Press Summary

17 September 2026

Forthwell Limited (Apellant) *v* Pontegadea UK Limited (Respondent)

[2026] UKSC 33

On appeal from: [2024] CSIH 38

Justices: Lord Reed (President), Lord Stephens, Lady Simler, Lord Doherty and Lord Hodge

Background to the Appeal

The Rogano was one of Glasgow's oldest and most celebrated restaurants. This appeal arises out of a dispute between the landlord and tenant of the premises from which it operated.

The appellant ("**Forthwell**") is the tenant, and the respondent ("**Pontegadea**") is the landlord. The lease contained a prohibition against sub-letting or otherwise sharing possession of the property. Forthwell acquired the tenant's interest in 2013 and it granted a licence to occupy the premises ("**the Licence**") to its wholly owned subsidiary, Lynnet Leisure (Rogano) Ltd ("**Lynnet**"). Lynnet traded from the premises as the Rogano Restaurant and Bar.

The restaurant closed during 2020 at the height of Covid-19 restrictions. On 9 and 14 December 2020 and 10 January 2021, the premises were damaged by flooding. A fire broke out after the first flood, rendering the electrical installations unsafe and leaving the premises without heating. There is ongoing water ingress.

Forthwell and Pontegadea have been in dispute about the nature and scope of the repairs and about who is liable for certain aspects of them. Repairs have not been carried out. As a result, Lynnet has not been able to reopen the restaurant.

Forthwell brought the present commercial action against Pontegadea. It seeks an order requiring that Pontegadea repair the premises or pay damages for the cost of repairs. It was common ground before the commercial judge that that aspect of the claim could not be resolved on the pleadings without a proof.

In addition, Forthwell seeks damages for Lynnet's loss of trading profits. Pontegadea maintains that Forthwell does not have any legal right to recover damages in respect of Lynnet's losses.

The general rule in relation to damages and exceptions to it

The general rule in relation to damages for breach of contract is that only a party to a contract can sue for damages if the contract is breached, and it can only recover losses which it has itself suffered.

The case law in England and Wales discusses two exceptions to the general rule.

The first exception is well-established and has been described as the *Albazero* exception (deriving from the case of *Albacruz v Albazero ("The Albazero")* [1977] AC 774), and, more recently, as the "narrow ground". It allows an innocent contracting party to recover a third party's losses where the contract relates to property and the contracting parties contemplated, when they agreed the contract, that breach may cause loss to the third party.

A further possible exception which has been suggested (initially by Lord Griffiths in the *St Martins* case [1994] 1 AC 85) is known as the "broader ground". That ground, it is said, may apply where a person contracts for work to be performed on a property which is owned by someone else (such as a family member). The contracting party may have a 'performance interest' in the contract and suffer loss for breach of contract because they have not got what they bargained for.

Forthwell's transferred loss claim

Forthwell accepts that it does not meet the requirements of either the narrow ground or the broader ground.

However, it argues that it should be permitted to recover damages for the losses suffered by the Lynnet but be obliged to account to Lynnet for them. It founds upon a suggestion by Lord Clyde in *Alfred McAlpine Construction Ltd v Panatown Ltd* [2001] 1 AC 518 ("*Panatown"*) that this would be a realistic and practical solution which would avoid a third party's loss falling into a "black hole". In a subsequent case in the Outer House (*McLaren Murdoch & Hamilton Ltd v The Abercromby Motor Group Ltd* 2003 SCLR 323), Lord Drummond Young approved of Lord Clyde's proposed solution, and he opined that it was in accordance with Scots law.

The decisions in the Court of Session

The commercial judge found that Forthwell was entitled to claim damages on Lynnet's behalf, on the basis suggested by Lord Clyde in *Panatown* and approved by Lord Drummond Young in *McLaren Murdoch & Hamilton.*

Pontegadea appealed. A majority of the Inner House allowed the appeal, holding that Forthwell was not entitled to recover damages for Lynnet's losses. The majority considered that Lord Clyde's proposed solution did not represent Scots law. Lord Malcolm disagreed and would have allowed Forthwell's transferred loss claim to proceed to a proof before answer.

Forthwell now appeals to the Supreme Court.

Judgment

On the morning of the Supreme Court hearing the parties informed the Court that they had settled the dispute between them. Forthwell applied to withdraw its appeal. Senior counsel for the parties clarified that the settlement was not dependent upon the application being granted. In light of that and because the appeal raised a point of law of general public importance where authoritative guidance was desirable, the Court refused the application and proceeded to hear the appeal **[2]-[3]**.

The Supreme Court unanimously dismisses the appeal. The Court holds that Forthwell cannot recover in respect of the losses suffered by Lynnet. Lord Doherty gives the judgment, with which Lord Reed, Lord Stephens, Lady Simler and Lord Hodge agree.

Reasons for the Judgment

The Supreme Court holds that the suggested exception to the general rule advanced by Forthwell does not represent the law of Scotland.

Lord Clyde's solution was not endorsed by any of the other members of the Appellate Committee in *Panatown*, and subsequent decisions of the Court of Appeal and the Supreme Court do not provide any support for it. The solution is inconsistent with the requirement that it should have been in the contemplation of the parties at the time of contracting that the contract was intended to benefit the third party or at least persons in the same position as the third party. Lord Clyde's solution does not represent the law of England and Wales **[31].**

In *McLaren, Murdoch and Hamilton*, Lord Drummond Young erred in treating Lord Clyde's solution as representing the view of the majority in *Panatown*. Moreover, Lord Clyde's and Lord Drummond Young's view that the basis for any exception in transferred loss cases to the general rule relating to damages is a rule of law rather than a rule of implication based upon the intention of the parties was not the majority view in *Panatown*. It is also contrary to the guidance given by the Supreme Court in *Swynson Ltd v Lowick Rose llp* [2017] UKSC 32, [2018] AC 313 **[32]-[37]**. There are additional compelling reasons for rejecting Lord Clyde's solution. Transferred loss claims are an exception to the conventional rule relating to the recovery of damages for breach of contract. Such claims should only be permitted in defined and limited circumstances. The solution suggested by Lord Clyde and Lord Drummond Young would be too wide and too indefinite an exception to that rule **[39]**.

It would be too wide because it would allow recovery of damages where the parties did not contemplate the involvement of a third party when they agreed the contract. That would be likely to produce unforeseen consequences for the party in breach, who is unlikely to have arranged their affairs (for example, in relation to insurance) on the basis that breaching the contract would result in liability to an unknown third party **[40]**.

The exception would be too indefinite because its limits are vague and undefined. Forthwell's suggestion that the third party would need to show a material interest in the performance of the contract is not a clear, robust or workable solution **[41]**.

In some cases, third parties to contracts may be able to rely on the provisions of the Contracts (Third Party) Rights (Scotland) Act 2017 and, in England and Wales, the Contracts (Rights of Third Parties) Act 1999). These statutes allow a third party to acquire a right under a contract if certain requirements are met. In other cases, a third party may be able to recover under the narrow ground or, perhaps, the broader ground. In light of the existing available remedies and the relatively small number of cases where legal "black holes" arise, the Court is not satisfied that there is a convincing case for the creation of the exception to the general rule which Forthwell proposes [**42]**.

The outcome in the present case does not seem unjust. Forthwell and Lynnet chose to organise their affairs as they did. They had no reason to believe that the ordinary legal consequences of having two separate companies, with separate corporate personality, would not apply. Moreover, the lease prohibited sub-letting or sharing possession of the premises. On the face of it, the grant of the Licence appears to have been in breach of the lease **[43]**.

Accordingly, the Supreme Court finds that Forthwell is not entitled to recover damages for losses said to have been suffered by Lynnet and dismisses Forthwell's appeal **[44].**

The Supreme Court confirms that the *Albazero* exception is part of the law of Scotland. However, the appeal is not a suitable case in which to decide whether the broader ground is (i) part of the law of England and Wales; or (ii) part of the law of Scotland **[45]-[47]**.

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]