

Unjust enrichment

Dargamo Holdings v Avonwick and its effect on fraud claims

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Overview

Unjust Enrichment – principles

Dargamo Holdings – what happened

Relationship to fraud claims

Practical issues

Unjust Enrichment – principles

- Unjust enrichment is a free standing cause of action
- Claimant has a right to restitution against a defendant who is unjustly enriched at the claimant's expense.
- The purpose of the claim is to correct normatively defective transfers of value, usually by restoring the parties to their pre-transfer position [54]

Unjust enrichment - elements

- 4 elements:
 - (i) Has the defendant been *enriched*
 - (ii) Was the enrichment *at the claimant's expense*
 - (iii) Was the enrichment *unjust*
 - (iv) Are there any *defences*
- Must identify an “unjust factor” – within established categories
- Not based on subjective evaluation of what is fair or unconscionable
- Common defence – change of position, so inequitable to require restitution

Unjust enrichment – positive basis for restitution

- Claimant must prove positive basis for restitution for unjust enrichment (*Goff & Jones – Unjust Enrichment* (9th Ed) at 1-21)

“...civilian and mixed legal systems generally approach this question by asking whether there is a legal ground for the transfer from claimant to defendant: if not, the defendant’s enrichment is unjustified and restitution will follow. English law approaches the task differently, by identifying positive grounds for restitution, sometimes referred to as “unjust factors”, because they are legally recognised factors that make the defendant’s enrichment unjust. For example, in a case of mistaken payment, the claimant’s mistake is the ground for restitution or unjust factor.”

Unjust enrichment – positive basis for restitution

- **Intention to benefit Defendant is vitiated:** lack of consent/want of authority, mistake, duress, undue influence
- **Common understanding (objectively assessed) that Defendant's enrichment is conditional on event that does not occur:** failure of basis
- **Restitution for policy reasons** (party intention irrelevant): necessity; secondary liability (eg contribution); ultra vires receipts and payments by public bodies; legal incapacity; illegality; and money paid pursuant to a judgment that is later reversed

(Goff & Jones – Unjust Enrichment (9th Ed) at 1-25)

Dargamo – headline points

- Deceit claim, where contract and unjust enrichment arguments raised as counterclaims: claims and counterclaims dismissed [2020] EWHC 1844 (Comm)
- On appeal [2021] EWCA Civ 1149 – CA focused on claim for unjust enrichment re a share sale under the Castlerose SPA
- Common *understanding*: USD 950m purchase price was for shares in a company to be transferred plus an advance payment for various other assets (being shares in other companies) to be transferred in due course under further contracts.
- No *binding contract* re the common understanding

Dargamo – headline points

- The share sale completed and the USD 950m purchase price was paid over by the Taruta parties. But the additional assets to be transferred to one of those buyers were never transferred.
- Taruta parties claimed to recover part of the purchase price (USD 82.5m) on the basis that the seller Gaiduk parties had been “unjustly enriched” because it held on to the additional assets.
- Relationship between contract and unjust enrichment under scrutiny
- Run as an alternative to fraud claims here

Key features of CA reasoning

- Generally, unjust enrichment must respect a valid contract
- Unjust factor does not usually override a legal obligation on the claimant to confer benefit on defendant: “Obligation Rule”
- Can be exceptions if claim does not undermine the contractual allocation of risks or if failure of basis established
- Claimant said there was a “failure of basis” – due to failure to transfer the extra shares/ assets that the parties agreed should be paid over
- Payment cannot amount to an enrichment if made for full consideration; and it cannot be unjust to receive or retain it if made in satisfaction of a legal right

Key features of CA reasoning

- “Failure of basis”: benefit conferred on a joint understanding that the recipient’s right to retain it is conditional. If condition not fulfilled, recipient must return the benefit
- Goes beyond just failure of promissory payment of consideration or contractual counter-performance
- Didn’t apply here because of the contractual context

Key features of CA reasoning

- Parties had a firm understanding/ intention re additional asset transfer
- Yet *deliberately* omitted any additional assets from definition of “Consideration”. Conscious and express bargain was for transfer of USD 950m for Castlerose shares under Castlerose SPA: “The consideration for the sale of the Shares shall be [USD 950m].”
- Alleged enrichment was “overpayment” of sums within the USD 950m attributed to the additional assets; but no overpayment was reflected in express terms
- Unjust enrichment cannot intervene on a basis external to a valid contract which also directly contradicts the express contract terms

Post - *Dargamo*

- *London Trocadero (2015) LLP v Picturehouse Cinemas Ltd* [2021] EWHC 2591 (Ch)
- *Football Association Premier League Ltd v Pplive Sports Int'l Ltd* [2022] EWHC 38 (Comm)
- *Bank of New York Mellon (Int'l) Ltd v Cine UK Ltd AND London Trocadero (2015) LLP v Picturehouse Cinemas Ltd* [2022] EWCA Civ 1021

Fraud and unjust enrichment

- Overlap: often the purpose and effect of a fraud is to obtain a consent that would not otherwise be given (Civil Fraud 1st Ed 14-015)
- Developing area of law: so ensure pleadings in the alternative, as here
- Don't look at subjective evaluation of fairness/ unconscionability
- English law prefers certainty – decision reiterates strict approach to the elements and “unjust factors”
- Fair outcome? Where parties agreed the Consideration was to cover assets to be transferred in future? Not what contract says...

Practical consequences

- Contract should include all relevant terms, expectations/ understandings that the parties wish to bind them. Apportion purchase price to assets where appropriate
- Ensure all assets to be transferred are covered in the contract – and if there is a staged transaction, get a separate contract in place.
- Provide for payment protections linked to transfer of titles. Else outcomes in event assets are not transferred – eg escrow/ clawback
- If imbalance in bargaining – possible that can't get it all agreed, but then be alive to risk

Contact

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