JANUARY 2026 NO. 21

MITCHELL V AL JABER

[2025] UKSC 43

KEY TAKEAWAYS:

1. When calculating an award of equitable compensation, the appropriate date to use to assess the value of what has been misappropriated is an open question which requires consideration of what is just and equitable.
2. The burden lies on a defaulting fiduciary to prove that a later event broke the chain of causation between their breach of fiduciary duty and the beneficiary's loss.
3. A person can be under a fiduciary duty even in the absence of a director's powers.

ISSUE

Whether a person who purports to exercise a director's power in relation to a company that has entered liquidation becomes subject to fiduciary duties to the company and is accountable for their breach in equitable compensation.

FACTUAL BACKGROUND

Sheikh Mohamed Bin Issa Al Jaber (the Sheikh) was a director and the sole shareholder of a company incorporated in the British Virgin Islands (BVI), MBI International & Partners Inc (the Company). The Sheikh dishonestly transferred 891,761 shares which the Company owned in another BVI company, JJW Hotels & Resorts Holding Inc (JJW Inc), after the Company had entered into liquidation. The shares were transferred for no consideration to a company registered in Guernsey, JJW Ltd (JJW Guernsey), of which the Sheikh was a director. The liquidators of the Company (the Liquidators) alleged that, by making the dishonest transfer of the shares in JJW Inc, the Sheikh acted in breach of his fiduciary duties owed to the Company although, under BVI company law (as set out to the right), the winding up had removed his powers as a director of the Company. The Liquidators also argued that the Company had a remedy against the Sheikh in equitable compensation for loss suffered as a result of the transfer of those shares.

BVI INSOLVENCY ACT 2003

SECTION 175

1.

(a) the liquidator has custody and control of the assets of the company;

(b) the directors and other officers of the company remain in office, but they cease to have any powers, functions or duties other than those required or permitted under this Part.

ISSUES

(1) Did the Sheikh in making the dishonest transfer of the Company's 891,761 shares in JJW Inc act in breach of a fiduciary duty owed to the Company when, under BVI company law, the winding up had removed his powers as a director of the Company? (Issue 1)

(2) If so, does the Company have a remedy against the Sheikh in equitable compensation for loss suffered as a result of the transfer of those shares?

(3) Did the Company suffer no financial loss from the transfer of 891,761 shares in JJW Inc because the Company acquired those shares subject to unpaid vendor's liens? (Issue 2)

(4) If the Company suffered financial loss, how should the loss of the value of the Company's 891,761 shares in JJW Inc be calculated when, after their transfer, the value of those shares was destroyed by the subsequent transfer of all JJW Inc's assets and liabilities to JJW UK? (Issue 3)

RELEVANT TRANSACTIONS

March 2009 Transfers

Company acquiring 891,761 shares in the context of a planned IPO. This transfer is the context for Issue 2.

2016 Share Transfers

Purported to give effect to a transaction which predated the winding up of the Company, transferred the 891,761 shares from the Company to JJW Guernsey. This transfer is the context for Issue 1.

2017 Asset and Liability Transfer

JJW Inc's assets and liabilities were transferred to JJW UK. This transfer is the context for Issue 3.

FIRST INSTANCE

Joanna Smith J

Proceedings were commenced pursuant to s 212 Insolvency Act 1986.

The trial judge found on the question of liability that:
(i) the 2016 Share Transfers were void;
(ii) the Sheikh owed a duty of fiduciary stewardship during the winding up and had acted in breach of that duty by signing the share transfer forms and putting the 2016 Share Transfers into effect; and
(iii) JJW Guernsey was the knowing recipient of the 891,761 shares.

On the question of remedy, the trial judge held that the Liquidators were entitled to equitable compensation on a substitutive basis and that loss to the Company was the value of the 891,761 shares which had been transferred from its ownership by the 2016 Share Transfers, that value being assessed using hindsight and common-sense.

COURT OF APPEAL

Newey, Arnold and Snowden LJJ

The Sheikh argued that the trial judge had erred:
(i) in finding that he had been in breach of fiduciary duty by effecting the 2016 Share Transfers; and
(ii) in making the order for equitable compensation.

The Sheikh argued against the order for equitable compensation on two grounds:
(i) the 2017 Asset and Liability Transfer had denuded the 891,761 shares of any value; and
(ii) the Company had suffered no loss as the 891,761 shares were subject to an unpaid vendor's lien which exceeded the sum ordered as equitable compensation.

The Court of Appeal allowed the appeal only on the ground that the Liquidators had failed to establish any loss. The court found that the Company would not have been any better off if the 2016 Share Transfers had not taken place and, therefore, had not suffered any loss from the Sheikh's breach of fiduciary duty.

However, the court held that the Sheikh had "intermeddled with the property of the Company and was liable as a fiduciary" and upheld the trial judge's finding that the March 2009 Transfers did not give rise to an unpaid vendor's lien.

SUPREME COURT

ISSUE 1 - APPEAL DISMISSED

The Supreme Court held that the Sheikh was in breach of fiduciary duty in making the 2016 Share Transfers.

The Sheikh was held to be under a fiduciary duty, despite the fact that he did not possess a power to transact on the Company's behalf.

The Supreme Court recognised that fiduciary duties can arise ad hoc and that it is not necessary that a person who has taken upon himself a fiduciary power to deal with property has title to or possession of that property before he can come under a fiduciary duty.

It was held, therefore, that the fact that the recipient of the 891,761 shares was a company under the Sheikh's control rather than the Sheikh was irrelevant to his liability as a fiduciary.

The Supreme Court also held that a single indivisible act is capable of both creating a fiduciary duty and be a breach of that duty.

ISSUE 2 - APPEAL DISMISSED

The Supreme Court rejected the Sheikh's argument that there was no financial loss arising from the 2016 Share Transfers as the shares had been acquired by the Company in the March 2009 transfers subject to vendor's liens.

The court held that it could clearly be inferred from the nature of the March 2009 Transfers that the joint intention of the parties was that there should be no unpaid vendor's lien on the 891,761 shares.

ISSUE 3 - APPEAL ALLOWED

The Court allowed the Liquidators' appeal on this issue and directed that the trial judge's order regarding compensation be reinstated.

The court held that it was for the Sheikh to prove not only that the 2017 Asset and Liability Transfer defeated the causative relevance of the 2016 Share Transfers, but also that this was a legitimate intervening event to be included in the "but for" causation analysis.

It was also for the Sheikh to prove that he played no part in and derived no significant benefit from the 2017 transfer at the expense of the Company.

The Sheikh made no attempt to prove this in the courts below. Rather, the Supreme Court found that there was sufficient evidence to suggest that the Sheikh was more than just a bystander in relation to the 2017 Asset and Liability Transfer.

The Supreme Court considered that the relevant assessment was not the value of the shares in the abstract, but the loss of their value to the Company.

The court held that their value to the Company was reduced to zero when the Sheikh misappropriated them.

ALEXANDER'S PRACTICE ENCOMPASSES INSOLVENCY, ARBITRATION AND COMMERCIAL CHANCERY. THIS INCLUDES CONSIDERABLE CROSS-BORDER AND OFFSHORE EXPERIENCE.

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