275,000.

The Supreme Court's Decision

The Supreme Court dismissed the appeal and confirmed that lenders in such situations cannot recover losses in scenarios where, even if the Trustee had done what he or she should have done as required under the trust, the lender would still have suffered losses. Equitable compensation ought to be compensation for the loss actually caused by the breach of trust.

On the facts of this case, this meant that AIB's loss was limited to recovering the difference between the value of the security it should have obtained had there been no breach of trust and what it did receive. The total amount of the loss, therefore, was around £275,000 net of interest. Any loss over and above this sum would have been suffered regardless of the breach of trust. The solicitors only caused the loss of £275,000.

Lord Toulson observed that causation had an important role to play in the law of equitable compensation and considered the case of *Target Holdings v Redfern*. The Supreme Court stated that a monetary reward which did not reflect the loss caused, as was argued by AIB in this case, would be penal.

The Supreme Court also discussed:

- Timing and dates for assessing equitable compensation - it was held that a Court should assess the loss at the date of trial with the benefit of hindsight. This is different from assessing common law damages for breach of contract/negligence, where the usual rule is that damages are assessed at the date of breach;
- The distinction between breach of trust claims where the underlying purpose of the commercial transaction is achieved and cases where the client's objectives are wholly frustrated (such as in vendor fraud cases, where no charge is ever obtained by the lender); and
- Common law principles and remedies and equitable doctrines and remedies. In this case, the loss to AIB due to breach of trust was in fact the same as the loss caused by breach of contract and in tort.

Comment

The Supreme Court endorsed Lord Browne-Wilkinson's statement of the law in *Target Holdings*: "Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach." Anything

other than such a result would be against policy and principle.

This case is confirmation by the Court that lenders should not be able to argue successfully that the Court should not reduce loss in equitable compensation cases because of principles of causation, and going forward this will certainly be a decision which will be welcomed no doubt by solicitors facing such claims and their professional indemnity insurers.

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