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What Counts & Will Sway the Court in *Knowing Receipt* & *Dishonest Assistance* Claims

NICHOLAS TROMPETER KC

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Dishonest Assistance

INGREDIENTS

DISHONEST ASSISTANCE

See e.g. Group Seven Ltd v Notable Services LLP [2020] Ch129, at [29]

Breach of Trust Owed by Trustee to Claimant

Defendant Assists the Trustee to Commit Breach

Assistance is Dishonest



Knowing Receipt

INGREDIENTS

KNOWING RECEIPT

See e.g. Byers v Saudi National Bank [2022] 4 WLR 22, at [14]

Disposal of Assets in Breach of Trust

Beneficial Receipt by Defendant of Trust Assets

Knowledge on Part of Defendant that Assets are Traceable to Breach of Trust



PRACTICAL POINT

Why are the Claims Useful?

DISHONEST ASSISTANCE

“I can see that it makes sense for a dishonest assistant to be jointly and severally liable for any loss which the beneficiary suffers as a result of a breach of trust. I can see also that it makes sense for a dishonest assistant to be liable to disgorge any profit which he himself has made as a result of assisting in the breach ...”

Ultraframe (UK) Ltd v Fielding [2005] EWHC 1638 (Ch), at [1600]

PRACTICAL POINT

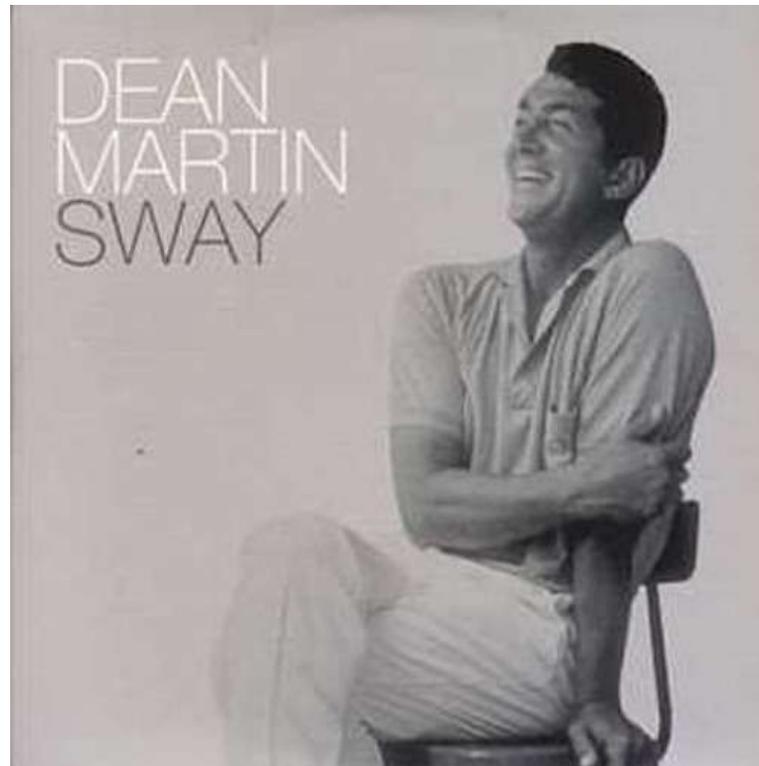
Why are the Claims Useful?

KNOWING RECEIPT

“The personal remedy in knowing receipt comes to the rescue if the transferee ... transfers, dissipates or destroys the property after learning of the breach of trust, so as to prevent the pursuit of a proprietary claim...”

[Byers v Saudi National Bank \[2024\] AC 1191, at \[42\]](#)

Sway With Me ...



Dishonest Assistance

HOW MUCH “ASSISTANCE” IS NEEDED?

“It must be shown that the conduct in fact assisted the breach of trust, and that the loss directly resulted from the breach of trust. The test at the first stage is that the assistance given must be more than minimal ... The test at the second stage is that the loss in fact resulted from the breach of trust.”

Group Seven Ltd v Notable Services LLP [2020] Ch
129, at [110]

Dishonest Assistance

WHAT COUNTS AS “DISHONESTY”?

“... dishonesty is a necessary ingredient of accessory liability. It is also a sufficient ingredient. A liability in equity to make good resulting loss attaches to a person who dishonestly procures or assists in a breach of trust or fiduciary obligation. It is not necessary that, in addition, the trustee or fiduciary was acting dishonestly, although this will usually be so where the third party who is assisting him is acting dishonestly ...”

Royal Brunei Airlines v Tan [1995] 2 AC 378, at 392F

Knowing Receipt

THE REQUIREMENT FOR A CONTINUING EQUITABLE PROPRIETARY INTEREST

“ ... a claim in knowing receipt cannot succeed once the claimant’s proprietary equitable interest in the property in question has been extinguished or overridden ... ”

[Byers v Saudi National Bank \[2024\] AC 1191, at \[1\]](#)

Knowing Receipt

UNCONSCIONABILITY?

“The recipient’s state of knowledge must be such as to make it unconscionable for him to retain the benefit of the receipt.”

[BCCI v Akindele \[2001\] Ch 437, at 455](#)

“... so flexible a test of the requirement for knowledge wrongly elevates unconscionability from an equitable objective into an unruly and unpredictable test for liability ...”

“... the terminology of ‘unconscionability’ has unhelpfully obfuscated the answer to the important question of whether the required knowledge for knowing receipt extends beyond actual knowledge to include constructive knowledge ...”

[Byers v Saudi National Bank \[2024\] AC 1191, at \[82\], \[101\]](#)

Knowing Receipt

WHAT KNOWLEDGE?

“... a five-fold classification of knowledge was set out by Peter Gibson J in Baden v Société Générale SA [1993] 1 WLR 509 at [250]: (1) actual knowledge; (2) wilfully shutting one’s eyes to the obvious; (3) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make; (4) knowledge of circumstances which would indicate the facts to an honest and reasonable man; and (5) knowledge of circumstances which would put an honest and reasonable man on inquiry. In a commercial context, Baden types (1) – (3) knowledge render the receipt of trust property ‘unconscionable’. Baden types (4) – (5) knowledge may also satisfy the knowledge requirement for knowing receipt, if, on the facts actually known to the Defendant, ‘a reasonable person would either have appreciated that the transfer was probably in breach of trust or would have made inquiries or sought advice which would have revealed the probability of the breach of trust’ (Armstrong GmbH v Winnington Networks Ltd [2013] Ch 156 at [132])...”

Alta Trading UK Ltd v Bosworth [2025] EWHC 91 (Comm), at [874]



POSTSCRIPT



SELBORNE CHAMBERS

Thank you

www.selbornechambers.co.uk

10 Essex Street, London, WC2R 3AA

Tel: 020 7420 9500

Fax: 020 7420 955

