



Neutral Citation Number: [2024] EWHC 1287 (Ch)

Case No: BL-2023-001512

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 4 June 2024

Before :

MR JUSTICE ZACAROLI

Between :

KENNETH LARSSON

Claimant

- and -

REVOLUT LIMITED

Defendant

Patrick Green KC and Arnold Ayoo (instructed by **Keystone Law**) for the **Claimant**
Anthony Pavlovich (instructed by **Eversheds Sutherland (International) LLP**) for the
Defendant

Hearing date: 25 April 2024

JUDGMENT

Mr Justice Zacaroli:

1. This is an application by the defendant, Revolut Limited (“Revolut”) to strike out the claim by the claimant (“Mr Larsson”) or for summary judgment.
2. Revolut is an electric money institution. Mr Larsson is a customer of Revolut, holding an account ending with the number 437703 (the “7703 Account”).

The facts

3. The essential facts pleaded in Mr Larsson’s claim, which are assumed to be true for the purposes of this application, are as follows.
4. Mr Larsson was the victim of a fraud (known as an authorised push payment fraud) perpetrated by various persons or entities, whose identity is either unknown or unimportant for the purposes of this application (the “Perpetrators”).
5. The Perpetrators induced Mr Larsson to transfer CHF 466,617.73 purportedly as consideration for the purchase shares in an entity called “Starlink”, which did not in fact exist.
6. Mr Larsson was told by the Perpetrators that five separate accounts at Revolut had been set up by them in Mr Larsson’s name (the “Destination Accounts”), and that he should transfer the funds to the Destination Accounts. The invoices which Mr Larsson received identified the Destination Accounts by reference to an IBAN number and BIC/SWIFT reference number, with him as the beneficiary and giving his address as the “Beneficiary Address”. Mr Larsson understood that the funds would then be used to purchase the shares in Starlink.
7. It is difficult to understand how Mr Larsson thought the Destination Accounts could be his, as he played no part in setting them up, or how he thought that a transfer of funds to the Destination Accounts, if they were his, could constitute payment for the shares to the Perpetrators. Nevertheless, for the purpose of this application, I assume that the explanation given by Mr Green KC, who appeared with Mr Ayoo for Mr Larsson, is correct: namely that he was told that this would “provide some sort of safeguard, ensuring that the money remained under his control and/or under his name until the moment he would actually become a shareholder”.
8. Mr Larsson made five transfers (one to each of the five Revolut accounts) on 12, 21, 22 and 25 July 2022 and 2 August 2022. These were all made by international bank transfer (utilising the SWIFT messaging system) from his account at UBS in Switzerland.
9. The five Revolut accounts to which these payments were made (identified below by their IBAN number) were in fact opened in the following names:
 - (1) GB95REVC0099706072667: Philip Edward Rogers;
 - (2) GB82REVC00997015925903: Scott Parry;
 - (3) GB02REV000997028966762: Paul Bremner;

- (4) GB14REVC00997004062378: Andrew Gould; and
- (5) GB35REV000997069613339: David Weatherhead.
10. The SWIFT messages by which these international bank transfers were instigated identified: (1) the ordering customer as Mr Larsson and the ordering institution as UBS; (2) the relevant Revolut account to which payment was to be made by reference to its IBAN number; and (3) the beneficiary of that account as Mr Larsson, giving his home address in Zurich. It is common ground that Revolut would have had access to a SWIFT message containing these details in relation to each transfer.
11. The one SWIFT message that is in evidence is for a payment to the Destination Account with IBAN number GB02REV000997028966762. On the face of this message, there was an inconsistency between the named beneficiary of the account (Mr Larsson) and the name in which the account was in fact held (Paul Bremner).
12. Once in the Destination Accounts the Perpetrators quickly transferred the funds out again, engaging, on a number of occasions, with Revolut via the “Live Chat” function. It is said that the Perpetrators provided pretextual reasons for the urgency of the payments out that were obviously suspicious, particularly when set against other red flags.
13. On 8 August, in response to a sixth invoice from the Perpetrators, Mr Larsson sought to make a payment from his UBS account to another Revolut account, with IBAN number GB98REV000997050015780. On this occasion, however, Revolut rejected the payment instruction. It is not known why Revolut did so. Nor is it known what procedures Revolut had in place, and/or operated, for checking any of the six payments and why, therefore, it was only the sixth payment that was rejected.

Pleaded causes of action

14. The causes of action pleaded against Revolut on the basis of the above core facts are as follows:
- (1) Revolut’s failure to detect and/or to take adequate steps to mitigate and/or prevent the fraud is said to constitute a breach of contract by Revolut and/or of its like duties in tort owed to Mr Larsson;
- (2) Revolut is said to be liable to Mr Larsson in restitution for unjust enrichment in respect of the sums paid to the Destination Accounts; and/or
- (3) Revolut is said to be liable as an accessory to a breach of trust (which was clarified at the hearing to be a claim in dishonest assistance in a breach of trust), because it rendered assistance to the Perpetrators in circumstances where it had sufficient knowledge of facts which constituted a breach of trust, or sufficient doubts that a breach of trust was being committed, but turned a blind eye to it.
15. Revolut applies to strike out (or seeks summary judgment in respect of) each of these causes of action. At the hearing of its application, it was agreed by the parties that they would address only the claims in contract/tort and in dishonest assistance. So far as the claim in unjust enrichment is concerned, a claim on materially similar facts was recently heard before a different court and the parties agreed that it was sensible to

await the outcome in that case. In any event, the application was listed for a day and, as it took nearly the whole day to deal with the other causes of action, there would not have been time properly to explore the issues raised by the unjust enrichment claim.

Test for strike out or summary judgment

16. The court may strike out a statement of case if it appears to the court that it discloses no reasonable grounds for bringing the claim, or there has been a failure to comply with a rule, practice direction or court order: CPR 3.4(2)(a) and (c). (The application notice mistakenly referred to sub-paragraph (b) – striking out on the basis of an abuse of process – rather than sub-paragraph (c) of CPR 3.4(2), but I consider that nothing turns on that.)
17. The court may give summary judgment against a claimant on the whole of a claim or on an issue if it considers that the claimant has no real prospect of succeeding on the claim or issue, and there is no other compelling reason why the case or issue should proceed to trial: CPR 24.3.
18. The principles applicable to an application for summary judgment are well-known, being those formulated by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at §15:

“i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: *Swain v Hillman* [2001] 2 All ER 91;

ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];

iii) In reaching its conclusion the court must not conduct a “mini-trial”: *Swain v Hillman*;

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of

fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.”

19. Mr Green KC contended that the application raises novel issues in a developing area of law, on which there is no direct authority, particularly as to the scope of the duty of care owed by a bank. He submitted that these are issues which should not be determined on a summary basis, but only after full investigation of the facts at trial.
20. Mr Pavlovich, who appeared for Revolut, submitted that this is a case where the court should grasp the nettle and decide the questions of law raised by the application. He relied on the decision of the Privy Council in *JP SPC 4 v Royal Bank of Scotland* [2022] HKPC 18 (“*JP SPC4*”). That case involved strike out/summary judgment in respect of a claim that the duty of care owed by a bank, to refrain from executing a customer’s order if it had reasonable grounds for believing that the order was an attempt to defraud the customer, extended to a third party known to be the beneficial owner of funds in the customer’s account. At §32, Lord Hamblen and Lord Burrows (with whom the other members of the board agreed) said:

“In the present case the relevant facts as to whether in law the Bank owed a duty of care to the Fund can be readily identified, namely, the assumed facts. It follows that the lower courts were correct to “grasp the nettle” and to decide the question of law, as to whether there was the alleged duty of care, one way or the other. This does not involve deciding whether, on the assumed facts, it is arguable that there is a duty of care: but rather deciding whether, on the assumed facts, there is, or is not, a duty of care.”

Breach of contractual or tortious duties

21. Mr Larsson contends that:
- (1) It was an implied term of his contract with Revolut that Revolut would “use reasonable care and skill in and about executing [his] orders”;
 - (2) Revolut was bound to refrain from executing an order if and for so long as Revolut was put on enquiry that the order was an attempt to misappropriate his funds;
 - (3) The standard of care is that of an ordinary prudent banker;
 - (4) As a further incident of that duty of care (or as a freestanding implied term) Revolut owed him an obligation to “have in place internal systems to give effect to accepted banking practice, particularly accepted practice in relation to systems designed to minimise error and fraudulent use of Revolut accounts”. That included duties to have adequate systems in place, to follow them properly, to heed matters drawn to its attention by them, insofar as those matters might reasonably put it on enquiry or require it to make reasonable further checks or investigate a transaction and, if necessary, to put a hold on transactions while it makes investigations;
 - (5) As a further incident of that duty of care (or as a further freestanding implied term) Revolut had an obligation to have systems in place that would identify if a customer opened, or tried to open, an additional primary Revolut account, which they were not lawfully entitled to open, and that Revolut would be entitled and/or bound not to honour orders purportedly made for payments into or out of such account;
 - (6) Further or alternatively, the above duties were owed in tort, given the banker-customer nature of his relationship with Revolut.
22. Revolut is an electric money institution, not a bank, but it accepts for the purposes of this application that it owes materially the same duties as a bank.
23. Insofar as Mr Larsson claims that Revolut owes duties to prevent him opening a second account, that stems from the fact that Revolut’s terms and conditions preclude a customer from opening more than one Revolut personal account (although a customer can open multiple sub-accounts in different currencies).
24. Revolut denies that any of the alleged duties are owed whether in contract or tort.
25. So far as each of the payments to the Destination Accounts is concerned, it is important to recognise the following:
- (1) Revolut was acting as a recipient payment services provider;
 - (2) At no stage was Revolut acting upon any orders or instructions from Mr Larsson - the only instructions he gave were to UBS to make payment to the Destination Accounts;

- (3) As recipient payment services provider, Revolut's customers were the holders of the Destination Accounts, which in each case was someone other than Mr Larsson;
 - (4) In causing payments to be made out of the Destination Accounts Revolut was therefore obliged to act upon the instructions of the account holders, not Mr Larsson;
 - (5) Mr Larsson intended the payments from his UBS account to be made to the Destination Accounts – i.e. this is not a case where he intended the payments to be made to the 7703 Account.
26. Such case law as exists in relation to a bank's duties to its customer relates principally to the duties of a paying bank. In that context, the following principles are clearly established:
- (1) Where a paying bank receives an instruction from its customer, it is obliged to act on it promptly, without concerning itself with the wisdom or risks of its customer's payment decision: *Philipp v Barclays Bank UK plc* [2023] UKSC 25; [2024] AC 346, per Lord Leggatt at §3;
 - (2) The duty identified in *Barclays Bank plc v Quincecare* [1992] 4 All ER 363, namely a duty *not* to execute a payment instruction given by an agent of the customer without making inquiries, if the bank had reasonable grounds for believing that the agent was attempting to defraud the customer, is an application of the general duty of care owed by a bank to interpret, ascertain and act in accordance with its customer's instructions: *Philipp v Barclays Bank* at §97;
 - (3) The so-called *Quincecare* duty does not apply where the customer had unequivocally authorised and instructed the bank to make the payment: *Philipp v Barclays Bank* at §5;
 - (4) Where a customer has unequivocally instructed the bank to make payment, the fact that its intention or desire so to instruct the bank resulted from the deceit of a third party does not invalidate the instruction or give rise to any claim against the bank: *Philipp v Barclays Bank* at §102;
 - (5) The *Quincecare* duty does not extend to third parties: there is therefore no equivalent duty of care owed to a third party who was not a customer of the bank and with whom the bank had no contractual relationship, even where the bank knows of the third party's interest (for example where the bank knows that the funds in its customer's account are beneficially owned by the third party): *JP SPC* 4.
27. One case was cited to me in which the responsibility of a recipient bank was considered: *Abou-Rahmah v Abacha* [2005] EWHC 2662 (QB). In that case, it was contended that a recipient bank owed a duty to the payer, to pay moneys received only to the beneficiary identified in the payer's instructions. Treacy J held that it did not. He noted (at §65) that no English authority was cited to him, and that Paget's Law of Banking suggested that no such duty was owed. In concluding that there was no such duty, he took into account the following factors:

“(i) The claimants were not the defendant’s customers. (ii) No special responsibility had been undertaken by the defendant to the claimants. (iii) Until the moneys were received by the defendant there had been no contact from the claimants - the moneys were simply paid by the claimants to the defendant’s HSBC bank account. (iv) The defendant received the moneys as the agent of its customer to whom it owed duties arising from their contractual relationship. (v) A bank has a huge number of potential payers who can remit moneys without significant control by the bank. (vi) The imposition of a duty of care in relation to such persons (in the absence of special circumstances) would in practice impose very heavy burdens on banks and significantly hamper their efficiency.”

Contractual duty

28. It is common ground that a bank owes a duty to carry out the service contemplated by the contract with its customer with reasonable skill and care. Mr Green KC submitted that the following services were being provided by Revolut to Mr Larsson, and that the implied duty to act with reasonable skill and care applied to these services:

- (1) By reason of the term in its standard conditions that a customer could not open more than one Revolut account, Revolut provided a service of “managing of the number of personal accounts”. Mr Green KC called this the “Single Account Obligation”;
- (2) The Single Account Obligation was owed to Mr Larsson – as he was an existing customer of Revolut – such that Revolut was “acting on behalf of [Mr Larsson] insofar as it had exercised the responsibility to block attempts to open, use or purport to use a second account in his name”.
- (3) Revolut also provided a service of “management of any attempt (whether by [Mr Larsson] or a third party) to transfer sums *to him* at an account *apparently held with Revolut*”. Mr Green KC called this the “Attempted Transfer Obligation”.
- (4) The Attempted Transfer Obligation required Revolut to manage and, so far as possible, facilitate “such transfers which are *prima facie* attempts to credit [Mr Larson] and/or the 7703 Account.” It follows from the fact that Revolut acted for Mr Larsson for the purpose of receiving funds to the 7703 Account that:
 - (a) If Mr Larsson, or anyone else, was attempting to transfer money into the 7703 Account (but with the incorrect details) then that was an attempt to credit an account “over which it had contractual responsibility”, so that Revolut must investigate that attempt (as an incident of its contractual responsibility);
 - (b) If Mr Larsson has – and can only have – one account, then any attempt to transfer funds to a different Revolut personal account must be considered as a possible attempt to credit the 7703 Account;
 - (c) Revolut – although operating an account – is also providing a service for Mr Larsson as its customer and it is axiomatic that any *attempt* to provide

Mr Larsson (its customer) with funds at an apparent personal account should be actively managed. That is so whether the attempt to transfer funds to a Revolut account is by a third party, or by Mr Larsson himself.

29. I disagree that Revolut provided, or was obliged to provide, either of these supposed services (i.e. the Single Account Obligation or the Attempted Transfer Obligation).
30. The only term in the contract relied on in support of the contention that Revolut was obliged to perform such services is the term restricting a customer from opening more than one Revolut personal account.
31. That term cannot, in my view, be construed either as defining any service to be provided by Revolut or as imposing any obligation on it at all.
32. No authority was cited to support the proposition that such a contractual restriction on a customer could give rise to a positive obligation on the bank to police the customer's compliance with that restriction. I do not see any basis on which it could do so.
33. Insofar as Mr Larsson contends that it gives rise to an obligation on Revolut to block an existing customer from opening a second account, it is in any event irrelevant on the pleaded facts of this case: it is not Mr Larsson's case that *he* sought to open any of the Destination Accounts. They were opened by the five individuals named as the account holders.
34. I note that under clause 8 of Revolut's terms and conditions, the service which it provides in relation to the receipt of money on behalf of a customer is: (1) it pays money which it receives for the customer's account into one of its dedicated client money bank accounts (called a "safeguarding account") (or - if approved by its regulator - invests it in low-risk assets case) and (2) issues to its customer the equivalent value of electronic money.
35. Mr Green did not refer to this provision, but I would accept that it is at least arguable that Revolut as recipient payment services provider had a duty to exercise reasonable skill and care when issuing the equivalent value of electronic money to a customer. In particular, where a payment is made to its customer, customer A, it arguably owes a duty to customer A to exercise reasonable skill and care to credit that payment to customer A's account. I do not see how that assists Mr Larsson in this case, however. The payments from his UBS account were made by him, intentionally, *to the Destination Accounts*. Any duty owed by Revolut as recipient bank was owed to the holders of the Destination Accounts.
36. Mr Green suggested that if a third party attempts to transfer funds to "Mr Larsson" but provides the wrong account details, Mr Larsson could expect Revolut to represent his interests insofar as it deals with that third party, e.g. to say: "Mr Larsson does have an account but that is not the correct one". He suggested that this is especially so where the incoming payment is from Mr Larsson himself, because from Revolut's perspective this could well be "an attempt to credit the 7703 Account by the very person with whom it has a contractual relationship."

37. This, however, mischaracterises the position: Mr Larsson was not attempting to credit the 7703 Account. As I have already noted, he was intending to credit the Destination Accounts. The relevant contractual service in play is that which Revolut provided to the holders of the Destination Accounts. I do not think there is any contractual basis (i.e. based on the contract created on the opening of the 7703 Account) for a duty of care owed by Revolut to Mr Larsson in relation to payments made by him from an account with another bank to an account with Revolut which is in fact held by someone else.
38. Since I have rejected the contention that Revolut supplied either of the services contended for, it is unnecessary to deal with Mr Green's argument based on the implied condition in connection with the services, that a bank will not act unlawfully. In any event, while this provides an exception to the rule that a bank must comply with its customer's instructions, I do not think it can be turned on its head to create obligations on the bank of the kind for which Mr Larsson contends.
39. Accordingly, I reject the contention that the alleged contractual duty of care is owed by Revolut to Mr Larsson.

Tortious duty

40. The alternative way in which the claim is formulated is a free-standing duty of care in tort. Although Mr Green accepted that duties in tort are generally likely to be co-extensive with those arising from the contractual relationship, he submitted that it is possible that a duty in tort can arise outside the four corners of the matters raised in the contract.
41. I understood the duty contended for, to be one that is:
- (1) Owed by a recipient bank, Bank A;
 - (2) To a person (P) who causes a payment to be made from its account with another bank, Bank B to an account at Bank A held by Bank A's customer (C).
42. Mr Green accepted that no such duty was, in general, owed by Bank A to third parties, and specifically third party payers such as P. He acknowledged that the contention that such a duty existed is precluded by *JP SPC 4*.
43. He contended, however, that in *JP SPC 4* the Privy Council were considering only whether the tortious duty of care (as found in *Quincecare*) was owed to anyone other than the bank's customer, i.e. "true" third parties. He submitted such a duty is owed by Bank A to P, where P also happens to be a customer of Bank A. In the particulars of claim, the duty in tort is said to arise "by reason of [Revolut's] duty to take reasonable care in the circumstances and given the banker-client nature of the relationship."
44. Mr Green submitted that, although no such duty has so far been recognised, this is a developing area of law and that I should find that the prospect of such a duty being found to exist at trial is sufficiently arguable to allow the claim to proceed to trial.
45. The content of the free-standing duty of care in tort is alleged to mirror the contractual duties pleaded in the particulars of claim (summarised above). In essence, the claimed

duty appears to be one to have adequate systems in place, and to operate those systems, to minimise user error and fraudulent use of Revolut accounts.

46. In *Benyatov v Credit Suisse Securities (Europe) Ltd* [2023] EWCA Civ 140, Underhill LJ, with whom Bean and Singh LJJ agreed, said (at §55) that:

“The correct course for a court which has to decide whether a duty of care should be recognised in a novel situation is to take the incremental approach endorsed in *Robinson*. That will in principle involve consideration of the three “*Caparo* factors” to the extent that they are in issue. It may be a useful analytical tool, particularly in considering the factors of proximity and/or “fairness, justice and reasonableness”, to ask whether the defendant can be regarded as having assumed a responsibility to take care to protect the claimant against a loss of the kind claimed; but its usefulness will depend on the issues in the particular case.”

47. The *Caparo* factors are foreseeability, proximity and fairness, justice and reasonableness.

48. Applying that approach here, Mr Green submitted that:

(1) The damage which occurred was foreseeable because it was clear that, if Revolut did not take reasonable care in dealing with incoming transfers directed to Mr Larsson by himself, Mr Larsson could be defrauded. That was demonstrated by the fact of the sixth payment, which Revolut did block.

(2) There was a sufficiently proximate relationship because Mr Larsson was a customer of Revolut.

(3) It is fair, just and reasonable in all the circumstances to impose a limited duty of care, analogous to that suggested by Lord Leggatt in *Phillip* at §54 (i.e, the duty to exercise reasonable skill and care in and about executing a customer’s orders).

(4) Revolut could be regarded as having assumed a responsibility to take care to protect Mr Larsson against loss of the kind claimed, given that it blocked the sixth payment.

49. In my judgment, there is no such duty of care. Given the acceptance that no duty of care is owed generally to a third party payer, I can see no principled reason for imposing a duty simply because P happens also to be a customer of the Bank. Much of the conclusions and reasoning in *SP JPC 4* applies in this case, as I explain below.

50. The possibility of damage being suffered, if Revolut did not take reasonable care in dealing with incoming payments, is no more foreseeable because the payor happens to be a customer of the bank than if it was a third party.

51. Any proximity between the bank and its customer derives from and relates to the contract created by the account with the customer. I have already determined that there is no duty of care arising out of that contractual relationship. I do not think that such proximity is relevant when considering whether a free-standing duty in tort arises where the payment in question (from the customer’s account at another bank to

the account of a different customer with the bank) is unconnected with the banker-customer relationship.

52. In considering whether it would be fair, just and reasonable in all the circumstances to impose the duty of care contended for, it is important to recognise that the burden placed on banks would be materially the same as if such a duty was owed to all third party payers – i.e. the duty which Mr Green accepts does not exist.
53. International payments are made and received by reference to account numbers, not account names. Pursuant to regulation 90(1) of the Payment Services Regulations 2017 (SI 2017/752):

“Where a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier.”

The “unique identifier” means (by regulation 2(1)) the combination of letters, numbers or symbols specified to the payment service user by the payment service provider.

54. It is common ground that there is no system currently in place in the UK in relation to international payments, whereby a recipient bank will check these details and confirm to the paying bank that they match. That contrasts with the ‘confirmation of payee’ name-checking service recently introduced by some UK banks in relation to domestic payments (and recent European legislation (Regulation (EU) 2024/886) which imposes such a requirement on recipient banks in respect of international transfers).
55. Whether or not any and, if so, what duty arises by reason of recently introduced initiatives in the UK in relation to domestic payments, it is not for the courts to develop the law by imposing such a duty on recipient banks in the context of international payments where no such initiatives exist.
56. In *Phillip v Barclays Bank* Lord Leggatt, at §19-21, noted the recent concerns, consultations and regulatory initiatives on the subject of authorised push payment fraud, including a new mandatory reimbursement scheme, introduced by the Financial Services and Markets Act 2023, including the provision for a 50-50 allocation of losses between the sending and receiving providers. At §22-24 he explained why it is not for the courts to make rules of this kind:

“22 It should go without saying that it is not the role of courts to make rules of this kind. There are several reasons for this. A fundamental reason is that the nature of adjudication requires courts to identify legal rights and duties which it is fair to treat as applicable to the parties to the lawsuit when the events giving rise to the dispute between them occurred. That is a very different exercise, which requires different forms of reasoning, from formulating policy or fashioning rules designed to regulate future dealings between different classes of persons.

23 Legislators and regulators have the institutional competence to take an overall view of a perceived social problem and to consider the appropriate policy response as a whole and from a variety of angles. They also have the competence and capacities: (i) to bring together a variety of perspectives from individuals with experience and expertise in relevant fields of knowledge; (ii) to acquire and evaluate information about the relative costs and benefits of different possible measures, both for those directly affected and for society at large; (iii) to consult a range of different bodies (and the public more generally); (iv) to design a comprehensive regime containing qualifications, exceptions and safeguards; and (v) in designing such a regime to set temporal, financial or other limits on its scope or otherwise to draw distinctions which may not have a principled basis but are considered to promote the common good by achieving an appropriate trade-off or compromise between different policy goals.

24 Courts are in a very different constitutional and institutional position. In deciding the case before them, they are bound to apply the laws made by Parliament and to respect precedents created by past judicial decisions. While courts, particularly at appellate level, have a responsibility to seek to adapt and develop the common law to keep it up to date which may sometimes require overruling previous decisions, they proceed by reasoning from established principles and are under a duty to promote consistency and predictability in the law. Nor do courts have the institutional capacities of legislators and regulators that I have described above.”

57. While it is open to the court to find new duties of care on the basis of the “incremental approach” (see, for example, *JP SPC 4* at §69-80), to impose a duty on a bank to take reasonable care to protect third parties who make payments *to* an account of one of its customers from that customer’s fraud would be to cross the line between the proper role of the courts, and the role of the legislator and regulator.
58. The duty for which Mr Larsson contends would require a recipient bank to review all SWIFT messages relating to incoming international payments, to see if the name of the payor matched the name of any of its – potentially millions – of customers, and then to check whether the named beneficiary of the payment matched the destination account number. The burden, and its consequences in terms of increased transaction costs and decreased speed, would be as great as if the bank had the duty which Mr Green accepts does not exist (i.e. one owed to all third party payers). Such an increased burden is, as in *JP SPC 4* (see §80 and §95), a powerful reason against any incremental development of the law in this case. I also consider that this would not be an incremental development of existing case law, but a radical extension of the duty with significant consequences for banking law (c.f. *SP JPC 4* at §95).
59. Finally, a further reason given in *JP SPC 4* for rejecting the duty alleged in that case was that it would undermine the conclusion in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378, that banks and other parties who are alleged to be assisting a breach of fiduciary duty are liable only if they are dishonest and not if they are merely negligent. That reasoning equally applies here. Revolut’s conduct in this case is alleged in the alternative to constitute dishonest assistance in a breach of trust. On the

assumption that the circumstances did amount to a breach of trust, if one were to treat Revolut as liable to Mr Larsson for the tort of negligence “this would be tantamount to holding it liable for having negligently assisted a breach of fiduciary duty” (see *JP SPC 4* at §88).

60. Mr Green suggested that Revolut can be regarded as having assumed a responsibility to take care to protect Mr Larsson against a loss of the kind claimed, because it rejected the sixth payment. I disagree. In considering whether there was any assumption of responsibility, it is generally important “to focus on exchanges which crossed the line between the defendants and the claimant” (*JP SPC 4* at §63). Mr Larsson does not point to anything which crossed the line. He does not rely on any communication from Revolut to him – other than the fact that the sixth payment was blocked – to suggest that Revolut assumed a responsibility towards him. The fact that Revolut acted (without any contractual duty to do so) in a manner which protected Mr Larsson from the fraud of the Perpetrators in relation to the last transaction, particularly where it is not suggested that Revolut had ever told its customers, including Mr Larsson, that it would do so, cannot in my view lead to the conclusion that Revolut had assumed the responsibility to do so.
61. Mr Green submitted that I ought not to reach that conclusion before the full facts are known. He suggested that the existence of a duty could depend on whether Revolut in fact had in place systems which ought to have picked up the discrepancy between the account name and number on the Swift messages, or perhaps on whether it did in fact pick up the discrepancy. He submitted that I must assume that one possibility at trial is that the reason which caused Revolut to block the sixth payment is because it did spot the discrepancy, and that it either saw the same discrepancy or ought to have done so in relation to the first five payments.
62. I accept that I should proceed on the basis that this might be established at trial. I do not accept, however, that it is relevant – in order to determine whether Revolut owed the alleged duty – to know whether those facts are in fact established. Such facts would be relevant, if such a duty existed, to determine whether it had been breached. They are not relevant to the question whether a duty is owed in the first place.

Dishonest Assistance

63. It is common ground that a claim in dishonest assistance in a breach of trust requires, in the first place, that there be a trust. Mr Larsson contends that where a transfer of property is procured by fraud, the transferred funds will constitute trust property.
64. Mr Green relied in support on *Westdeutsche Landesbank Girozentrale v London Borough of Islington* [1996] AC 668, in which Lord Browne-Wilkinson said, at p.716:

“Although it is difficult to find clear authority for the proposition, when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient: the property is recoverable and traceable in equity. Thus, an infant who has obtained property by fraud is bound in equity to restore it: *Stocks v. Wilson* [1913] 2 K.B. 235, 244; *R. Leslie Ltd. v. Sheill* [1914] 3 K.B. 607. Moneys stolen from a bank account can be traced in equity: *Bankers D Trust Co. v. Shapiro* [1980] 1

W.L.R. 1274, 1282C-E: see also *McCormick v. Grogan* (1869) L.R. 4 H.L. 82, 97.”

65. (Mr Green also relied on *Fetch A.I. v Persons Unknown* [2021] EWHC 2254, at §15, where HHJ Pelling QC referred to the “relatively simple proposition” that “when property is obtained by fraud, equity imposes a constructive trust on the fraudulent recipient, with the result that the fraudulent recipient holds the legal title on constructive trust for the loser.” This has little weight as a precedent, however, as it was said in the context of a without notice application for a proprietary injunction, permission to serve out of the jurisdiction and disclosure against third parties at which, necessarily, the respondents were not represented.)

66. Revolut relies, for its part, on the decision of HHJ Bird in *Tecnimont Arabia Limited v National Westminster Bank plc* [2022] EWHC 1172 (Comm). This was another case of authorised push payment fraud, the claimant having been induced by fraud to transfer funds to an account held at the defendant bank by fraudsters. One of the causes of action was unconscionable receipt of trust property. At §100, HHJ Bird dismissed that claim, saying:

“The claimant paid away monies acting under a mistake induced by the deceit of a third party. In my judgment, the defendant is right to submit that the property was not trust property at the time it was received.”

67. The claim was also dismissed because the bank received the funds for its customer, and not for its own account. No authority was cited to HHJ Bird, and no argument presented to him in closing, in support of the argument in unconscionable receipt. It too, therefore, is of little value as a precedent.

68. Mr Pavlovich referred to *Civil Fraud, Law, Practice & Procedure* by Grant and Mumford (Sweet & Maxwell), 1st edition, at 9-056 to 9-063. It is there pointed out that the dictum of Lord Browne-Wilkinson in *Westdeutsche* has divided opinion. In particular, it is difficult to reconcile with another line of authority, exemplified by *Shalson v Russo* [2003] EWHC 1637 (Ch). In that case, Rimer J held that where a person was fraudulently induced to lend money to another the money advanced did not become subject to an immediately binding constructive trust in the lender’s favour but became the borrower’s property both legally and beneficially, but that when the contract was rescinded for fraudulent misrepresentation, the beneficial title in the money revested in the lender, who then enjoyed a sufficient beneficial title to trace the money into other assets.

69. Nevertheless, as Grant and Mumford point out at §9-061, Lord Browne-Wilkinson’s dictum has been followed in a number of other cases, and this is an area on which there has been considerable academic debate. In *Re D&D Wines International Ltd* [2016] UKSC 47, Lord Sumption referred to this “controversial question” and said:

“For present purposes it is enough to point out that where money is paid with the intention of transferring the entire beneficial interest to the payee, the least that must be shown in order to establish a constructive trust is (i) that that intention was vitiated, for example because the money was paid as a result of a fundamental mistake or pursuant to the contract having been rescinded, or (ii) that irrespective

of the intentions of the payer, in the eyes of equity the money has come into the wrong hands, as where it represents the fruits of a fraud, theft or breach of trust or fiduciary duty against a third party. One or other of these is a necessary condition, although it may not be a sufficient one.”

70. As that passage recognised, there is also a line of authority that recognises a constructive trust over property paid as a result of a mistake, where the recipient is aware of the mistake. Mr Larsson’s claim is put, alternatively, on the basis that he made the payments to the Destination Accounts under the mistaken belief that they were his accounts.
71. While the court should in some cases be prepared to bite the bullet and decide difficult points of law, I am not prepared to find on this application that there is no sufficiently arguable case that a constructive trust arose on the funds transferred to the Destination Accounts. The issue was dealt with in a single paragraph in Revolut’s skeleton and was not developed much further in oral argument. Revolut referred me to no authorities other than *Shalson v Russo* and the passages referred to above from Grant and Mumford. Much fuller argument would be required in order to resolve this question, particularly where the answer could have wider implications beyond the facts of this case.
72. Mr Pavlovich also submitted that the claim in dishonest assistance was insufficiently pleaded. The claim involves the following three elements (see, for example, Grant and Mumford at §13-003): (1) a breach of trust; (2) procurement of or assistance in that breach of trust by the defendant; (3) dishonesty on the part of the defendant.
73. The pleading avers, so far as the claim in dishonest assistance is concerned, the following:
 - (1) The funds transferred pursuant to the first five payments “are properly considered trust monies”;
 - (2) Revolut is liable as an accessory to “the breach of trust”;
 - (3) By reason of the “Red Flags ... Revolut had sufficiently strong doubts and/or grounds for doubting the normative validity of the transactions in question and nonetheless ignored or turned a blind eye to the same in a manner which, on these facts, was objectively dishonest”;
 - (4) Revolut had “actual knowledge of facts which amounted to a breach of trust or which suggested that a breach of trust has been or was being or was to be committed”;
 - (5) Revolut’s knowledge of the Red Flags above constituted knowledge of facts which, although they fell short of constituting a breach of trust, nonetheless put it on enquiry and/or led it to believe that other facts existed or may have existed which did amount to an actual breach of trust or would or were likely to involve a future breach of trust, and Revolut rendered assistance to the Perpetrators in those circumstances, which were circumstances in which an honest bank, having

knowledge of the Red Flags as aforesaid, would not have done so, either at all or without making further enquiry.”

74. Mr Pavlovich contended that this is an insufficient pleading. It does not identify how the alleged trust arose. It does not identify what the breach of trust was, or how Revolut is said to have procured or assisted in the breach of trust. Moreover, it does not provide sufficient details of Revolut’s dishonesty.
75. I agree that the pleading does not in terms identify how the trust is said to have arisen, or what constituted the breach or breaches of trust, or how Revolut assisted in the breach or breaches. In other parts of the pleading, there are allegations that the payments were procured by fraud, or made by mistake, and that Revolut facilitated payments away from the Destination Accounts. It should not be necessary, however, for a defendant to search through particulars of claim to identify those matters which might be sufficient to establish a trust, its breach, or acts of assistance by the defendants. The constituent elements of the cause of action in dishonest assistance should be expressly pleaded. Mr Green urged me, in the event that I considered that the pleading was defective, to give Mr Larsson the chance to rectify the defect. That is what I propose to do, by giving Mr Larsson the opportunity to apply to amend the particulars of claim before an order is drawn up giving effect to this judgment.
76. As for dishonesty, this is expressly pleaded, including on the basis that Revolut turned a blind eye to its doubts as to the normative validity of the transactions and this amounted to “objective dishonesty”. Although incompetence, even gross incompetence is not enough, wilful blindness is sufficient to satisfy the test for dishonesty: *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd* [2017] EWCA 257 (Ch), per Rose J at §146-147.
77. Mr Pavlovich rightly submitted that it is necessary to identify an individual within Revolut who was dishonest (*Singularis* (above) at § 147). I do not accept, however, his submission that the claim should be struck out for the failure to do so at this stage. The information as to which employee – if any – within Revolut had the requisite knowledge of any alleged breach of trust is something that could not be known to Mr Larsson in advance of disclosure. While it is true that *Norwich Pharmacal* disclosure has been provided by Revolut, that would typically relate to information identifying wrongdoing by others, as opposed to disclosure relevant to which, if any, of Revolut’s employees had the requisite dishonest knowledge.
78. I emphasise that I say nothing at all about the merits of the claim, recognising only that the burden on Mr Larsson of proving the requisite dishonesty on the part of one or other employee(s) of Revolut is a high one, and that establishing matters that would give rise to a cause of action in negligence will not meet that burden.

Conclusion

79. For the above reasons, I will strike out the claims in contract and tortious duty of care, but decline, at this stage, to strike out the claim in dishonest assistance in breach of trust, giving Mr Larsson the chance to remedy the pleading defects I have identified above.