



20 July 2016

PRESS SUMMARY

Patel (Respondent) v Mirza (Appellant) [2016] UKSC 42 *On appeal from [2014] EWCA Civ 1047*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEAL

Mr Patel gave Mr Mirza £620,000 to place bets on a bank's share prices with the benefit of insider information. Mr Mirza expected his contacts to inform him of a government announcement about the bank. Mr Mirza's expectation was not fulfilled and the intended betting did not take place. But Mr Mirza did not return the money to Mr Patel. Mr Patel brought a claim against Mr Mirza for the money and Mr Mirza contended that the claim should fail because of the illegality of the arrangement with Mr Patel. The issue was when involvement in illegality bars a claim. Mr Patel succeeded in the Court of Appeal and Mr Mirza was required to repay the money. Mr Mirza appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses Mr Mirza's appeal. Mr Patel is entitled to restitution of the £620,000 which he paid to Mr Mirza. Lord Toulson (with whom Lady Hale, Lord Kerr, Lord Wilson and Lord Hodge agree) gives the lead judgment. Lord Neuberger, Lord Mance, Lord Clarke and Lord Sumption concur in the result, but by different processes of reasoning.

REASONS FOR THE JUDGMENT

Lord Mansfield said in *Holman v Johnson* (1775) 1 Cowp 341, 343 that “no court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act” [1]. Behind this maxim, there are two broad policy reasons for the common law doctrine of illegality as a defence to a civil claim. First, a person should not be allowed to profit from his own wrongdoing. Second, the law should be coherent and not self-defeating, condoning illegality by giving with the left hand what it takes with the right hand [99]. The reliance test expressed in *Tinsley v Milligan* [1994] 1 AC 340 bars the claimant if he/she relies on the illegality in order to bring the claim. This test has been criticised and *Tinsley* should no longer be followed [110].

The essential rationale of the illegality doctrine, as explained by the Supreme Court of Canada in *Hall v Hebert* [1993] 3 RCS 159, is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system. In assessing whether the public interest would be harmed in that way, it is necessary to consider a) the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by

The Supreme Court of the United Kingdom

Parliament Square London SW1P 3BD T: 020 7960 1886/1887 F: 020 7960 1901 www.supremecourt.uk

denial of the claim, b) any other relevant public policy on which the denial of the claim may have an impact and c) whether denial of the claim would be a proportionate response to the illegality. Various factors may be relevant, but the court is not free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of the considerations identified, rather than the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate [120].

In considering whether it would be disproportionate to refuse relief to which the claimant would otherwise be entitled, as a matter of public policy, various factors may be relevant. Potentially relevant factors include the seriousness of the conduct, its centrality to the contract, whether it was intentional and whether there was marked disparity in the parties' respective culpability [107].

A claimant, such as Mr Patel, who satisfies the ordinary requirements of a claim for unjust enrichment, should not be debarred from enforcing his claim by reason only of the fact that the money which he seeks to recover was paid for an unlawful purpose. There may be rare cases where for some particular reason the enforcement of such a claim might be regarded as undermining the integrity of the justice system, but there are no such circumstances in this case [121].

Lord Kerr writes a concurring judgment elaborating on aspects of Lord Toulson's judgment. Lord Kerr identifies that there is a choice of approaches between a rule-based approach on the one hand and on the other a more flexible approach, taking into account the policy considerations that are said to favour recognising the defence of illegality [133]. A rule-based approach to the question has failed to lead to the predictability it sought. Further, it is questionable whether particular weight should be given to predictability where a claimant and defendant have been parties to an illegal agreement [137].

Lord Neuberger [143, 163], Lord Mance [197-199], Lord Clarke [210] and Lord Sumption [250, 253] all conclude there is no inconsistency in the law in permitting a party to an illegal arrangement to recover any sum paid under it, so long as restitution is possible. An order for restitution simply returns the parties to the position in which they would and should have been, had no such illegal arrangement been made.

Lord Neuberger goes on however to express the further view that, in relation to other issues involving illegal arrangements, the approach suggested by Lord Toulson provides as reliable and helpful guidance as it is possible to give [174, 186].

Lord Mance, Lord Clarke and Lord Sumption, in separate judgments expressing general agreement with each other, consider that, with the above clarification of the operation of restitution, there is no basis for substituting for the clear-cut principle identified in *Holman v Johnson and Hall v Hebert*, founded on the need to maintain the integrity of the law, a mix of factors as advocated by Lord Toulson, which would not offer the same coherence or certainty [206-207, 216-219 and 259-265].

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