



4 November 2015

PRESS SUMMARY

Bank of Cyprus UK Limited (Respondent) v Menelaou (Appellant) [2015] UKSC 66
On appeal from [2013] EWCA Civ 814 and [2013] EWCA Civ 1960

JUSTICES: Lord Neuberger (President), Lord Kerr, Lord Clarke, Lord Wilson, Lord Carnwath

BACKGROUND TO THE APPEALS

The appellant (Melissa Menelaou) is the owner of a property, 2 Great Oak Court (“the Property”), bought by her parents in 2008 (in her name as a gift to her) as a family home for her, her siblings and her parents. The respondent Bank had two charges, securing the parents’ borrowing, totalling about £2.2 million over the previous family home owned by the parents, which was sold. The Bank agreed to release those charges, in return for a lump sum payment of £750,000 discharging part of the debt, and a fresh charge over the Property to secure the remaining indebtedness of £1.45 million. This left £875,000 to be used out of the sale proceeds for the purchase of the Property in Melissa’s name.

Melissa was eventually registered as the proprietor of the Property, and the Bank as purported chargee. Melissa only became aware of the existence of the charge in 2010. She then discovered that the charge had not been properly executed and was in fact void, because she had not signed it and it had been altered without consulting her. She sought rectification of the register. The Bank invoked the unpaid vendor’s lien (namely the charge which the law gave to the vendor over the Property to secure the payment of the £875,000 which the purchasers were contractually due to pay him). It counterclaimed that, because the £875,000 used to pay the vendor effectively originated from its release of the charges over the previous property, and was intended to be secured on the Property, the law entitled it to be subrogated to the unpaid vendor’s lien, and thereby to claim a charge over the Property in the sum of £875,000. That counterclaim was the only issue at trial. It was dismissed by the judge at first instance, but granted by the Court of Appeal.

JUDGMENT

The Supreme Court dismisses the appeal. Lord Clarke (with whom Lord Kerr and Lord Wilson agree) delivers the judgment. Lord Neuberger writes a concurring judgment, with which Lord Kerr and Lord Wilson also agree. Lord Carnwath writes a judgment dismissing the appeal, but on different reasoning.

REASONS FOR THE JUDGMENT

This is a case of unjust enrichment. Melissa was enriched. The critical question is whether she was enriched at the expense of the Bank [19-22], because if so that enrichment was clearly unjust. The answer is plainly yes: she became owner of the Property (subject to the charge) thanks to the Bank’s agreement to release a part of the debt in return for that charge. Since the charge was void, the value of the Property to Melissa was considerably greater, at the expense of the Bank which was left without the security that was central to the overall scheme [24]. There was one overall scheme, and a sufficient causal connection between the Bank’s loss and Melissa’s benefit, adopting either a narrow approach (with exceptions) or broad approach to the causal test [25-35]. There are no other defences available to Melissa [36].

The appropriate equitable remedy is that the Bank is subrogated to the unpaid seller's lien. This has the effect of reinstating Melissa's liability under the charge, reversing her unjust enrichment, and allowing the Bank to enforce its equitable interest in the Property by sale [49]. Although this is a complex remedy, it has been rationalised by the development of the doctrine of unjust enrichment, and may now be applied flexibly to the facts of any particular case [37-48; 50].

Lord Neuberger agrees. The Bank can establish an unjust enrichment claim against Melissa. The first step is that she was enriched, because she received the freehold of the Property for nothing (or more accurately, received the freehold free of the intended charge) [62-64]. The second step is that Melissa was enriched at the Bank's expense, both because the Bank could have prevented the purchase of the Property proceeding until it had been granted a charge, and because there was one overall scheme [65-68]. Thirdly, Melissa's enrichment was unjust, since she (as a donee) could not be placed in a better position than her parents, who were not entitled to transfer the freehold free of the intended charge, and since she directly benefited from the scheme [69-73]. Fourthly, Melissa cannot point to any facts which give her a defence, even though she did not know of the charge and the Bank might have an alternative claim [73-77].

Lord Neuberger further notes that it is hard to identify a more appropriate remedy than subrogating the Bank to the lien over the freehold [79-82, 106]. The remedy is broad and flexible, and justified here on analysis of the decision of the House of Lords in *Orakpo v Manson Investments Ltd* [1978] AC 95, 104 and Lord Hoffman's observations in *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221 [83-93]. Melissa's case is by contrast "pure formalism" [95, 99]. This remedy could probably also be justified on the basis that the Bank had a proprietary interest in the £875,000 used to purchase the Property, and that either the Bank or Melissa's parents were the beneficial owners of that sum [100-104, 106].

Lord Carnwath concurs, reaching the same conclusion, but by strict application of the traditional rules of subrogation. The proprietary restitutionary remedy is justified in this case by principles of tracing and subrogation as expressed in *Boscawen v Bajwa* [1996] 1 WLR 328, not because of any tenuous relationship with a vendor's lien, said to subsist by way of analogy [109, 117 121]. The remedy requires that the claimant establish that its money was used to discharge the security through the process of tracing; the looser test of "economic reality" or simple causation (applied by the Court of Appeal in this case) is insufficient [132]. Here, there was a clear "tracing link" between the Bank and the money used to purchase the Property. The Bank's interest in the purchase money was clear and direct. [134-140].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.shtml>