# Press Summary

**20 December 2023**

## Byers and others (Appellant) v Saudi National Bank (Respondent)

## [2023] UKSC 51

*On appeal from [2022] EWCA Civ 43*

**Justices:** Lord Hodge (Deputy President), Lord Briggs, Lord Leggatt, Lord Burrows, Lord Stephens

### Background to the Appeal

Between 2002 and 2008, Mr Al-Sanea acquired shares in five Saudi Arabian companies (the "**Shares**"). He held the Shares on trust for (i.e., for the benefit of) Saad Investments Company Limited ("**SICL**"). In September 2009, Mr Al-Sanea transferred the Shares to Samba Financial Group ("**Samba**") in breach of the terms of the trust in favour of SICL (the "**Transfer**").

There is a distinction in English law between: (i) legal title to property (being, in this case, the title held in the Shares by Mr Al-Sanea as trustee); and (ii) equitable interest in property (being, in this case, the interest in trust property held by SICL as beneficiary of the trust).

However, the governing law of the Transfer was Saudi Arabian law, which does not recognise this distinction. As a result, the effect of the Transfer under Saudi Arabian law was to extinguish SICL's equitable interest in the Shares. Samba therefore became the sole owner of the Shares following the Transfer.

In September 2009, SICL went into liquidation. In May 2017, SICL and its joint liquidators made a claim for knowing receipt against Samba, alleging that it received trust property in the knowledge that the property was transferred in breach of trust. In April 2021, Samba's assets and liabilities were transferred to Saudi National Bank ("**SNB**").

The High Court of England and Wales dismissed SICL's claim. It concluded that, as SICL's equitable interest in the property had been extinguished, it was not possible to make a claim for knowing receipt. SICL appealed to the Court of Appeal of England and Wales, which dismissed SICL's appeal. SICL then appealed to the Supreme Court of the United Kingdom.

## Judgment

The Supreme Court unanimously dismisses SICL's appeal. It holds that a claim for knowing receipt cannot be made if a claimant's equitable interest in the property in question has been extinguished by the time of the defendant's knowing receipt of the property.

The Supreme Court delivers three judgments: (i) Lord Hodge, (ii) Lord Briggs, and (iii) Lord Burrows. In his judgment, Lord Hodge (with whom Lord Leggatt and Lord Stephens agree) provides a summary of the matters agreed by both Lord Briggs and Lord Burrows as determining the outcome of the appeal. The detailed reasons are to be found in Lord Briggs' and Lord Burrows' judgments.

## Reasons for the Judgment

Although the case law points toward the Supreme Court's conclusion, it does not provide a definitive answer in this case. The Supreme Court therefore concludes that it must decide the matter by applying equitable principles **[1], [116], [143]**. The applicable principles are the following.

First, the 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 (referred to as a "**bona fide purchaser for value without notice**") extinguishes or overrides the equitable interest held in that property by the beneficiary of the trust **[2], [18], [20], [156]**.

Second, 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 also is 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 **[3], [23] – [24], [167] – [171]**.

Third, it is well established that a claimant cannot make a claim for knowing receipt in either of these two situations because their equitable interest in the property has been extinguished or overridden **[4], [23] – [24], [172], [201]**.

Fourth, a claim for dishonest assistance (i.e., a claim against a non-trustee who induces or assists the breach of trust by a trustee) is not comparable to a claim for knowing receipt. Dishonest assistance is ancillary to the breach of trust by a trustee and is an accessory wrong (i.e., one is assisting the primary wrong which is the breach of trust), whereas knowing receipt is closely linked to a claim which attaches to the trust property (referred to as a "**proprietary claim**"). A personal claim for knowing receipt against a recipient who is not a bona fide purchaser for value without notice may be engaged where a proprietary claim would fail because the recipient no longer has the property. This may be because the recipient has transferred, dissipated, or destroyed the property after learning of the claimant's equitable interest in it.**[5], [41] – [42], [46], [145] – [149]**.

Fifth, the extinction or overriding of an equitable interest in property by the time the recipient receives the property prevents a claimant from bringing a proprietary claim against the recipient. Given the close link between a claim for knowing receipt and a proprietary claim, it would be logically inconsistent to allow a claim for knowing receipt to survive where a proprietary claim does not, in a case where (as here) the recipient has not dissipated or disposed of the property. **[6], [44], [158] – [159], [172], [201]**.

Applying these principles to the facts of this case, the Supreme Court concludes that, as Saudi Arabian law extinguished SICL's equitable interest in the Shares at the time of their transfer to Samba, SICL cannot make a claim for knowing receipt against SNB in respect of the Shares **[1], [6], [97], [201]**.

Lord Briggs and Lord Burrows set out their reasoning in separate judgments. The primary difference in their reasoning is that Lord Briggs analyses a claim in knowing receipt as ancillary to a proprietary claim, while Lord Burrows categorises a claim in knowing receipt as an equitable proprietary wrong **[8], [42], [46], [151], [157] – [159]**. The judgment of Lord Briggs is principally based on a review of the basic equitable principles that are engaged by a claim in knowing receipt, and an analysis of how such principles regulate the question of which interests prevail where two or more come into apparent conflict **[17] – [18], [38] – [40], [43]**. Lord Burrows' judgment proceeds from the essential nature of a claim in knowing receipt as an equitable wrong rooted in the claimant's continuing proprietary interest and examines how the logical consequences of its application in a range of factual circumstances confirm this as the correct legal view **[151], [167] – [171], [188], [196]**.

*References in square brackets are to paragraphs in the judgment.*