

## Case Note

# Proprietary interests and knowing receipt: *Byers v Saudi National Bank* [2023] UKSC 51

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### Abstract

The long-awaited Supreme Court ruling in *Byers v Saudi National Bank* has provided a welcomed judgment on an established claim in equity and trusts law, knowing receipt. The judgment not only provides guidance on an issue which has never been directly addressed at the Supreme Court level before, namely whether a continuing proprietary interest is needed for a successful claim in knowing receipt, but also provides much-needed clarification on the underlying basis and application of knowing receipt claims moving forwards, guidance that will be renowned for years to come.

### Case note

*Byers v Saudi National Bank*<sup>1</sup> provides the highly awaited Supreme Court precedence on the requirements for a successful claim in knowing receipt in the context of **overridden and overreached interests**. Despite knowing receipt being a longstanding equitable claim, it still perplexes many, with the Supreme Court seeking to address one key gap in its understanding, namely whether it is an essential element of knowing

receipt that the claimant has a continuing proprietary interest in the asset received by the defendant. As Lord Briggs himself recognises, this central issue has never ‘been squarely addressed’<sup>2</sup> with the courts not previously being ‘concerned even to consider, let alone decide, whether the continuation of such an equitable interest was a condition for liability’.<sup>3</sup> The judgment’s significance is accordingly evident.

### Facts

The claimants, Saad Investments Company Ltd (SICL) and its liquidators, brought a claim against Samba Financial Group which challenged the transfer by Mr Al-Sanea, a registered owner of shares in five Saudi Arabian banks, of such shares to Samba in September 2009, a transfer made to discharge debts owed by him to Samba. Mr Al-Sanea held those shares on express trusts for SICL following transactions made between 2002 and 2008. Following the dismissal by the Supreme Court of their claim that the transfer was a disposition, and thus void,<sup>4</sup> the claimants issued a personal claim of knowing receipt against Samba to recover compensation for the value of the shares since the transfer made to Samba was in

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1. [2023] UKSC 51.

2. *ibid* [11].

3. *ibid* [48].

4. See *Akers v Samba Financial Group* [2017] UKSC 6.

breach of trust, with Samba knowing this at the time of receipt.<sup>5</sup>

As the transfer was governed by Saudi Arabian law, which does not recognise the distinction between legal and equitable ownership, the trust over the securities was not upheld, with Samba consequently becoming registered as the shares' sole owner, and SICL's equitable interest in them being extinguished, upon the transfer. The central issue accordingly surrounded the effect of SICL's proprietary interest being overridden on the viability of their knowing receipt claim.

As Samba's assets and liabilities were transferred to the Saudi National Bank in April 2021, they became the defendants before the Court of Appeal and Supreme Court.

## Chancery division

Fancourt J undertook a foundational analysis of knowing receipt when dismissing SICL's claim.

Firstly, to determine whether an undestroyed proprietary base is needed for a successful knowing receipt claim, Fancourt J highlights that knowing receipt places on a defendant the sole obligation to restore the assets if they are found liable.<sup>6</sup> Consequently, he explains that liability 'should not arise where the recipient is entitled to the assets' as this is at odds with the restorative purpose of knowing receipt liability,<sup>7</sup> leading him to hold that the basis of knowing receipt supports the need for an undestroyed proprietary base for a successful claim.

Fancourt J further supports this finding when analysing existing precedence. For example, his analysis of MacMillan and Lightning, which upheld the need for an undestroyed proprietary base and confirmed that, where a third party obtains unencumbered title, their notice of the claimant's equitable interest cannot found a claim against them,<sup>8</sup> provided sufficient clarity that:

'a claim based on equitable ownership of property, where there is no equity against the defendant before his receipt of the property, cannot be maintained if, upon receipt, the defendant acquires good title to the property.'<sup>9</sup>

He accordingly concluded that, although no previous case has decided this question as part of its ratio, common law does infer that, if the recipient was entitled to deal with the property as his own, as a result of the claimant's proprietary interest being extinguished, a knowing receipt claim cannot succeed; the transfer cannot be one that gives the transferee good title in priority to the beneficiary's interest.

Fancourt J further upheld the need for a continuing proprietary interest in knowing receipt claims by distinguishing dishonest assistance from knowing receipt. As explained, in contrast to dishonest assistance, which is a truly fault-based liability deriving from the dishonesty of the defendant in assisting in a breach of trust, knowing receipt liability is instead dependent on the recipient's knowledge that the property they have received is trust property which they are not entitled to deal with as their own, leading Fancourt J to note that, consequently, if the property is not trust property, but property to which the defendant has good title, knowing receipt cannot be established; the essence of this claim is that the recipient receives the claimant's property.

Consequently, Fancourt J was then required to determine the secondary issue of whether Saudi Arabian law, which governed the transfer in question, extinguished SICL's beneficial interest in the shares upon the transfer and registration of them to Samba. In light of expert evidence, he concluded that, although a Saudi Arabian judge would have characterised the claimants' interest under the Cayman Island trusts as an ownership interest, there was no evidence that they would have directed the shares to be restored to them, nor could it be

5. The parties agreed that, for the purposes of the claim and its appeals, Samba possessed the required level of knowledge needed to satisfy liability for knowing receipt.

6. *Byers v Samba Financial Group* [2021] EWHC 60, [45]; *Williams v Central Bank of Nigeria* [2014] UKSC 10 followed.

7. *ibid* [46].

8. *Macmillan Inc v Bishopsgate Investment Trust Plc* (No.3) [1995] 1 W.L.R. 978; *Lightning v Lightning Electrical Contractors Ltd* (1998) 23 TLI 35.

9. (n 6) [52].

guaranteed that compensation would have been granted. Accordingly, although SICL would have been entitled to claim for compensation, this did not amount to evidence of a continuing proprietary interest in the shares, leading to the dismissal of their knowing receipt claim.<sup>10</sup>

Thus, Fancourt J concluded that knowing receipt, where dishonesty is not alleged, will fail if, at the time of receipt, the beneficiary's equitable interest is extinguished.

## Court of appeal

Unhappy with the decision reached by Fancourt J, the claimants appealed. They contended that a successful knowing receipt claim does not require a continuing proprietary interest but, even if this was a requirement, Fancourt J had erred in finding they had no such interest in the disputed securities. The court dismissed the appeal.<sup>11</sup>

Firstly, following a detailed common law analysis, the court upheld the need for a continuing proprietary interest in the affected property for a successful claim in knowing receipt in light of the accepted understanding that knowing receipt liability depends on the defendant receiving trust property that belongs, and continues to belong, to the beneficiary, with knowledge that the property was transferred to them in breach of trust, knowledge which makes it unconscionable for them to then retain the property; 'unconscionability must coincide with possession of trust property for liability to arise'.<sup>12</sup> Accordingly, as it is the fact that the transaction does not transfer good title to the recipient that grants equity to the claimant, if the transfer results in the beneficiary's interests being extinguished, a defence to knowing receipt will arise.<sup>13</sup> The court rightly

note that this understanding is logical since 'it is much more difficult to see why a recipient should be [liable for knowing receipt and] bound to 'restore' property or otherwise to have 'custodial' responsibilities in respect of it if he has an unimpeachable title to it'.<sup>14</sup> Thus, given the nature of liability for knowing receipt, the first ground of appeal was dismissed and Fancourt J was upheld as correct to conclude that a continuing proprietary interest in the affected property is needed for a successful claim in knowing receipt.

When determining the second ground of appeal, the court examined whether Fancourt J had correctly interpreted Saudi Arabian law. They explained that foreign law is a question of fact to be determined using evidence submitted by the parties to decide what the highest court in the foreign jurisdiction would have ruled on the matter, and how they would have interpreted statutory provisions. The judgment clarified that the court is tasked only with identifying what rights exist, and should not interpret foreign law itself, except where, for example, the foreign law is written in English and uses concepts similar to those used in English law. As no such exception applied here, the court held that Fancourt J's findings of fact on Saudi Arabian law were reasonably open to him on the evidence he heard, with there being nothing to suggest his conclusions should be challenged.

The judgment thereby affirmed Fancourt J's finding that there is no distinction in Saudi Arabian law between legal and beneficial ownership and that, under Saudi Arabian legislation, registration of transfers of listed securities and shares are deemed to represent 'conclusive evidence and proof of ownership' against all, subject only to a correction to the register being made where information is incorrectly entered.<sup>15</sup> Consequently, given SICL's failure to obtain a

10. Although the claim was dismissed, Fancourt J provided a brief judgment on how the securities were to be valued if knowing receipt had been established, holding that a block discount would have applied to the share's quoted market value. This valuation was deemed as properly reflecting the nature of the shares as trust property and the monetary equivalent that could be achieved by a trustee with authorisation to sell them.

11. The claimants also brought a third ground of appeal contending that Fancourt J had incorrectly applied a 'block discount' when determining the shares' market value. However, having dismissed the first two grounds of appeal, the Court of Appeal concluded that no question of valuation arose.

12. *Byers v Saudi National Bank* [2022] 4 WLR 22, [70].

13. *MacMillan and Lightning* (n 6) and *Courtwood Holdings SA v Woodley Properties Ltd* [2018] EWHC 2163 applied.

14. (n 12) [75].

15. *ibid* [83], [84], [91].

rectification of the share register, the court concurred with Fancourt J that the claimants **had no continuing proprietary interest in the disputed securities as their beneficial interest was extinguished upon their transfer and registration to Samba, meaning Samba could not be held liable for knowing receipt.**

Therefore, the court dismissed the claimants' appeal and upheld the importance of a continuing proprietary interest to successful claims in knowing receipt.

## **The significance of the Supreme Court decision**

In addressing the claimants' final appeal, the Supreme Court provided a much-welcomed judgment which directly analyses the need for continuing proprietary interests for knowing receipt claims through a detailed examination of relevant equitable principles, an analysis case law has previously failed to undertake; there is no existing Supreme Court authority directly on the issue,<sup>16</sup> demonstrating the judgment's unquestionable significance.

Lord Briggs and Lord Burrows provide the leading judgments and, while both analyse differing equitable principles, they equally hold the importance of proprietary interests to claims for knowing receipt.<sup>17</sup>

### **Lord Briggs' judgment**

Firstly, Lord Briggs provides an analysis of equitable principles underlying priorities of interest. He begins by explaining that equitable interests, unlike legal interests, possess an 'essential fragility' and 'vulnerability' to **being overreached or overridden**,<sup>18</sup> including where the equitable interest has been overridden by a disposition which has the legal effect of giving the transferee title free from the claimant's interest, even where it has been

transferred in breach of trust, as occurred in this case.<sup>19</sup> Where an equitable interest is overreached or overridden, it is destroyed, with the claimant's ability to vindicate this interest being defeated, a consequence Lord Briggs held equally applies to knowing receipt:

'for equity to impose liability in knowing receipt upon equity's darling, on subsequently learning of the breach of trust, or on a successor in title [ ... ], would seriously detract from the **full beneficial ownership which equity treats a purchaser without notice as acquiring, and from the once and for all effect of the principle that an equitable interest may [ ... ] be overridden.** I therefore consider [ ... ] that the remedy of **knowing receipt has no role to play once the claimant's equitable interest has either been overreached or overridden**'.<sup>20</sup>

Lord Briggs clarifies that such precedence applies even where knowledge of a breach is known upon receipt, as occurred here, given the importance of upholding equity's respect for priorities:

'[equitable] interests [ ... ] have to take their proper place in a sophisticated system of priorities [ ... ] [with] the priority of equitable interests under trusts [being] regulated by the principles of overreaching and overriding [ ... ] equity recognises the need to balance its function to restrain unconscionable conduct [ ... ] by the need to respect the public interest in certainty and therefore marketability of title'.<sup>21</sup>

Accordingly, Lord Briggs provides a logical understanding of knowing receipt by ensuring its application accords with the recognised system of priorities, and provides welcomed clarification that, if an equitable interest in property has been overridden or overreached, a claimant cannot bring a successful claim for knowing

16. (n 1) [1], [11], [116].

17. Lord Hodge provides a useful summary of the key precedence and decision reached by Lords Briggs and Burrows at paragraphs 1–9.

18. *ibid* [39].

19. *ibid* [21]; Two other examples are provided by Lord Briggs in paragraphs 19–20. Firstly, where a trustee exercises their power under the trust to dispose of the property, the equitable interest in the property is overreached, and instead attached to the proceeds of sale. Secondly, is where the equitable interest is overridden due to its sale to 'equity's darling', even if the sale amounted to a breach of trust. However, if the purchaser has notice or knowledge of the breach, they lose the protection of being equity's darling.

20. *ibid* [26], [27].

21. *ibid* [38], [39].

receipt, even where dishonesty is present, as the defendant and their successors take the property free from such claims. Similarly, if equity's darling, or a further transferee, later becomes aware that the property was transferred to them in breach, this does not revive the claimant's interest, except where the further transferee is the property's original trustee;<sup>22</sup> claims in knowing receipt will fail where the proprietary interest has been extinguished as priority is instead given to the recipient with unencumbered title. SICL's knowing receipt claim was accordingly dismissed since their proprietary interest was overridden as a result of the September transfer.

To ensure a thorough analysis was undertaken, Lord Briggs also provides a detailed examination of a breadth of case law to determine whether the need for a continuing proprietary interest in knowing receipt claims can be deduced from existing precedence, a comprehensive analysis common law has not previously provided.<sup>23</sup> For example, when examining *Barnes v Addy*, Lord Selborne's description of knowing recipients as those who 'receive and become chargeable with some part of the trust property'<sup>24</sup> was deemed by Lord Briggs as upholding that the property should still be trust property when in the recipient's hands, rather than property which has been freed from the claimant's equitable interest as a result of overreaching or overriding. Similarly, Lord Briggs' interpretation of Hoffman LJ's guidance in *El-Ajou*, namely that knowing receipt requires 'the beneficial receipt [...] of assets which are traceable as representing the assets of the plaintiff',<sup>25</sup> highlights the importance of a continuing proprietary interest since tracing is used to identify property one is claiming a beneficial interest in. Accordingly, as tracing cannot be pursued against property that the recipient holds unencumbered title to,

Lord Briggs interpreted *El-Ajou* as precedence which clearly contemplated that:

'the claimant must be able to assert a continuing equitable beneficial interest in the subject property at the time of its receipt [...], if not [...], a knowing receipt claim will [not] be available',<sup>26</sup> leading Lord Briggs to the logical conclusion that, once a claimant's beneficial interest in the property is extinguished, the defendant and their successors cannot be liable for knowing receipt.

Lastly, to aid his analysis, Lord Briggs examined *MacMillan Inc (No.3)*,<sup>27</sup> a case deemed important for present purposes. Despite noting of factors which diminish the judgment's relevance, Lord Briggs discerned a principled basis for Millet J's leading view that an undestroyed proprietary base is a necessary element in personal and proprietary claims against a stranger, holding that this understanding is sound in principle and accordingly applicable to the requirements for knowing receipt since a 'defendant to a knowing receipt claim is [...] a stranger to the claimant'.<sup>28</sup> Lord Briggs was consequently able to conclude that:

'the personal liability of a recipient of trust property in knowing receipt, who had no pre-existing relationship with the claimant capable of giving rise to an equity [...] does depend upon the claimant having a continuing equitable interest in the property when it reaches the hands of the defendant. If it has been overreached or overridden [...] the claim in knowing receipt must fail'.<sup>29</sup>

Thus, following his in-depth analysis, Lord Briggs concludes that case law is generally supportive of the

22. This exception, however, does not arise as a result of a claim in knowing receipt, but due to the defaulting position of the trustee and the obligations they are bound to towards the trust property. Lord Burrows equally endorses such findings in paragraphs 167–170.

23. See paragraphs 48–96 for the detailed analysis of case law undertaken by Lord Briggs.

24. *Barnes v Addy* (1874) LR 9 Ch App 244.

25. *El Ajou v Dollar Land Holdings Ltd* [1994] 2 All ER 685, 700.

26. (n 1) [69].

27. *MacMillan* (n 6).

28. (n 1) [77], [79].

29. *ibid* [97].

need for a continuing proprietary interest for knowing receipt liability, and dismissed the appeal.

### **Lord Burrows' judgment**

Lord Burrows concurred with Lord Briggs' decision and upheld the necessity of a continuing proprietary interest for a successful claim in knowing receipt when analysing equitable principles surrounding knowing receipt liability, an analysis he justified given the failure of existing case law to provide detailed guidance on this matter.<sup>30</sup> Firstly, Lord Burrows examined the nature of knowing receipt as an equitable wrong. As he explains, where there has been a breach of trust, it is a proprietary wrong for a defendant to knowingly interfere with the claimant's proprietary rights by receipt or retention, leading Lord Burrows to clarify that:

'it is a logical consequence of the nature of the wrong of knowing receipt that the conferral of unencumbered title on the recipient does defeat the knowing receipt claim'.<sup>31</sup>

Additionally, similarly to Lord Briggs' analysis, Lord Burrows examines equitable tracing to support his findings that knowing receipt requires a continuing proprietary interest. Following an analysis of relevant case law, Lord Burrows identifies that an equitable proprietary interest is needed at the start and end of the tracing process meaning, where a claim for knowing receipt rests upon tracing an affected asset that has been transferred, the claimant must possess a continuing proprietary interest in that asset at the time of receipt. Lord Burrows accordingly dismissed the claimants' appeal, and concluded that:

'the principled answer to the knowing receipt issue is that [ ... ] liability for knowing receipt is dependent on

the claimant having a continuing equitable proprietary interest. There can be no liability [ ... ] once unencumbered legal title in the asset has been conferred on the defendant'.<sup>32</sup>

Therefore, the Supreme Court, for the first time, have provided decisive precedence that a conferral of unencumbered title to a defendant will render a knowing receipt claim unsuccessful.

### **The consequences of the Supreme Court's judgment**

The Supreme Court's judgment additionally has wider significance to the application and understanding of knowing receipt in practice.

#### *Knowing receipt as a proprietary claim*

Firstly, the Supreme Court's judgment impacts the distinction between proprietary and personal claims in knowing receipt by recognising that both will now require a continuing proprietary interest to succeed. As Lord Briggs explains:

'there is a serious lack of logic in the view that while overreaching or overriding may kill off the equitable interest necessary to maintain a proprietary claim, it nonetheless leaves in place a claim in knowing receipt, with the same liability to return the property [ ... ] as if there was a proprietary claim'.<sup>33</sup>

This provides logical and welcomed clarification that where a proprietary interest has been extinguished, both a proprietary and personal claim in knowing receipt which rely on such an interest will fail, guidance which will ensure that one cannot turn a failed proprietary claim into a success simply by bringing it under a personal claim of knowing receipt instead.<sup>34</sup>

30. *ibid* [124], [133], [143]; See paragraphs 117–143 for the range of cases examined.

31. *ibid* [155].

32. *ibid* [172].

33. *ibid* [44].

34. *ibid* [159].

### Knowing receipt versus dishonest assistance

Secondly, the judgment aids in the distinction between knowing receipt and dishonest assistance, two forms of liability which are often confused.

As explained, unlike knowing receipt, dishonest assistance is not based upon any continuing equitable interest in the affected property, but is a form of accessory liability, meaning it arises where one dishonestly procures or assists a breach of trust being committed by another. Lord Burrows confirms that, although knowing receipt is similar to dishonest assistance in the broad sense that it is also linked to another's wrong, its liability instead surrounds the need for a continuing proprietary interest, and the recipient's knowledge of this, to enable the beneficial owner to recover the trust property, or its substitute; liability without the continuing interest would instead give rise to a contradiction of having clean title while being obligated to restore the property to another.<sup>35</sup>

Accordingly, the judgment provides a welcomed affirmation of the fundamental differences between both liabilities, guidance that will be appreciated by many.

### Will the ruling apply in non-paradigm contexts?

The significance of the judgment lastly derives from the extent of its application to knowing receipt claims

which do not begin with a breach of trust, including the misapplication of company property.

As explained, although an express trust is not in place over company property, where this is misapplied, it will then be treated as subject to a trust prior to receipt, with the beneficial interest remaining with the company upon transfer, consequently allowing them to bring a knowing receipt claim. In accordance with the Supreme Court's judgment, liability will also fail to be established here if no continuing proprietary interest is found, with Lord Burrows rightly clarifying that it would be incoherent to find otherwise; 'if unencumbered title passes to the defendant, the analogous application of the law that would apply in the paradigm situation requires that there can be no liability for knowing receipt [in the non-paradigm situation too]'.<sup>36</sup>

Thus, the judgment has significance beyond the paradigm contexts which concern knowing receipt, demonstrating the extent of its impact.

### Conclusion

Therefore, the Supreme Court provide an evident judgment of significance by finally clarifying that knowing receipt claims cannot be made if the claimant's equitable interest in the property has been extinguished by the time of receipt.<sup>37</sup>

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35. *ibid* [42], [43], [148], [149].

36. *ibid* [181]; Lord Burrows also examines Ministers of the Crown in his judgment, and reaches a similar conclusion on the relevance of continuing proprietary interests to claims in knowing receipt in such contexts.

37. Given the constraints on the issues the court could address, a number of flaws of knowing receipt were raised, but not dealt with, including the court's criticism of the unconscionability test for 'knowledge' provided in *BCCI v Akindele* [2001] Ch 437 given the complexity it presents in determining whether the required knowledge extends beyond actual knowledge to include 'constructive knowledge', thereby presenting key issues that, one hopes, will be decided sooner rather than later. See paragraphs 29–35, 101, and 174 for further details.

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