



Press Summary

12 July 2023

Philipp (Respondent) v Barclays Bank UK PLC (Appellant)

[2023] UKSC 25

On appeal from: [2022] EWCA Civ 318

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Sales, Lord Hamblen and Lord Leggatt

Background to the Appeal

In 2018 Mrs Fiona Philipp and her husband, Dr Robin Philipp, fell victim to a fraud. They were deceived by criminals into instructing Barclays Bank (the **Bank**) to transfer £700,000 in two payments from Mrs Philipp's current account with the Bank to bank accounts in the United Arab Emirates. The instructions were carried out and the money was lost.

In these proceedings Mrs Philipp claims that the Bank is responsible for this loss. She contends that the Bank owed her a duty under its contract with her or under common law not to carry out her payment instructions if - as is alleged - the Bank had reasonable grounds for believing that she was being defrauded.

The Bank applied to have the claim summarily dismissed on the ground that, as a matter of law, it did not owe Mrs Philipp the alleged duty. The High Court (Judge Russen QC) granted summary judgment in favour of the Bank: [2021] EWHC 10 (Comm). But the Court of Appeal allowed an appeal by Mrs Philipp: [2022] EWCA Civ 318. The Court of Appeal accepted her legal argument that, in principle, a bank owes a duty to its customer of the kind alleged: whether such a duty arose on the facts in this case is a question which can only be decided at a trial. From that decision the Bank now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal, holding that the Bank did not owe the alleged duty to Mrs Philipp. The Court therefore restores the order of the judge granting the Bank summary judgment (but varies it to permit Mrs Philipp to maintain an alternative claim based on the Bank's alleged failure to act promptly to try to recall the payments after the

fraud was discovered). Lord Leggatt, with whom the other Justices agree, gives the court's judgment.

Reasons

The type of fraud which occurred in this case is known as "authorised push payment" (APP) fraud - so called because the victim is induced by fraudulent means to authorise their bank to send a payment to a bank account controlled by the fraudster [8]. Whether victims of such frauds should be left to bear the loss themselves or whether banks which have made or received the payments on behalf of customers should be required to reimburse victims of such crimes is a question of social policy for regulators, government and ultimately for Parliament to consider [6], [22]-[24]. It is in fact now the subject of legislation. The Financial Services and Markets Act 2023, which received Royal Assent on 29 June 2023, provides (in section 72) for a mandatory reimbursement scheme (although this scheme does not extend to international payments and therefore would not have applied to this case) [21].

The claim made by Mrs Philipp is based on her contract with the Bank. The contract between a bank and a customer who holds a current account is a very well-established type of contract. Certain obligations have come to be recognised by the common law (and sometimes statute) as obligations implied by law in contracts of this type. These can be added to or altered by express agreement [26]. It would be possible for a bank to agree that it is not to carry out a payment instruction given by its customer if it believes, or has reasonable grounds for believing, that the customer has been tricked by a third party into authorising the payment. But the standard terms of business on which Barclays expressly agrees to provide its services do not contain an express term of this kind [4], [111]-[114]. Mrs Philipp argues that no express term is needed because such a duty is either already recognised by the common law, or can and should be recognised by a principled extension of the existing law, as an implied term of the contract between a bank and its customer [27].

The Court rejects this argument as inconsistent with the ordinary obligations owed by a bank to its customer. Provided the customer's account is in credit, the ordinary duty of the bank when instructed by its customer to make a payment from the account is to carry out the instruction and make the payment. In making the payment, the bank acts as the customer's agent. Its duty is strict. Unless otherwise agreed, the bank must execute the instruction and do so promptly. It is not for the bank to concern itself with the wisdom or risks of its customer's payment decisions [3], [28]-[30].

Mrs Philipp's argument relies heavily on the case of *Barclays Bank plc v Quincecare Ltd* [1992] 4 All ER 363. In this and other similar cases courts have held that a bank which receives an instruction from an agent of the customer to make a payment owes a duty to its customer not to carry out the instruction if the bank has reasonable grounds for believing that the agent is defrauding the customer by using the money for the agent's own purposes. But the explanation for these cases is that the authority of an agent to sign cheques or give other payment instructions on the customer's behalf does not include authority to defraud the customer [72]-[74], [90]-[91]. If the bank were to carry out the instruction it would therefore be making a payment which the customer has not actually authorised the bank to make. Even if the agent is acting in fraud of the customer and therefore does not actually have authority to give the instruction on behalf of the customer, the bank would still generally be entitled to rely on the agent as having apparent authority to do so; but not if

the bank has reasonable grounds for believing that the instruction given by the agent is an attempt to defraud the customer and is therefore given without the customer's authority [86], [89]. In that case if the bank executes the instruction without first making inquiries to verify that the payment has actually been authorised by the customer and the instruction proves to have been given without the customer's authority, the bank will be in breach of duty. It will also be acting without actual or even apparent authority from the customer and will therefore not be entitled to debit the payment to the customer's account [90], [97].

This reasoning does not apply to cases like this one where there is no agent involved and the customer herself gives a payment instruction to the bank. In this situation the validity of the instruction is not in doubt. Provided the instruction is clear, no enquiries are needed to clarify or verify what the bank is authorized and required to do. Unless otherwise expressly agreed, the bank's duty is to execute the instruction and any refusal or failure to do so will be a breach of duty by the bank [5], [100].

Conclusions

In this case each of the two payments made by the Bank was made after Mrs Philipp and her husband had visited a branch in person and given instructions to transfer the money from her account to a bank account in the UAE. They believed, having been duped by the fraudster, that they were transferring the money to "safe accounts". It is conceded that on the first occasion her husband told the cashier, falsely, that he had had previous dealings with the company to whose account the payment was being sent. On each occasion, before making the transfer, a representative of the Bank telephoned Mrs Philipp to seek her confirmation that she had made the transfer request and wished to proceed with it. On each occasion Mrs Philipp provided the required confirmation [12]. It is beyond dispute, therefore, that she unequivocally authorised and instructed the Bank to make the payments and, in these circumstances, it is impossible to say that the Bank owed her a duty not to comply with her instructions [5].

Mrs Philipp has an alternative claim that the Bank was in breach of duty in not acting promptly to try to recall the payments made to the UAE after being notified of the fraud. In the Court's view, the questions (i) whether the Bank owed such a duty and (ii) whether there was any realistic chance that the money would have been recovered if attempts had been made to recall the payments sooner cannot be decided without a fuller investigation of the facts. This alternative claim should therefore not have been summarily dismissed [115]-[119].

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: [Decided cases - The Supreme Court](#)