Smith New Court Securities Ltd v Citibank NA

Also known as: Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd

Significant

Positive/Neutral Judicial Consideration

Court
House of Lords

Judgment Date
21 November 1996

Where Reported
[1997] A.C. 254
[1996] 3 W.L.R. 1051
[1996] 4 All E.R. 769
[1996] 11 WLUK 335
[1997] 1 B.C.L.C. 350
[1996] C.L.C. 1958
(1996) 93(46) L.S.G. 28
(1996) 146 N.L.J. 1722
(1997) 141 S.J.L.B. 5
Times, November 22, 1996
Independent, November 27, 1996
[1996] C.L.Y. 996

Subject
Company law

Keywords
Fraud; Misrepresentation

Judge
Lord Browne-Wilkinson;
Lord Keith of Kinkel;
Lord Mustill;
Lord Slynn of Hadley;
Lord Steyn

Counsel
For C: Jonathan Sumption Q.C. and Anthony Mann Q.C.
For SNC: Anthony Grabiner Q.C., Ian Glick Q.C. and John McCaughran.

Solicitor
For C: Wilde Sapte.
For SNC: Ashurst Morris Crisp.

Case Digest

Abstract
SNC had bought shares in a public company, FIS, at an inflated price in reliance on false representations made by R, who had acted as broker for SVAM and who was also an employee of the second defendant, C. A fraud involving FIS caused the

value of the shares to slump and SNC sold the shares at a substantial loss. The judge awarded damages against C in the sum of GBP 10,764,005 being the difference between the price paid by SNC and the true value of the shares had all facts about FIS been known at the time of purchase. The Court of Appeal substituted an award of GBP 1,196,010 on the basis that SNC's loss upon selling the shares was not foreseeable and should be assessed according to the circumstances and the date they bought the shares. C and SNC appealed.

Held, allowing SNC's appeal and dismissing the appeal by C, that the defendant was liable for all losses directly flowing from the fraudulently induced transaction even if they were not foreseeable. Damages could include the full price paid by SNC but they would have to account for any benefit accruing to them as a result of the transaction. Whilst such benefit would generally include the market value of the property on the purchase date, this rule was flexible and would not normally be applied where the misrepresentation had continued after the date of the transaction or where the plaintiff had become locked into the property as a result of fraud. Consequential losses could also be recovered, although SNC were obliged to do whatever was reasonable to mitigate the loss once they became aware of the fraud. SNC were to be put in the position that they would have been in had misrepresentation not occurred. The judge's original order would be restored, *Doyle v Olby (Ironmongers) Ltd [1969] 2 Q.B. 158, [1969] 1 WLUK 621* considered and *Downs v Chappell [1997] 1 W.L.R. 426, [1996] 4 WLUK 90* overruled in part.

