Press Summary

19 March 2025

Rukhadze and others (Appellants) v Recovery Partners GP Ltd and another (Respondents)

[2025] UKSC 10

On appeal from [2023] EWCA Civ 305

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Briggs, Lord Leggatt, Lord Burrows, Lady Rose and Lord Richards

Background to the Appeal

This is an appeal about the 'profit rule' for fiduciaries. Fiduciaries, such as trustees or company directors, owe a duty of loyalty to their beneficiary/principal (the person for whom they hold or manage property, eg the company in the case of a director). One of the ways in which that duty of loyalty manifests itself is in a requirement that, if the fiduciary makes a profit out of their position as a fiduciary, they are bound to account for that profit to their principal (unless the principal has given fully informed consent).

The respondents to the appeal are a company incorporated in the British Virgin Islands (to which the claims of another such company have also been assigned) and an English LLP. The individual appellants worked for the respondents, holding positions of responsibility (eg serving as directors) such that they owed fiduciary duties to the respondents. In breach of those duties, these appellants diverted a business opportunity away from the respondents and exploited it for themselves.

Following a claim in the High Court, the appellants were – in accordance with the profit rule – ordered to pay to the respondents the profits made from this business opportunity. The appellants appealed, unsuccessfully, to the Court of Appeal. They now appeal to the Supreme Court. In their appeal, they dispute their liability to repay those profits and, in any event, how those profits should be calculated.

The question before the Supreme Court was whether the current test for requiring an account of profits should be altered to introduce a requirement that the fiduciary could not have made the same profit in a way that avoided a breach of duty, ie: 'Could the same profit have been made *but for* the breach of fiduciary duty'? The appellants accept that introducing such a 'but

for' test would mean departing from two House of Lords authorities: *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134 and *Boardman v Phipps* [1967] 2 AC 46.

Judgment

The Supreme Court unanimously dismisses the appeal. Lord Briggs (with whom Lord Reed, Lord Hodge, and Lord Richards agree) writes the leading judgment. Lord Leggatt, Lord Burrows, and Lady Rose each write concurring judgments (agreeing with the outcome but for their own different reasons). The court declines the appellants' invitation to change this aspect of the law.

Reasons for the Judgment

Lord Briggs explains that the profit rule reflects the way that the law (or more specifically, the body of legal principles known as 'equity') views the profits made by a fiduciary as belonging to the fiduciary's principal. They are, from the moment they are made, held on trust for the principal (under what is called a 'constructive trust'). And they have to be accounted for. That involves the fiduciary both revealing their existence and paying them over to the principal **[2]**.

Where a fiduciary makes a profit after the end of the fiduciary relationship, he will still have to account for those profits if they were somehow made out of that expired relationship. In practice, there is often a dispute as to whether such profits did indeed arise from the fiduciary relationship or not. But it is clear that in such a situation a former fiduciary cannot avoid liability by saying that he would have made the profit even if he had not committed a breach of fiduciary duty **[4]–[5]**.

The appellants argued that this rule was counter-intuitive and old-fashioned, resulted in unpredictability and (on occasion) excessive harshness, and was ultimately unjustifiable; introducing a 'but for' element to the test for liability would cure these defects **[6]**, **[45]**, **[50]**. On examination, however, these arguments did not add up to anything approaching a compelling justification for changing the law **[75]**.

The essential purpose of the profit rule is to deter fiduciaries from giving in to the human temptation to depart from their obligation of single-minded loyalty to their principal (for their own benefit) **[16]–[19]**. The obligation to account is a duty imposed by equity as an inherent aspect of being a fiduciary. It is not necessarily (though often is) triggered by a separate breach of duty, and it is certainly not a mere discretionary remedy for such a breach, dependent on a demand from the principal or an order of court (though it often has a remedial effect). Nor is it comparable to an award of damages **[20], [22]–[24], [47]**. The comparison to equitable compensation (which does employ a 'but for' test) is similarly unhelpful: an account of profits is not about compensation for loss **[60]**.

Thus the introduction of a 'but for' test would undermine the essence of the duty (by treating it as a mere remedy for a separate breach) and water down the chief disincentive – the inevitable nature of the obligation to account for the profits – to fiduciaries who might otherwise be tempted to be disloyal **[47]**. The scope, in the existing law, for an equitable allowance to be afforded to errant fiduciaries (reducing their liability) in recognition of their work and skill in obtaining the profits made provides an effective means of mitigating against excessive harshness **[57]–[58]**.

Furthermore, the appellants' suggestion that the existing application of the profit rule was obscure, inconsistent with modern business norms, and irrelevant in the light of modern regulation was not substantiated and did not justify a departure from long-established legal principles **[50]–[53]**.

Finally, it was not the case that there was any compelling divergence between the approach taken by the English courts and those of other common law jurisdictions, nor was there any academic consensus in favour of changing the law in the way the appellants suggested **[61]–[74]**.

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Lord Leggatt considers that referring to the 'profit rule' is misleading. The true rule is that a fiduciary must not use any property or information or opportunity belonging to the principal for the fiduciary's own benefit (or for any unauthorised purpose) **[93]–[95]**. If the fiduciary does so, he or she is liable to compensate the principal for any loss caused, or to account to the principal for any profit made, as a result of the breach of duty. A 'but for' test is inherent in the requirement to show a causal link between the breach of duty and a recoverable loss or profit [**172]**. Here the 'but for' test is satisfied. The appellants exploited for themselves a business opportunity (and confidential information) in breach of fiduciary duties owed to the respondents. But for these breaches, they would not have made any of the profits which they in fact made **[201]–[203]**. In addition, Lord Leggatt disagrees with Lord Briggs' characterisation of an account of profits as a duty rather than just a remedy **[210]–[237]**.

Lord Burrows considers that, in this case, the account of profits is a remedy for the wrong of breach of fiduciary duty. The two leading cases, which the appellant submits should be overruled, do not apply a 'but for' test to link the profits made to the wrong because the causal test does not incorporate a consideration of the profits which the defendant might otherwise have lawfully obtained **[261]–[264]**, **[269]–[270]**. Invitations to overrule Supreme Court/House of Lords authority are approached with caution. The two leading cases cannot be said to have been plainly wrong in their failure to apply a 'but for' test that includes the 'lawful alternative counterfactual' (ie the test contended for by the appellants). On the contrary, the approach in those two cases can be readily justified for reasons of principle and policy. Therefore, those cases should not be overruled **[291], [297]–[301]**.

Lady Rose considers that the appellants' real complaint is that the formal roles that the parties in this case were given in companies and partnerships did not reflect their actual business relationships or the conduct fairly expected of them, but were adopted purely for tax advantage or other similar reasons. However, Lady Rose points out that those rules were recently codified in the Companies Act 2006. It shows that Parliament did not consider that changing business norms in the UK, which is where these parties were carrying on their business, meant that the rules were now out of date. Further, the proposed change to the law would have far reaching effects. Any reconsideration was properly a matter for the legislature **[325]–[335]**.

References in square brackets are to paragraphs in the judgment.