



4 March 2015

## PRESS SUMMARY

**Sea Shepherd UK (Appellant) v Fish & Fish Limited (Respondent) [2015] UKSC 10**

*On appeal from [2013] EWCA Civ 544*

**JUSTICES:** Lord Neuberger (President), Lord Mance, Lord Kerr, Lord Sumption and Lord Toulson

### BACKGROUND TO THE APPEALS

The Respondent operates a fish farm in Malta. On 17 June 2010, it was transporting tuna in fish cages when its vessel was attacked by a ship, named the “Steve Irwin”. One of the fish cages was rammed and divers from the “Steve Irwin” forced it open, releasing the fish. The Respondent’s crew were fought off with liquid-filled bottles and rubber bullets. This incident was carried out by the Sea Shepherd Conservation Society (“SSCS”) as part of a campaign, called “Operation Blue Rage”, to intercept and oppose the overfishing of Bluefin tuna in the Mediterranean.

SSCS was formed in 1997 in the state of Washington, USA, where it is still based, for the purpose of conserving and protecting ecosystems and species. Since then, a network of SSCS subsidiaries, such as the Appellant, have formed in various different countries. The Appellant, one such subsidiary, is a company limited by guarantee and a registered charity based in the UK. Its general objectives are to conserve and protect the world’s marine wilderness ecosystems and marine wildlife species. In 2010, its primary objective was to provide funds and support the aims and objectives of its parent organisation, SSCS.

The Appellant had purportedly contributed in two main ways to the incident on 17 June 2010. It had: (i) participated in the fundraising for Operation Blue Rage; and, (ii) recruited two volunteers.

In relation to the fundraising, SSCS involved the Appellant to make use of its bulk mailing services within the UK and so that UK donors could contribute through sterling cheques or transfers. As such, SSCS sent the Appellant a mailshot appealing for funds for Operation Blue Rage. This mailshot was designed, organised and paid for by SSCS but was sent out in the name of, and with (at least) the knowledge of, the Appellant, but not by or on the instructions of the Appellant. The subsequent donations, amounting to £1,730, were paid to the Appellant who then transferred this to SSCS.

In relation to the recruitment of volunteers, the Appellant passed on the names of those who had contacted it about volunteering. One of the volunteers sourced a pump for the “Steve Irwin”. He and the other volunteer then transported the pump to the “Steve Irwin” and did a day’s work on board.

The Respondent brought a claim in the English courts in tort against the Appellant for the loss and damage it had suffered. A preliminary issue was whether the Appellant could be held liable, directly or vicariously, for this damage. At trial, Hamblen J dismissed the claim finding that the Appellant could not be held liable. The Court of Appeal disagreed and allowed the Respondent’s appeal.

### JUDGMENT

The Supreme Court allows the appeal by a majority of three to two. Although all five Justices agree on the test for liability, they disagree as to the application of the test to the facts of this case. Lord Toulson delivers the lead judgment. Lord Neuberger and Lord Kerr give concurring judgments. Lord Sumption and Lord Mance give dissenting judgments.

**The Supreme Court of the United Kingdom**

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## REASONS FOR THE JUDGMENT

### *The test for liability*

Lord Toulson reasons that a defendant will be jointly liable for the tortious acts of the principal if the defendant: (i) acts in a way which furthers the commission of the tort by the principal; and, (ii) does so in pursuance of a common design to do or secure the doing of the acts which constitute the tort [21].

Lord Sumption agrees that a defendant will be jointly liable if: (i) he has assisted the commission of the tort by another person; (ii) it is pursuant to a common design; and, (iii) an act is done which is, or turns out to be, tortious [37].

Lord Neuberger agrees with these statements of the law [55], [61]. It is unwise to attempt to define the necessary amount of connection between the defendant and the tort; this is ultimately fact-sensitive [56]. The defendant's assistance must be substantial rather than minimal to be jointly liable. Once assistance is shown to be more than trivial, a defendant's relatively unimportant contribution should be reflected through the court's power to apportion liability and then order contribution between the defendant and the principal [57].

Lord Kerr [90] and Lord Mance [91] agree with these formulations of the test.

### *Application to the facts of this case*

Lord Toulson finds that Hamblen J correctly asked whether the Appellant's contribution had any significance to the commission of the tort [25]. Hamblen J reached an entirely proper conclusion that the role played by the Appellant, based mainly on its fundraising relating to a small sum solicited by SSCS, had been of minimal importance [26].

Lord Neuberger considers that although the Appellant and SSCS shared a common design [68], the judge at first instance had been entitled to find that the Appellant's contribution was minimal and played no effective part in the commission of the tort [70]. The Appellant's recruitment of volunteers was trivial [72] and, in relation to the fundraising, all the Appellant did was not to object to the use of its name and bank account in the mailshot before paying the small sum over to SSCS [79].

According to Lord Kerr, it was plainly open to Hamblen J to find that the Appellant had no more than a minimal or peripheral input so that it played no effective part in the commission of the alleged tort. There was, therefore, no reason to interfere with this finding [87], [89].

Lord Sumption (dissenting) finds that the Appellant had a common intention with SSCS that SSCS should cut the nets of fishermen and forcibly release their catch if necessary [46-48]. The Appellant's participation in relation to fundraising, though small, cannot be described as so trivial as to be no fact at all in the eyes of the law [50-51].

Lord Mance (dissenting) agrees with Lord Sumption that the fundraising assistance given by the Appellant to SSCS cannot be described as minimal [97]. The mailshot was sent out in the Appellant's name and on its behalf, having explicitly or implicitly authorised this, and the sum raised was not insignificant [98-99].

*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: [www.supremecourt.uk/decided-cases/index.html](http://www.supremecourt.uk/decided-cases/index.html)**