Press Summary

23 July 2025

Stevens (Respondent) v Hotel Portfolio II UK Ltd (In Liquidation) and another (Appellants)

[2025] UKSC 28

On appeal from: [2023] EWCA Civ 1120

Justices: Lord Reed (President), Lord Briggs, Lord Hamblen, Lord Burrows and Lord Richards

Background to the Appeal

Mr Ruhan was a director of a company called Hotel Portfolio II UK Ltd ("**HPII**", the Appellant in this appeal). As a director, he owed fiduciary duties to the company, not least to avoid conflicts of interest (absent the company's consent) and to refrain from making unauthorised profits out of his position as a director.

In 2005, HPII sold three hotels to a Madeiran company, Cambulo Comercio e Serviyços Sociedade Unipessol LDA (together with its subsidiaries, "**Cambulo**"). Cambulo was ostensibly owned by Mr Stevens (the Respondent in this appeal), but in reality it and Mr Stevens were nominees for Mr Ruhan, who concealed from HPII that he was the true buyer. Nonetheless, the hotels were sold at market value, and the parties agree that HPII suffered no loss at that stage.

Between 2006 and 2008, Cambulo went on to sell the hotels – now with the benefit of planning permission for residential development – to third parties, making a very large profit. Again, both sides accept that HPII would not itself have exploited the development opportunity which enabled the highly profitable onwards sale and so, in that sense, it did not lose out.

Over £100 million of those profits went to Mr Ruhan, which he dissipated for his own purposes.

When it discovered Mr Ruhan's role in these transactions, HPII sued both Mr Ruhan and Mr Stevens, alleging that Mr Ruhan had breached his fiduciary duties and that Mr Stevens had dishonestly assisted him in doing so.

HPII won in the High Court. Mr Ruhan was held to have breached his fiduciary duties by failing to disclose his interest in Cambulo and by dissipating the on-sale profits which, as unauthorised profits made by a fiduciary, were as a matter of law held on constructive trust for HPII (and for which he was ordered to account). Mr Stevens was held to have dishonestly assisted in each of Mr Ruhan's two breaches and was ordered to pay equitable compensation in respect of the dissipation of the profits in the sum of £102 million.

However, Mr Stevens successfully appealed to the Court of Appeal. That appeal (like this one) was, strictly speaking, concerned only with Mr Stevens' liability. But while a dishonest assistant like Mr Stevens will be jointly liable with a defaulting fiduciary (ie Mr Ruhan) to compensate the beneficiary for any loss caused by the fiduciary's breach, they will not be liable to account for any profits received by that fiduciary. Accordingly, the Court of Appeal accepted that, because HPII would not have realised the on-sale profits itself, it had suffered no compensatable loss as a result of Mr Ruhan's actions, and so Mr Stevens could not be liable.

HPII now appeals to the Supreme Court.

Judgment

The Supreme Court allows the appeal in favour of HPII (Lord Burrows dissenting). Lord Briggs (with whom Lords Reed, Hamblen and Richards agree) writes the judgment of the majority. Since the unauthorised profits made by Mr Ruhan were held on trust for HPII, and since Mr Stevens had dishonestly assisted in the dissipation of those profits (to the detriment of HPII), Mr Stevens is liable to compensate HPII for those dissipated profits.

Reasons for the Judgment

It was common ground between the parties that Mr Ruhan held the profits on an institutional, and not merely remedial, constructive trust from the moment he received them, and that his dissipation of those profits was a breach of that trust **[23].** In other words, the profits always belonged (beneficially) not to Mr Ruhan but to HPII. They were HPII's property **[24]**.

There were essentially three issues before the court **[26]**:

(i) Whether loss caused by a breach of constructive trust is compensatable in principle.

(ii) Whether HPII in fact suffered a loss as a result of the dissipation.

(iii) If so, whether the profits from the onwards sale could be treated as a gain made for the benefit of HPII, and set off against the subsequent dissipation loss to reduce Mr Stevens' liability.

On (i), while the constructive trust of the profits was equity's response to the circumstances in which they were made, it was not a mere remedy for Mr Ruhan's wrongdoing in the way that damages (eg for breach of contract) are **[31]**, **[33]**. It meant that the profits were HPII's property: in those circumstances it would be extraordinary – and contrary to basic equitable principle, if the dissipation of the trust fund (preventing HPII from actually claiming its property) did not give rise to a remedy of equitable compensation **[35]**.

Moreover, Mr Stevens' liability as an assister was founded on the dissipation of the profits, which was distinct from the making of them. So there was no conflict with the principle that a dishonest assister will only be liable for profits they have themselves made (and not those made by the errant fiduciary) **[36]–[39]**.

As for (ii), equitable compensation is calculated as the amount needed to put the beneficiary (ie HPII) in the position it would have been in had the fiduciary (ie Mr Ruhan) acted in accordance with his duties **[43]**. Mr Stevens used that to argue that HPII had suffered no real loss, because the dissipation breach had to be aggregated with the earlier breach involved in the making of the profits: in those circumstances HPII had suffered no loss as its position if neither breach had occurred was equivalent to the one in which it found itself (the profits had been made in breach of duty and then dissipated in breach of duty) **[9]**.

But that analysis did not follow from the case law and would be inconsistent with the purpose of the constructive trust, which equity must intend to have some useful effect. On a practical level, it would mean that a dishonest assister would get off scot-free in any case in which the trust fund he helped dissipate was an unauthorised profit. **[56], [59-60].** The correct counter factual when assessing the loss caused by the dissipation was not that the constructive trust had never come into being, but rather than the trust fund had not been dissipated **[61-62]**.

Finally, in relation to (iii), the general rule is that a trustee is not permitted to set off gains made in one breach of trust against losses made in another **[63]**. The case law permits an exception to that rule, but properly understood it extends only to situations where a strict application of the usual rule would lead to a plainly inequitable result, and not to cases where the loss and the gain are merely connected in some way **[82-83]**. In the present case, there is no sense in which equity would be better served by allowing the set-off rather than following the general rule, which properly reflects the purpose of the constructive trust in conferring ownership of the unauthorised profit to the wronged fiduciary **[93-99]**.

The legal conclusions reached in the course of the judgment are concisely summarised at paragraph **[100]**.

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<u>Lord Burrows (dissenting)</u> would have dismissed the appeal. The precise nature of a constructive trust of unauthorised profits remains unclear **[124-127].** But, in any event, Mr Stevens is not liable for dishonest assistance for loss caused by the dissipation of profits for several reasons. They include:

(i) It is artificial to divide up the various parts of Mr Ruhan's scheme – the relevant counterfactual is the position HPII would have been in but for the scheme as a whole and, applying that counterfactual, HPII has suffered no loss **[128-131]**.

(ii) Making Mr Stevens liable effectively requires him to account for Mr Ruhan's profits rather than Mr Stevens' own profits. That contradicts the established law on an account of profits **[132-133]**.

(iii) The law on election of remedies means that, having elected for an account of profits, HPII cannot recover equitable compensation **[135]**.

(iv) To award equitable compensation for dishonest assistance leads to potential double recovery by HPII **[136]**.

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