



18 April 2018

PRESS SUMMARY

Gavin Edmondson Solicitors Limited (Respondent/Cross-Appellant) v Haven Insurance Company Limited (Appellant/Cross-Respondent) [2018] UKSC 21
On appeal from: [2015] EWCA Civ 1230

JUSTICES: Lady Hale (President), Lord Kerr, Lord Wilson, Lord Sumption, Lord Briggs

BACKGROUND TO THE APPEAL

Six individuals were involved in road traffic accidents involving vehicles whose drivers were insured by the appellant insurance company, Haven Insurance Company Limited (“**Haven**”). They all entered into conditional fee agreements (“**CFAs**”) with the respondent solicitors firm, Gavin Edmondson Solicitors Limited (“**Edmondson**”). Edmondson notified the claims via the online Road Traffic Accident Portal (“**the Portal**”), in accordance with the Pre-action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“**the Protocol**”). Under this scheme, the solicitors lodge the details of the claim on the Portal, the insurers respond by admitting or denying liability, and then, if liability is admitted, the amount of the damages are negotiated, with recourse to a court hearing if the amount cannot be agreed. Under the Protocol, the insurer is expected to pay the solicitor’s fixed costs and charges direct to the solicitors.

In this case, however, shortly after the claims were logged on the Portal, Haven made settlement offers direct to the claimants, on terms which did not include any amount for the solicitors’ costs. Haven told the claimants that they could pay the claimants more, and more quickly, by that route, than by going through the Portal. All the individuals eventually accepted these offers, and cancelled their CFAs with Edmondson. This practice by Haven has been repeated in many other cases, which are not before the court.

Edmondson claimed against Haven for the fixed costs which it should have been paid under the Protocol. Specifically, Edmondson sought enforcement of the solicitor’s equitable lien. This is a form of security for the payment of fees owed by the client for the successful conduct of litigation, paid out of the fruits of that litigation. Edmondson’s claim was dismissed at first instance. The Court of Appeal allowed their appeal, holding that, even though the claimants did not have a contractual liability for the firm’s charges, which meant that the traditional equitable lien claim failed, the remedy could be modernised to allow the solicitors to recover from the insurers their fixed costs that should have been paid under the Protocol.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Briggs gives the lead judgment, with which the rest of the Court agrees. Edmondson are entitled to the enforcement of the traditional equitable lien against Haven, as the client owed a contractual duty to pay the solicitors’ charges. However, the equitable lien should not have been modernised in the manner undertaken by the Court of Appeal.

REASONS FOR THE JUDGMENT

The solicitor's equitable lien: the existing law

As the early cases demonstrate, the solicitor's equitable lien was developed to promote access to justice. It enables solicitors to offer litigation services on credit to clients who, although they have a meritorious case, lack the financial resources to pay up front for its pursuit [1], [33-34].

The equitable lien depends upon (i) the client having a liability to the solicitor for his charges; (ii) there being something in the nature of a fund in which equity can recognise that the solicitor has a claim (usually a debt owed by the defendant to the solicitor's client which owes its existence to the solicitor's services to the client); and (iii) something sufficiently affecting the conscience of the payer at the time of payment, either in the form of collusion with the client to cheat the solicitor or notice or knowledge of the solicitor's claim against or interest in the fund [35-37].

Construction of the CFA – does the client have any contractual liability to pay the solicitor's charges?

The client care letter, which explained that the solicitor would be able to recover its costs from the losing side if the claimants won, so that the claimants would not need to put their hands in their own pockets, did not mean that the claimants were not contractually liable for the solicitors' fees. It merely limited the recourse from which Edmondson could satisfy that liability to the amount of its recoveries from the defendant, and it both preserved and affirmed the client's basic contractual liability. This was a sufficient foundation for the lien to operate as a security for payment, on a limited recourse basis [40-44].

Did Haven have notice of Edmondson's lien?

In all the cases before the court, the requirement that the settlement debts must owe their creation to Edmondson's services provided to the claimants under the CFAs was satisfied on the facts. Edmondson's actions in logging the claim on the portal contributed to the settlement in two ways. First, it supplied the details of the claim to the insurer, and second, it demonstrated the claimant's serious intention to pursue the claim, and ability to do so with the benefit of a CFA [45-46], [59-63].

Once a defendant or his insurer is notified that a claimant in a road traffic accident case has retained solicitors under a CFA, and that the solicitors are proceeding under the Protocol, they have the requisite notice and knowledge to make a subsequent payment of settlement monies direct to the claimant unconscionable, as an interference with the solicitor's interest in the fruits of the litigation. In this case, Haven had notice of the lien because they knew that each of the claimants had retained Edmondson under a CFA, and also knew that Edmondson was looking to the fruits of the claim for recovery of its charges [48-50]. As such, the lien could be enforced against Haven by requiring it to pay the fee amounts in the CFAs direct to Edmondson, but only up to the amount of the agreed settlement payments [65]. To that limited extent the order made by the Court of Appeal needed to be varied.

The re-formulation of the equitable lien by the Court of Appeal

It is not strictly necessary to address this issue in view of the decision on the traditional principle above, but the correctness or otherwise of the Court of Appeal's reformulation of the principle has been extensively argued, and the Law Society has intervened to support it [51-52].

There are insuperable obstacles to extending the principle to cases where, although there is no contractual liability for the charges, the Protocol is breached. This includes the fact that the Protocol is purely voluntary and created no debt or other relevant legal rights at all. Whilst equitable remedies are flexible, they still operate according to principle. One of the principles of the equitable lien is that the client must have a responsibility for the solicitor's charges. There is no general principle that equity will protect solicitors from any unconscionable interference with their expectations in relation to recovery of their charges [53-58].

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.

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