



Press Summary

24 November 2025

Mitchell and another (Joint Liquidators of MBI International & Partners Inc (In Liquidation)) (Respondents) v Sheikh Mohamed Bin Issa Al Jaber (Appellant);

Mitchell and another (Joint Liquidators of MBI International & Partners Inc (In Liquidation)) (Appellants) v Sheikh Mohamed Bin Issa Al Jaber (Respondent) No 2

[2025] UKSC 43

On appeal from: [2024] EWCA Civ 423

Justices: Lord Hodge (Deputy President), Lord Briggs, Lord Sales, Lord Stephens and Lord Richards

Background to the Appeal

Sheikh Mohamed Al Jaber (“**the Sheikh**”) is an international businessman and the founder and chairman of many companies. He was the director of MBI International & Partners Inc (**the “Company”**), which was incorporated in the British Virgin Islands on 24 July 1990. In these proceedings, the liquidators of the Company sued both the Sheikh and JJW Guernsey (a company associated with the Sheikh) for equitable compensation.

In March 2009, the Company acquired 891,761 shares (**the “891K shares”**) in JJW Inc (another company associated with the Sheikh) pursuant to two share purchase agreements (**the “March 2009 transfers”**). The shares were transferred in return for sums of money which were to be “*paid on demand*” by the Company “*in such way that is mutually agreed.*” Payment under the share purchase agreements was never demanded, nor was any agreement reached as to how such payment would be made. No payment was made under the share purchase agreements.

The Company was wound up by the order of the Eastern Caribbean Supreme Court on a creditor’s application on 10 October 2011. At that time, the Company was still the registered owner of the 891K shares in JJW Inc. As a result of the winding up, under the provisions of BVI company law, the Sheikh’s powers as director of the Company came to an end.

Nevertheless, on or around 29 February 2016 (after his powers as a director had ceased), without the knowledge of the Company’s liquidator, the Sheikh signed two undated share

transfer forms for the transfer of the 891K shares in JJW Inc from the Company to JJW Guernsey (**the “2016 Share Transfers”**). The Sheikh purported to sign the share transfer forms *“for and on behalf of [the Company] as its ‘Director.’”*

In July 2017, all JJW Inc’s assets and liabilities were transferred to JJW UK (**the “2017 Asset and Liability Transfer”**). As a result of this transfer, the 891K shares which in 2016 had been transferred from MBI to JJW Guernsey became worthless.

In May 2019, the Company’s liquidator commenced proceedings against the Sheikh. The Company’s liquidator advanced three claims: first, that the 2016 Share Transfers were void; secondly, that the Sheikh had acted in breach of fiduciary duty or in breach of trust in bringing about the 2016 Share Transfers; and thirdly that JJW Guernsey was the knowing recipient of the 891K shares.

The trial judge found in favour of the liquidators, who had taken over the winding up, on all three issues. She ordered that the liquidators were entitled to equitable compensation on a substitutive basis and that the loss to the Company was the value of the 891K shares which had been transferred from its ownership by the 2016 Share Transfers. She calculated the loss to amount to €67,123,403.36. She found that the Sheikh and JJW Guernsey were jointly and severally liable to pay equitable compensation in that sum.

The Court of Appeal upheld the trial judge’s ruling as to liability. However, on the issue of remedy, the Court of Appeal allowed the Sheikh and JJW Guernsey’s appeal on the ground that the liquidators had failed to establish any loss. The Court of Appeal considered that, by the time of the trial, the 891K shares had become worthless because of the 2017 Asset and Liability Transfer. The Court of Appeal therefore held that no equitable compensation was payable.

The liquidators and the Sheikh both appealed to the Supreme Court.

The appeal to the Supreme Court raises three issues. Was the Sheikh in breach of fiduciary duty in effecting the 2016 Share Transfers? (**Issue 1**). Did the Company nevertheless suffer no financial loss because it had acquired the 891K shares subject to unpaid vendor’s liens? (**Issue 2**). If not, how should the Company’s loss be calculated? (**Issue 3**).

Judgment

The Supreme Court unanimously dismisses the Sheikh’s appeal on Issues 1 and 2 and allows the liquidators’ appeal on Issue 3. Lord Hodge, Lord Briggs and Lord Sales give the leading judgment, with which Lord Stephens and Lord Richards agree.

The result is that the order made by the trial judge (that the Sheikh pay compensation of €67,123,403.36) is to be reinstated.

On Issue 1, the Supreme Court holds that the Sheikh was in breach of fiduciary duty in making the 2016 Share Transfers.

On Issue 2, the Supreme Court holds that the Company did suffer financial loss because the shares were not acquired subject to vendor’s liens.

On Issue 3, the Supreme Court holds (restoring the trial judge’s approach) that the loss suffered by the Company should be calculated by reference to the value of the shares at the date of the breach of fiduciary duty.

Reasons for the Judgment

Issue 1 (was the Sheikh in breach of fiduciary duty in effecting the 2016 Share Transfers?)

The Sheikh was under a fiduciary duty, irrespective of the absence of a power to transact on behalf of the Company [36]. Fiduciary duties can arise ad hoc, including where there is an

undertaking of fiduciary duty by the presumed fiduciary in circumstances where he or she has not made any conscious undertaking or considered the interests of the person to whom that duty is owed, and indeed has acted contrary to that person's interests [38]-[42].

If persons, although not appointed as trustees, take upon themselves the custody and administration of property on behalf of others, they are actual trustees and are fully subject to fiduciary obligations: *Soar v Ashwell* [1893] 2 QB 390 [43]-[45]. It is not necessary that a person who has taken upon himself a fiduciary power to deal with property has title to or possession of that property before he can come under a fiduciary duty [50]. In any event, directors of a company do not have title to or possess the property of the company but only have powers of administration over that property, yet they are treated as if they were trustees of the funds of the company under their control. The Sheikh pretended to be a director with authority to transfer the 891K shares: the fact that the recipient of the misappropriated 891K shares was a company under the Sheikh's control rather than the Sheikh is irrelevant to his liability as a fiduciary in respect of that transaction [51].

The Court rejects the Sheikh's argument that a single indivisible act (ie signing the share transfer forms for the 2016 Share Transfers) cannot both create a fiduciary duty and be a breach of that duty: there is no reason why the arrogation of a fiduciary power may not itself involve a breach of fiduciary duty at one and the same time [55].

Issue 2 (did the company suffer no financial loss due to unpaid vendor's liens?)

The Sheikh argued that there was no financial loss arising from the 2016 Share Transfers, because the shares had been acquired by the Company in the March 2009 transfers subject to vendor's liens. A vendor's lien allows an unpaid seller to retain an interest in the property until the buyer has paid the purchase price. If there were such a lien in this case, the entities from which the Company had acquired the 891K shares in 2009 would have retained an interest in them at the date of the 2017 Asset and Liability Transfer. Therefore, the Company would have suffered no financial loss when they were transferred [58].

The Court rejects this argument, finding no flaw in the conclusions of the trial judge and Court of Appeal on this issue [59]-[60], [68]. The trial judge found that the intention behind the March 2009 transfers was to enable an initial public offering ("IPO") of the shares in JJW Inc. The Company would then use the returns from the sale of the 891K shares in the IPO to pay the price for the transfers [64]. The trial judge considered that the existence of an unpaid vendor's lien on the 891K shares would have prevented their sale in the IPO, thereby undermining the purpose and rationale of the March 2009 transfers [64]. The Court of Appeal agreed, considering that there was nothing in the evidence to suggest that the parties intended to create the lien [67].

The lien arises by operation of law, because it will usually be fair that the vendor should have a lien over the property until the price has been paid [71]. The key question is whether there is a clear and manifest inference that the parties intended to exclude the unpaid vendor's lien - *Barclays Bank Plc v Estates & Commercial Ltd* [1997] 1 WLR 415 [69]. This is an objective test, based on the transaction entered into by the parties and the circumstances of the case. The inquiry is not limited to the documents agreed by the parties [70]-[73], [78].

The Court makes three comments on the authorities. First, given the very specific inference as to joint intention which must be drawn to exclude a vendor's lien, the evidence which will be relevant must be closely related to the transaction in question [79].

Secondly, the evidence regarding joint intention in this case was very strong and compelling. The Sheikh stood on both sides of the agreements and gave specific evidence about the joint intention underlying the transactions. The trial judge was entitled to make the finding she did based on that evidence and the other evidence before her [80].

Thirdly, there is a close analogy between this case and the case of *In re Brentwood Brick and Coal Co* (1876) 4 Ch D 562. It can clearly be inferred from the nature of the March 2009 Transfers that the joint intention of the parties was that there should be no unpaid vendor's lien on the 891K shares [81]. Therefore, the Sheikh's appeal on this issue fails [85].

Issue 3 (how should the Company's loss be calculated?)

When calculating an award of equitable compensation, the appropriate date to use to assess the value of what has been misappropriated is an open question which requires consideration of what is just and equitable as between the beneficiary and the trustee (or the principal and the fiduciary) [96].

Where a trustee or fiduciary has misappropriated trust property (or property under his fiduciary control) and the beneficiary (or principal) can prove that the property has value when misappropriated, the beneficiary suffers an immediate loss of value. Thus, if a defaulting fiduciary wishes to rely upon a later event as breaking the chain of causation between the breach and the beneficiary's loss, the burden lies on the fiduciary to prove that later event and to show that it should be treated as having that impact on the analysis of causation: *In re Brogden*; (1888) 38 Ch D 546, *Carruthers v Carruthers* [1896] AC 659 and *Libertarian Investments Ltd v Hall* [2013] HKFCA 93; (2013) 17 ITELR 1 [101]-[106].

It was for the Sheikh to prove not only that the 2017 Asset and Liability Transfer defeated the causative relevance of the 2016 Share Transfers, but also that this was a legitimate intervening event to be included in the "but for" causation analysis [108]. The decided cases indicate that, without a clear and convincing innocent explanation, a defaulting fiduciary cannot rely on a later event as breaking the chain of causation where the fiduciary has or may have played some part in bringing about that later event [110].

Insofar as the Sheikh wished to rely upon the 2017 Asset and Liability Transfer as having diminished the loss apparently caused to the Company by the 2016 Share Transfers, it was for him to prove that he played no significant part in and derived no significant benefit, at the expense of the Company, from the 2017 transfer. He made no attempt to do so at trial or in the Court of Appeal: in contrast, there is sufficient evidence to suggest that the Sheikh was more than just a bystander in relation to the 2017 Asset and Liability Transfer [123].

The Court also disagrees that the assessment that the Company had suffered no loss could be reached without in-depth consideration of the appropriate counterfactuals because the 891K shares were in fact rendered worthless [125]-[126]. The relevant assessment is not the value of the shares in the abstract, but the loss of their value to the Company. Their value to the Company was in the real world reduced to zero when the Sheikh misappropriated them in 2016. By July 2017, the 891K shares were owned by MBI International Holdings: it was the value of the shares to that company which was actually reduced to zero by the 2017 Asset and Liability Transfer [127]. Accordingly, the Court allows the liquidators' appeal on this issue, and directs that the trial judge's order regarding compensation be reinstated [128]-[129].

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](#)