

Rukhadze and others v Recovery Partners GP Ltd and another [2025] UKSC 10

1. On 19th March 2025, a panel of seven Supreme Court justices gave their decision in an appeal concerning whether an important change to the equitable principles about the duties and liabilities of fiduciaries should be made. A panel of seven justices was assembled because the Supreme Court was asked to depart from two longstanding decisions of the House of Lords: *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134 and *Boardman v Phipps* [1967] 2 AC 46.

The issue

2. This is an appeal about the “profit rule” for fiduciaries.
3. The Supreme Court had to consider the well-recognised equitable principle that a fiduciary is under a duty to account to their principal for any profits arising out of the fiduciary relationship unless the principal has given fully informed consent to the fiduciary keeping those profits for himself. That duty to account can outlast the ending of the fiduciary relationship and a fiduciary is not able to defend his retention of profits by saying that he would have made a profit anyway even if he had not committed a breach of duty. For example, he could not say that he could, by resigning earlier, have made the same profit with no breach of duty.
4. The related rule is that a fiduciary must avoid placing himself into a position where his interest and his duty may conflict so as to protect others and deter him from being tempted to fall short of that obligation.
5. The question which came before the Supreme Court was whether the current test for requiring an account of profits should now be altered to introduce a requirement that the fiduciary could not have made the profit in a way that avoided a breach of duty, i.e. could the same profit have been made *but for* the breach of duty?

The facts

6. In brief, the claim arose out of a lucrative business opportunity which arose on the death in 2008 of an extremely wealthy Georgian businessman, Arkadi Patarkatsishvili. The opportunity was to provide asset recovery services to his family for a large reward and consisted of recovering assets (often hidden) from locations around the world and resisting the claims of governments and others to those same assets. pag
7. The respondents were a BVI incorporated company and an English LLP, and part of the corporate structure under which those assets were to be recovered. The appellants had worked for the respondents holding positions of responsibility (e.g.

serving as directors). In breach of their duties, the appellants diverted the lucrative business opportunity away from the respondents with the intention of exploiting it for themselves.

8. Because it was a clear departure from previous House of Lords authority, the appellants reserved their right to pursue their *but for* causation argument in the Supreme Court at all stages below. As a result, there is no consideration of it by either of the Courts below because the Court of Appeal would have been bound by precedent to reject it.

The appellants' ground for proposing a change

9. The appellants submitted that the test should be changed for the following reasons:
 - a. The present basis for an account of profits is draconian, works injustice to honest fiduciaries who have devoted time and skill and risked their own assets in a post-termination profitable business and serves an objective which is no longer proportionate in modern society.
 - b. Whilst courts of equity may have been discouraged in the past from constructing counterfactuals by the forensic difficulties and uncertainties of hypothetical speculation, modern procedural and forensic tools available to civil courts render this concern outdated.
 - c. A *but for* condition applied to an allowance for the devotion of time and skill by a fiduciary avoids uncertainty and unpredictability in its outcome.
 - d. Other equitable principles have been recently improved by the insertion of common law principles of causation. English law is lagging behind other common law jurisdictions in this respect.
 - e. Academic criticism of the remedy of an account of profits should be given more weight than has happened to date.

A brief summary

10. In very brief outline, the Supreme Court decided that these arguments did not add up to a compelling reason for changing well-settled law. The two leading cases cannot be said to have been plainly wrong in their failure to apply a *but for* test that includes the lawful alternative counterfactual.

11. Thus, the profit rule reflects equity's view that profits made by a fiduciary belong to the principal, and this remains unchanged. They are held on constructive trust and they have to be accounted for, both by revealing their existence and paying them over. That is so even where the profit is made after the end of the fiduciary relationship.
12. The essential purpose of that rule is to deter people from giving in to the temptation to depart from their obligation of loyalty to a principal. The obligation to account is not comparable to an award of damages; an account of profits is not about compensation for loss.
13. Of particular interest is Lord Briggs' consideration that the application of the profit rule is not out of place in today's society. It is not inconsistent with modern business norms or irrelevant in the light of today's much wider regulatory scope.

Some reflections

14. In today's business environment where very large sums of money are frequently involved in asset-tracing and other cases and given that there will always be those who may be minded to promote their own financial interests ahead of their principals, this decision is a clear restatement of the significance of the single-minded loyalty required of a fiduciary.
15. For those who would be inclined to put their own financial interests first, the potential risk of a court holding that, whilst their conduct was of itself unacceptable, there was no consequent adverse financial impact is unlikely to be sufficient to deter them.
16. The inevitability of a duty to account for profits arising is a major disincentive from entering into activities which involve a conflict between interest and duty. The no profit rule serves a clear deterrent purpose.
17. The fiduciary duties owed by directors, commercial agents and professionals such as solicitors operate as a control mechanism on the market and business relationships. That remains the case in today's business world and the proposed change contended for by the appellants would have been far reaching. For those involved in, or advising on, corporate governance and regulatory, compliance and ethical issues, this Supreme Court case is a timely reminder of the consequences of non-compliance with fiduciary obligations.

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