

How has *Byers v Samba Financial Group* [2020] changed existing thinking on knowing receipt and dishonest assistance claims, and with what implications for practice?

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The 3 remaining issues:

- In a claim for knowing receipt of trust assets, when both the trust and the cause of action are governed by Cayman (i.e. English) law, does the extinction or non-recognition under the lex situs of the claimant's beneficial interest defeat the claim?
- If so, under Saudi Arabian law, was SICL's beneficial interest extinguished on the September 2009 transfer to Samba?
- If not, what was the claim worth: in particular, in valuing the shares, was credit to be given for the "block discount" that would have applied on a sale of such large volumes of shares on the particular valuation dates (agreed to be the date of the transfer and the date of judgment)?

Key background cases on knowing receipt

El Ajou v Dollar Land Holdings plc [1994] 12 All ER (CA, Hoffmann LJ)

Bank of Credit & Commerce International v Akindele [2001] Ch 437 (CA, Nourse LJ)

Key cases on the requirement for an “undestroyed proprietary base”

Macmillan Inc. v Bishopsgate Investment Trust plc (No 3)
[1995]1 1 WLR 978 (Millett J.)

Lightning v Lightning Contractors Ltd (2009) 1 TLI 35 (CA)

Akers v Samba Financial Group [2017] AC 424

Courtwood Holdings SA v Woodley Properties Ltd [2018]
EWHC 2163 (ch) (Nugee J.)

Other key materials

Macmillan v Bishopsgate (No 3) [1996] 1 WLR 387 (CA)

Boscawen v Bajwa [1996] 1 WLR 328

R Griggs Group Ltd v Evans [2005] Ch 153

Arthur v Attorney General of Turks & Caicos Islands [2012] UKPC 30

Lewin on Trusts 20th Ed.

C. Mitchell and S. Watterson “Remedies for Knowing Receipt” in C. Mitchell *Constructive and Resulting Trusts* (2010)

M. Conaglen and A. Goymour “Knowing Receipt and Registered Land” in C. Mitchell *Constructive and Resulting Trusts* (2010)

Court of Appeal Judgment para 79:

In short, a continuing proprietary interest in the relevant property is required for a knowing receipt claim to be possible. A defendant cannot be liable for knowing receipt if he took the property free of any interest of the claimant. It follows that, as the Judge held, “absent a continuing proprietary interest in the Disputed Securities at the time of registration, the claim in knowing receipt as pleaded will fail.

Back to the question:

- There has been no change in the law of knowing receipt – but the case has winkled out and important undecided point.
- The Court of Appeal has put to rest the argument that the personal claim in knowing receipt is made out on proof of receipt and the defendant's fault, regardless of where the receipt took place and what system of law governed it.
- Nor any change in the law of dishonest assistance, but both the first instance and CA judgments are helpful in drawing the clear line between the mental elements required for knowing receipt (unconscionability) and dishonest assistance (dishonesty).
- Implications for practice: bringing clarity to an undecided and ostensibly controversial part of the law, in an important aspect of civil fraud litigation.

