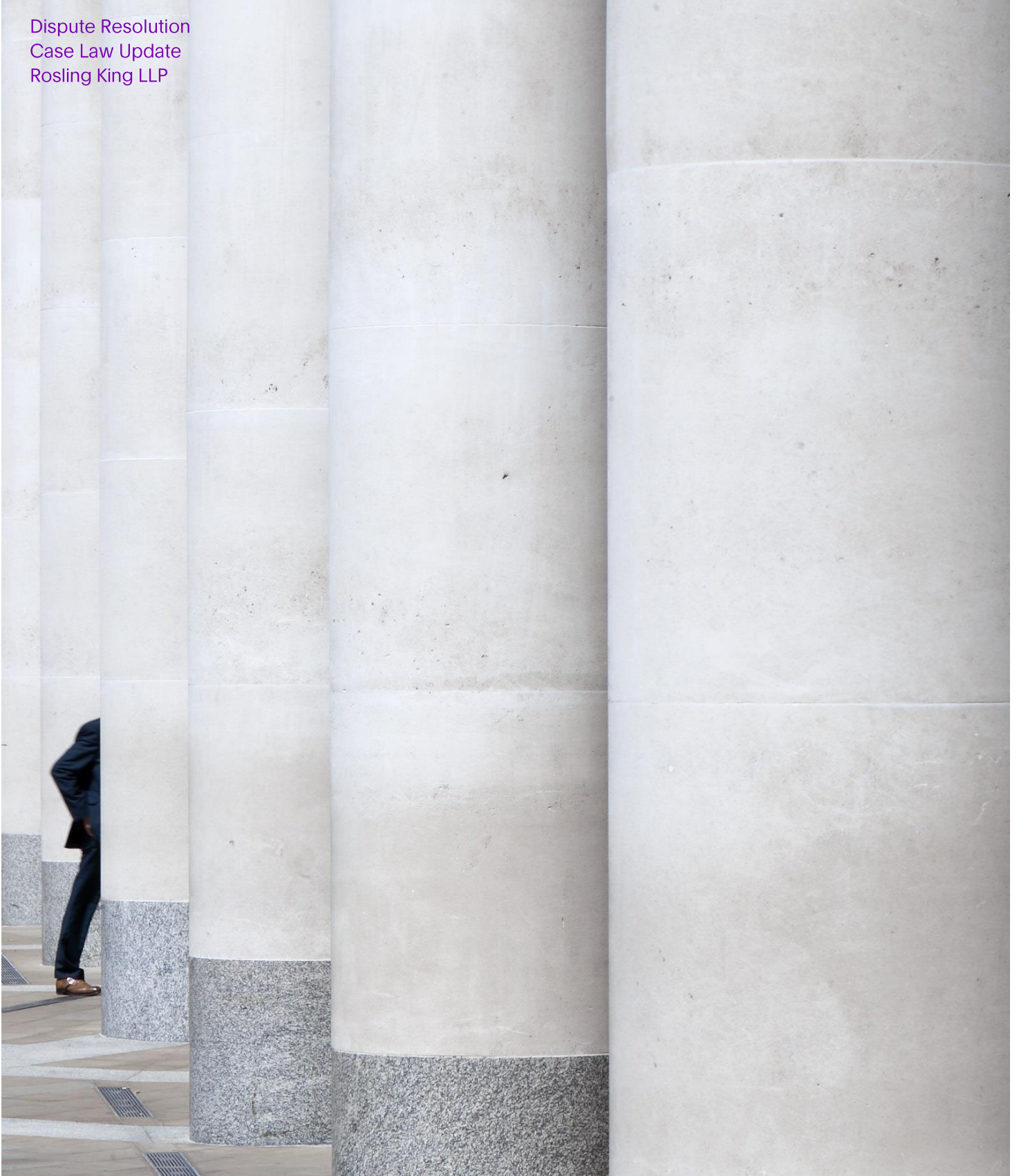


Dispute Resolution
Case Law Update
Rosling King LLP



Philipp v Barclays Bank UK PLC [2022] EWCA Civ 318

Authorised push payment fraud, or APP fraud as it is often known, is a common type of fraud that takes place when the fraudster deceives the unwitting victim into instructing their bank to transfer often large sums of money under false pretences into the account of the fraudster.

The fraudster will almost always try to impress upon the victim a sense of urgency whereby they convince the victim that funds must be transferred as soon as possible to protect the victim's money. Payments are often transferred instantaneously via BACS or Faster Payments meaning that the fraudster could be long gone before the victim even knows what has happened.

APP fraud is referred to as "authorised" because, from the bank's perspective, the payment is authorised by the customer.

Background

In March 2018 the Appellant, Mrs Philipp, became a victim of APP fraud. Mrs Philipp, together with her husband Dr Philipp, were deceived by a fraudster known as JW. The result of the deception was that the couple moved over £700,000 of their savings into an account in Mrs Philipp's name with Barclays Bank. Mrs Philipp subsequently attended a branch of Barclays in person and instructed Barclays to transfer the money to bank accounts in the United Arab Emirates in the name of Lambi Petroleum Ltd. The couple had been convinced that they were moving money into safe accounts to protect it from fraud.

Having no recourse to the fraudster, Mrs Philipp brought a claim against Barclays for breach of its duty to exercise reasonable care and skill when executing her requests. It was argued on her behalf that the bank's duty was derived from common law tort or by way of statute under section 13 of the Supply of Goods and Services Act 1982, and that the duty was a species of the duty established by the High Court in the well-cited case of *Barclays Bank v Quincecare* [1992] 4 All ER 363.

Siding with the bank, the High Court Judge dismissed the claim and granted summary judgment in favour of the bank finding that:

- (1) The duty contended for by Mrs Philipp was not a species of the recognised duty in *Quincecare* to exercise reasonable care and skill when executing a customer's instructions because that duty only relates to properly interpreting, ascertaining and acting in accordance with those instructions.
- (2) *Quincecare* is irrelevant because it only arises when the instructions are being

given by an agent.

- (3) The duty contended for by Mrs Phillip would be unworkable in practice on the basis that it would be commercially unrealistic to require bank staff to ask the necessary questions whenever any payment instruction was authorised by the customer attending the bank in person, regardless of the sum involved.

Mrs Philipp appealed.

The Decision of the Court of Appeal

Setting the summary judgment aside, the Court of Appeal held that as a matter of law the duty identified in *Quincecare*, which is a duty on the bank to make enquiries and refrain from acting on a payment instruction in the meantime, does not depend on whether the bank was instructed by an agent of the customer or the customer themselves. It therefore decided that it was possible, at least in principle, that a relevant duty of care could arise in the case of a customer who instructs her bank to make a payment when that customer has themselves been the victim of APP fraud.

The right occasion on which to determine whether the duty in fact arises is at trial. The question to be answered at trial will be whether the bank was put on inquiry, by virtue of the facts and circumstances present and known by them at the time of the transactions including the applicable banking practices, that executing the order would result in Mrs Philipp's funds being misappropriated.

Commentary

This decision of the Court of Appeal extends the scope of the duty imposed on banks in *Quincecare* to include instances where individual customers have themselves authorised the bank to transfer money as a result of APP fraud committed against them and appears to suggest a willingness on the part of the English courts to confront increasing levels of APP fraud head-on. This will come as welcome news for victims of APP fraud, particularly individuals, but is likely to receive a less enthusiastic response from banks and other financial institutions which may find themselves reimbursing customers for losses caused by fraudsters.

For further information, please contact [Hannah Sharp](#) or the Partner with whom you usually deal.