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UK Supreme Court Clarifies Approach to Valuation Date When Calculating Equitable Compensation Payable by "Dishonest" Director

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At a Glance

In a judgment concerning a defaulting director's liability to pay equitable compensation for disposing of company property in breach of trust, the UK Supreme Court restored a €67 million order against Sheikh Mohamed Bin Issa Al Jaber for dishonestly transferring shares owned by MBI International & Partners Inc whilst it was in liquidation.

The Supreme Court's judgment[1] clarifies key principles regarding how to quantify equitable compensation when company property has been misappropriated but has subsequently diminished in value. The decision rejects a one-size-fits-all rule that equitable compensation must be measured at the trial date and confirms that there is a strict burden on fiduciaries who seek to rely on supervening events to reduce or eliminate liability.

The Supreme Court held that:

- The Sheikh assumed — and simultaneously breached — fiduciary duties when he "intermeddled" in MBI's property notwithstanding that the liquidation process had stripped him of powers as a director of MBI.
- Purported unpaid vendors' liens did not encumber the shares.

- The Sheikh could not escape liability by relying on a later intra-group restructuring that rendered the shares worthless. He failed to prove that event broke the causative link between the breach of fiduciary duty and the loss suffered by MBI.

Accordingly, the Supreme Court dismissed the Sheikh's cross-appeal and reinstated the trial judge's compensatory order in favour of the liquidators.

Background

The Sheikh was the sole shareholder and a director of MBI, a British Virgin Islands company.

In 2009, as part of a planned restructuring and proposed initial public offering (IPO) of JJW Hotels & Resorts Holding Inc (JJW Inc), MBI acquired 891,761 shares (891K Shares) in JJW Inc from two group entities, JJW Guernsey and JJAB, pursuant to two identical share purchase agreements (SPAs).

The consideration for these shares, amounting to circa €89 million, was "to be paid on demand by [MBI] to [JJW Guernsey/JJAB] in such a way that is mutually agreed by [MBI] and [JJW Guernsey/JJAB]". However, the IPO did not proceed, no demand for payment was made and thus no payment for the 891K Shares was ever made by MBI to JJW Guernsey or JJAB.

MBI was wound up by order of the Eastern Caribbean Supreme Court in October 2011. Under BVI law, as a result of the winding up, the liquidators took custody and control of MBI's assets, and the Sheikh's powers as a director ceased.

Despite this, in 2016, without the liquidator's knowledge, the Sheikh dishonestly signed undated share transfer forms purporting to transfer the 891K Shares from MBI to JJW Guernsey and facilitated the registration of JJW Guernsey as the holder of these shares in JJW Inc's register (the 2016 transfers). He did so by signing a written resolution as sole director of JJW Inc, falsely asserting that the transfers had occurred in 2010.

The 891K Shares were subsequently transferred in June 2017, after the BVI liquidation was recognised in the UK, by JJW Guernsey to another company in the MBI Group, MBI International Holdings. In July 2017, all of JJW Inc's assets and liabilities were transferred to JJW Hotels & Resorts UK Holdings Ltd (JJW UK), which was at all relevant times owned by another MBI group company, MBI International Group

Holdings UK Ltd (2017 asset and liability transfer). As a result of this transaction, the 891K Shares became worthless, as JJW Inc was left with no assets.

The liquidators commenced proceedings in England in 2019 under Section 212 of the Insolvency Act 1986 claiming that the Sheikh owed fiduciary duties at the time of the 2016 Share transfer, misappropriated company property and sought an order for damages.

The trial judge:

- found that, in effecting the 2016 transfers, the Sheikh had acted dishonestly, in bad faith and not in the best interests of MBI;
- awarded compensation of circa €67 million to MBI, using the value of the net assets in JJW Inc's accounts for the year ended 31 December 2016 as an approximation of the value of JJW Inc when the 2016 transfers took place; and
- found the Sheikh and JJW Guernsey jointly and severally liable to pay the equitable compensation.

The Sheikh and JJW Guernsey appealed. The Court of Appeal allowed the Sheikh's appeal on the issue of whether MBI had suffered any loss, finding that MBI suffered no loss as the substitutive approach to equitable compensation required the court to assess loss at the time of trial. Since the 891K Shares had become worthless following the 2017 asset and liability transfer, MBI had not suffered any loss from the Sheikh's breach of fiduciary duty.

The parties appealed to the Supreme Court.

Issues Before the Supreme Court

The Supreme Court appeal concerned three issues:

- Did the Sheikh owe and breach a post-liquidation fiduciary duty when he executed and implemented the 2016 transfers (when MBI was in liquidation)?
- If there was a breach of fiduciary duty, had MBI in fact suffered no loss because the 891K Shares were acquired by MBI in 2009 subject to an unpaid vendors' lien?
- Even if no liens existed, how should the loss of value of the 891K Shares be calculated when the value in the 891K Shares was destroyed following the 2017 asset and liability transfer?

Supreme Court Decision:

The Supreme Court unanimously allowed the liquidators' appeal.

Issue 1 — Fiduciary Duty:

The Supreme Court held that the Sheikh was liable as a "fiduciary de son tort" (i.e., "of his own wrong", in acting in an official capacity without legal authority). Although his formal powers as a director had ceased upon MBI's liquidation, the Supreme Court found that by purporting to exercise a director's authority (specifically, by signing share transfer forms for the 891K Shares and facilitating the registration of the 891K Shares in JJW Guernsey's name), the Sheikh had "intermeddled" with company property and assumed fiduciary obligations.

The Supreme Court emphasised that fiduciary duties can arise ad hoc. Equity does not require an express or implied undertaking to act as a fiduciary. Rather, equity will recognise the undertaking of a fiduciary duty by a putative fiduciary where a person arrogates to themselves a fiduciary power and they will be subject to the same duties as if they had been properly appointed as a fiduciary.

The Sheikh's actions, which the trial judge found to be dishonest and in bad faith, constituted a clear breach of these fiduciary duties. The Supreme Court confirmed that the act of intermeddling itself both created and breached that duty.

Issue 2 — Unpaid Vendor's Lien:

On the question of whether the shares were encumbered by unpaid vendor's liens, the Supreme Court agreed with the Court of Appeal that no such equitable lien arose.

The Supreme Court conducted a close analysis of the SPAs and the surrounding circumstances, specifically the intended IPO. It concluded that the parties' objective intention was that the JJW Guernsey and JJAB would be paid from the proceeds of the IPO, not by enforcing a lien over the 891K Shares. The existence of a lien would have frustrated the very purpose of the transaction — it would have prevented MBI from selling the 891K Shares in the IPO.

Issue 3 — Quantification of Loss:

On the issue of quantification, the Supreme Court overturned the Court of Appeal's finding that MBI suffered no loss as the 891K Shares fell to be valued as at the trial date.

The Supreme Court recognised that there is a general tendency of equity to assess quantum (including value) at the date of trial. But the Supreme Court confirmed that this is not a fixed or invariable rule. Thus, the question of which date is appropriate to use to assess the value of what has been misappropriated is an open question that requires consideration of what is just and equitable as between the company and the fiduciary.

The Supreme Court reaffirmed that once a misappropriation by a fiduciary is established and the company can prove that the property had value when it was misappropriated, the company suffers an immediate loss in value. In those cases, the burden shifts to the wrongdoer to prove that any subsequent event broke the chain of causation or would have resulted in the same loss regardless of the breach.

The Supreme Court stressed that a fiduciary cannot benefit from a supervening event in which they played a significant role, in the absence of a clear and convincing innocent explanation provided by the fiduciary. The Supreme Court noted that the Sheikh had not provided full disclosure as to the subsequent events that led to the destruction in value of the 891K Shares. However, piecing together the facts that had been disclosed, the Supreme Court found that the Sheikh was the prime mover in the 2017 asset and liability transfer and thus he could not pray it in aid as a subsequent event in diminution or extinction of the loss that he had caused to MBI by the 2016 transfers.

The real-world loss to MBI occurred when the 2016 transfers were made by the Sheikh. By time of the 2017 asset and liability transfer, the 891K Shares were owned by MBI International Holdings. Thus, the loss in value of the 891K Shares caused by the 2017 asset and liability transfer was in fact a loss to MBI International Holdings not MBI.

On the facts of this case, therefore, the proper measure of compensation was the value of the shares at the time of the misappropriation, assessed with hindsight but reflecting the actual loss suffered by MBI. The Supreme Court accepted the trial judge's valuation of €67,123,403.

Conclusion

The Supreme Court's judgment is welcome clarification of the approach courts should take when calculating equitable compensation in cases of misappropriation of assets by a fiduciary where those assets subsequently suffer a loss in value due to a supervening event. By rejecting a rigid rule tethering compensation to trial-date valuations, the Supreme Court protects principals (including companies, creditors and trustees) from value-destructive transactions that are effected in breach of a fiduciary duty.

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1. *Mitchell v Sheikh Mohamed Bin Issa Al Jaber (No 2)* [2025] UKSC 43 ↩

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