***Mitchell v Sheikh Mohamed Bin Issa Al Jaber* [2025] UKSC 43**

The Supreme Court has confirmed that fiduciary duties can arise "ad hoc" and without any express appointment, in a decision which demonstrates a firm approach to the assessment of liability where a person deals with another's property contrary to requirements of good faith.

**Summary**

The former director of a company in liquidation acted in breach of fiduciary duty when signing share transfer forms, purportedly as director, divesting the company of around €67 million worth of shares. It did not matter that he did not personally take possession or title to the misappropriated property.

The company suffered an immediate loss, and equitable compensation was payable on a restitutive basis assessed by reference to the shares' value at the date of transfer.

There was no invariable rule that equitable compensation falls to be assessed at the date of trial. It would depend on the facts.

Where a defaulting fiduciary wishes to argue that a later event as reducing or extinguishing the loss, the burden is squarely on them to show that the later event both had causative relevance and was legitimately to be regarded a valid supervening event.

**Background**

The case concerned transactions involving various companies under the ownership and control of Sheikh Mohamed Bin Issa Al Jaber ("the Sheikh"). In simple terms:

- In March 2009, MBI International & Partners Inc ("the Company"), a BVI company, acquired certain shares in JJW Inc, another BVI company, under two share purchase agreements, the consideration for which was expressed to be payable on demand. Payment was never demanded and no payment was ever made.
- The Company was wound up in October 2011. Under the provisions of BVI company law, that brough the Sheikh's powers as director of the Company to an end.
- In February 2016 the Sheikh purported to sign two share transfer forms for and on behalf of the Company as its director, transferring its shares in JJW Inc to JJW Guernsey.
- On 9 June 2017, the shares were transferred to MBI International Holdings;
- On 23 June 2017, all JJW Inc's assets and liabilities were transferred to JJW UK, so that the shares in JJW Inc became worthless.

The Liquidator of the Company sued the Sheikh and JJW Guernsey, on the basis that i) the 2016 share transfers were void; ii) the Sheikh had acted in breach of fiduciary duty or breach of trust in bringing about the 2016 share transfers; and iii) JJW Guernsey were knowing recipients of the wrongfully transferred shares.

The Defendants argued:

i) that the Sheikh had not owed fiduciary duties, firstly because he had never received the Company's property and secondly because he had no fiduciary powers capable

of being discharged, his office as director having ceased. It was not possible, it was argued, to create and breach fiduciary duties in a single indivisible act;

ii) that no financial loss arose from the 2016 share transfers because there was an unpaid vendor's lien;

iii) that the Company had in any event suffered no loss because the value of the misappropriated shares was zero at the time of the trial.

**The judgments below**

The judge, Joanna Smith J, found for the liquidators on all three issues and ordered compensation based on the value of the shares in 2016, some €67 million.

The Court of Appeal upheld the decision on liability, but on the issue of remedy, allowed the appeal on the basis that the shares had become worthless because of the 2017 asset and liability transfer. The liquidators had not established that the shares, if not misappropriated, would have been sold before the fall in value. Both parties appealed to the Supreme Court.

**The Supreme Court's decision**

The Supreme Court (Lords Hodge, Briggs and Sales, with whom Lords Stephens and Richards agreed) restored the decision of the trial judge, holding as follows:

- Fiduciary duties can arise where there is an undertaking of fiduciary duty by the presumed fiduciary, even when he does not in fact have power to act and has not considered, indeed has acted contrary to, the interests of the beneficiary of the duty [38]-[42].
- It is not necessary for a person who has arrogated to himself a fiduciary power to deal with property to have title to or possession of the property before he can come under a fiduciary duty. Directors are treated as trustees of the property of companies under their control. The fact that the Sheikh himself was not the recipient of the misappropriated shares was irrelevant to his liability [50]-[51].
- A single act may constitute both the assumption of a fiduciary duty and a breach of it at the same time [55].
- A vendors' lien usually arises by operation of law, unless there was a clear and manifest inference that the parties intended to exclude it: *Barclays Bank plc v Estates & Commercial Ltd* [1997] 1 WLR 415 [69]. There was very strong and compelling evidence of joint intention, and it could be clearly inferred from the nature of the 2009 transfers that the joint intention of the parties was that there should be no vendors' lien [80]; [85].
- In determining the date at which the value of the property should be assessed, there is no fixed or invariable rule: the question is what date appropriately reflects the justice or equity of the case. Thus, if the property would have declined in value for reasons unconnected with the fiduciary's conduct, the defaulting fiduciary will not be answerable for the fall in value [93]-[94];[96].
- Where a trustee or fiduciary has misappropriated trust property and the beneficiary/ principal can prove that the property had value when misappropriated, the beneficiary suffers an immediate loss of value. If the defaulting fiduciary wishes to rely upon a supervening actual or counterfactual event breaking the chain of causation between the breach and the beneficiary's loss, the burden lies squarely upon the fiduciary to prove

that supervening event and to show that it should be treated as having that impact on the analysis of the causative link between the breach of duty and the loss suffered by the beneficiary [101]-[106].

- A supervening event is unlikely to qualify if the defaulting trustee or fiduciary "had a hand" in it. On the facts, there was ample support for the inference that the Sheikh had been actively involved in the events leading to the 2017 asset and liability transfer, which formed part of a general "restructuring" of the Sheikh's MBI group of companies, and he had made no attempt at all to rebut that inference [110]-[123].
- Further, the value of the shares to the Company was "in the real world" reduced to zero by the 2016 misappropriation. They still have value, but to not the Company. By 23 June 2017 they were owned by MBI International Holdings, and it was their value to that company that had been extinguished [126]-[127].

**Comment**

The case confirms that the principle that "a person who assumes an office ought not to be in any better position than if he were that which he pretends"[1] applies to persons purporting to act as company directors, just as it does to an executor or trustee "*de son tort*". Importantly, that meant that in this case there was a remedy for the wrongs of the former director arising after the liquidation.

Clarification that the defendant bears the burden of proof in relation to supervening events will be welcomed by insolvency practitioners and highlights the need, for those defending such claims, for early consideration of whether that burden is likely to be discharged.

The part of the judgment ([93] onwards) dealing with the proper approach to equitable compensation will repay close reading for anyone dealing with claims for breach of trust or breach of fiduciary duty, as this is an area which can give rise to confusion.

In particular, at [98]-[100] the Court distinguished *Target Holdings Ltd v Redferns* [1996] AC 421 ("Target") and *AIB Group (UK) plc v Mark Redler & Co Solicitors* [2014] UKSC 58 - both cases of mistaken failure properly to apply the trust funds rather than of misappropriation for the trustee's benefit – as cases where, with the benefit of hindsight, it was clear that the client's loss was limited. It is clear that the approach is flexible, and the court will adopt the course that best achieves proper compensation.

Overall, the case demonstrates a robust approach to unauthorised dealings with another's property, with technical arguments in relation to loss receiving short shrift. Insolvency practitioners can take comfort; D&O insurers should take note.

Alice Nash

Hailsham Chambers

December 2025

[1] *Lewin on Trusts*, 20th edition, para 42-101, cited with approval at [45].