

A Bridge Too Far? Imposter Fraud, Bridging Finance and Summary Judgment

Simon Wilton KC appeared for the successful borrower's solicitors on a summary judgment application made by the lender in *Social Money Limited v Atwells Solicitors LLP* [2024] EWHC 3288 (Ch). This article discusses what other practitioners might learn from the decision and why these cases are not always as straightforward as they might appear.

In 1996, almost 30 years ago now, the House of Lords held in *Target v Redferns* [1996] AC 421 that monies held on a solicitors' client account were held on trust. Those who were fighting solicitors' liability cases in the 2010s will recall the frequency with which the courts were called upon to work out the consequences of that trust's existence. The circumstances of the dispute were almost always familiar: a solicitor had received money for the purposes of a conveyance, but in one way or another, that conveyancing transaction had gone wrong, and either the buyer has been left without a property, or the lender without security. Well-known examples include *Lloyds TSB v Markandan & Uddin* [2011] EWCA Civ 65, *Nationwide v Davisons Solicitors* [2013] PNLR 12, *Santander v RA Legal Solicitors* [2014] PNLR 20 and *Dreamvar* [2019] Ch 273.

After a decade of consistent litigation on the point, practitioners might be forgiven for thinking that the principles were well-established, and that a solicitor who pays out a lender's money to an imposter will (almost inevitably) be found in breach of trust, and that attention will focus on the question of relief under s61 of the Trustee Act 1925.

It would appear that this view was taken by the lender in *Social Money Limited v Atwells Solicitors LLP* [2024] EWHC 3288 (Ch), who argued that the principles were sufficiently clear that they should have summary judgment in their claim against the borrower's solicitors. The facts were relatively typical although the case did involve a remortgage in the form of a bridging loan rather than a purchase. All the parties were agreed that an identity fraud had taken place, that the real owner of the property had not received the £700k advance (which in the usual way had been paid by the lender to its solicitors, then to the borrower's solicitors and onwards to the borrower), and that the lender had not obtained security for its advance (other than being subrogated to a £60k first charge that had been redeemed using the remortgage money). Accordingly, the lender had paid out a large sum of money and had received little back. It sought to bring a claim against the borrower's solicitors.

The application for summary judgment was put on two bases. First, that the borrower's solicitors had acted in breach of undertaking either because the money advanced was not used for the "Transaction", or alternatively if the money was used for the "Transaction" then the solicitors had failed to obtain the security that they had promised to obtain. Secondly, on the grounds that the borrower's solicitors were in breach of trust in paying the money away to a fraudster.

The application for summary judgment failed. The lender's case was not assisted by the fact that this was a remortgage transaction not a purchase, the undertakings given by the borrower's solicitors were bespoke and did not follow the pattern of the Code for Completion by Post (the meaning and effect of which had been the subject of the decision in *Dreamvar*) and the undertakings contained certain ambiguities such that the borrower's

solicitors were able to argue that they had not acted in breach of undertaking or breach of trust.

Master Pester accepted the borrower's solicitors' submissions and held that the application for summary judgment should be refused. Since it was arguable that the borrower's solicitors' construction of the undertakings would succeed at trial, and the question of what had been undertaken was directly relevant to whether the borrower's solicitors had acted in breach of trust, the matter should go to trial.

It will remain to be seen whether the borrower's solicitors succeed at trial. But clearly this was an excellent result for the borrower's solicitors who wished to avoid an early finding of liability.

For practitioners working in this area, this case is a reminder that, particularly when dealing with non-standard undertakings, and indeed where the transaction is not a straightforward purchase, these cases may sometimes prove more contentious than might be expected at first sight.

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Disclaimer: this article is not to be relied on as legal advice. The circumstances of each case differ and legal advice specific to the individual case should always be sought.