

Dispute Resolution
Dispute Resolution Case Law Update
Rosling King LLP



Background

Group Seven Ltd (“**Group Seven**”) was an investment company that fell victim to a €100m fraud by Larn Ltd (“**Larn**”) who had promised huge returns. Larn laundered a portion of the money through the solicitor client of account of Notable Services LLP, (“**Notable**”) by instructing a series of payments to offshore companies. Mr Nobre, the owner of Larn, was found guilty of fraud and sentenced to 14 years. The police managed to recover €88m and these proceedings were to recover the remainder from accessories to his crime.

Mr Nobre used two members of Notable, Mr Landman, an accountant, and Mr Meduri, a solicitor to facilitate the offshore payments. He also procured Mr Louanjili, an employee of a Swiss bank (the “**Bank**”) to make false statements about Mr Nobre’s good standing to Notable.

Group Seven commenced proceedings against Mr Landman and Mr Meduri for dishonest assistance and against Mr Louanjili for deceit, conspiracy with Mr Noble to injure Group Seven by unlawful means and for dishonestly assisting a breach of trust. Proceedings were also brought against Notable and the Bank by virtue of vicarious liability.

In the first instance, the Judge found, inter alia:

1. Mr Landman and Mr Meduri did not dishonestly assist a breach of trust. However, Mr Landman was liable for a breach of the SRA account rules for the unconscionable receipt of £170,000 of trust monies, which was one of the payments from Notable to the offshore accounts; and
2. Mr Louanjili’s statements to Notable dishonestly assisted Larn’s breach of trust and there was no break in the chain of causation to Group Seven as a result of Notable breaching the SRA account rules. Mr Louanjili was also held to have conspired with Larn to injure Group Seven by unlawful means. As a result, the Bank was held vicariously liable.

Various parties appealed. Mr Louanjili’s appeal against the break in causation and, consequently, the Bank’s vicarious liability was dismissed. However, the focus of the extensive judgment centred around whether the Judge had misstated the test for dishonest assistance when not finding Mr Landman and Notable liable.

The Law on Dishonest Assistance

In order to find someone liable for dishonest assistance of a breach of trust, it is necessary to establish that:

- a) There was a trust in existence at the material time;
- b) The trustee committed a breach of that trust;
- c) The defendant assisted the trustee to commit that breach of trust; and
- d) The defendant’s assistance was dishonest.

Only the final point was disputed between the parties. The modern law test for dishonesty was set out in *Brunei Airlines v Tan* [1995] 2 AC. The Court stated that dishonesty is to be equated with conscious impropriety. The starting point is to look at the defendant's actual knowledge at the time as to the relevant facts. Once the defendant's knowledge has been ascertained, people are not free to set their own standards of what constitutes honesty, it is an objective test. However, the Court will consider subjective elements such as the defendant's experience and intelligence. The Court went on to consider how turning a blind eye to certain facts can equate to actual knowledge.

In *Manifest Shipping v Uni-Polaris* [2003] 1 AC the Court established a two-stage test for 'blind eye knowledge':

1. There must first be the existence of a subjective suspicion that certain facts may exist. This suspicion must be firmly grounded and not speculation. However, suspicions that fall short of this are not wholly irrelevant to the questions of whether an alleged accessory has acted dishonestly. The state of a person's mind is a pure question of fact and suspicions of differing degrees of probability may form part of the overall picture to which the objective standard of dishonesty is to be applied; and
2. There must be a conscious decision to refrain from taking any step to confirm their existence. Negligently failing to investigate will not suffice.

Court of Appeal's Judgment

The Court of Appeal found that Mr Landman must have had 'blind eye knowledge' that the €100m was not beneficially owned by Larn, if indeed he did not actually know. Following the first instance Judge's unchallenged finding of Mr Landman's unconscionable receipt of the £170,000, which was dependant on the receipt of the €100m, the Court of Appeal thought it was impossible on the facts to insulate his dishonest receipt from his dishonest assistance in facilitating the payments out of the account. Mr Landman was ultimately condemned by his own actions. Had he acted honestly, he would not have negotiated the bribe with Mr Nobre nor would he have taken steps to conceal it from his colleagues.

Notable had also submitted that the Court of Appeal must also answer whether, as a separate question to the standard test, there was a minimum content of knowledge which an alleged accessory must possess in order to be held liable for dishonest assistance. However, since the Court of Appeal had found Mr Landman liable for 'blind eye knowledge' there was no requirement for them to answer this question.

Comment

The approach of the Court to readily find the presence of 'blind eye knowledge' of certain facts, where the defendant had already demonstrated unconscionable behaviour, may serve to narrow the scope of defences available to accessories for dishonest assistance. It also serves as a warning for those that deal with trusts, to properly investigate any suspicions they harbour.



Dispute Resolution Case Law Update: Don't turn a blind eye: Group Seven Ltd and another v Notable Services LLP and another and other cases [2019] EWCA Civ 614
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For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.