

Duty of Care

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CATEGORY:
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Facts of the Case

The Customs & Excise Commissioners ('CEC') appealed the decision of the Court of Appeal that Barclays Bank ('BB') owed no duty of care to them in respect of a loss arising from payments out of specified accounts held at BB in breach of freezing injunctions granted in favour of CEC.

In January 2001 Brightstar Systems Limited ('BSL') and Doveblue Limited ('DL') held current accounts with BB. Both accounts were substantially in credit, but both companies owed the CEC unpaid VAT. CEC believed that the companies would dissipate their assets in order to defeat judgments which CEC were likely to obtain. They accordingly applied for freezing injunctions which were granted on 26 and 30 January 2001 respectively. The value of the assets restrained was £1,800,000 in the first case and £3,928,130 in the second. In each injunction order a numbered account held by the company at the bank was specified, and in the injunction order of 30 January, the branch also. The first order was served on BB by fax at about 12.33pm on 29 January, the second (also by fax) at about 11.38am on 30 January 2001. At about 2.30pm on 29 January 2001, the bank authorised payments totalling £1,240,570 to be made out of the BSL account, and at about 2pm on 30 January 2001, it permitted payments totalling £1,064,289 out of the DL account.

In due course, the CEC entered judgment against BSL for £2,285,788.98 and against DL for £3,944,095.85. Neither company paid any part of the judgment, although the CEC obtained and enforced garnishee orders against residual sums remaining in the accounts of the companies. In those proceedings the CEC also claimed damages against BB in the sums paid out in breach of the respective injunctions plus interest. At first instance, Coleman J considered BB to have no duty of care and thus any claim for damages failed. The Court of Appeal held that CEC were owed a duty of care and in consequence, damages for the loss arising from BB's negligence in making payments out of the accounts were due. BB appealed this decision.

The Decision

The House of Lords allowed BB's appeal. In their view, when the Court granted CEC applications for freezing injunctions, their purpose was to protect CEC by preventing the companies from parting with their assets. BB would only be in Contempt of Court if it knowingly failed to freeze customer accounts subject to the freezing injunctions and authorised transfers of sums from the accounts after being notified of the Court orders. The failure to operate a system for freezing accounts did not mean that BB was liable to CEC who had obtained the orders. On being notified of the injunctions, whilst these imposed a duty on BB to respect the order of the Court, it did not of itself generate a duty of care to CEC. The parties were not in a relationship of proximity and consequently it would not be fair, just and reasonable to hold that the third party owed a duty of care to CEC.

Points of Interest

Lord Hoffman in delivering his judgment considered the general principle that the law of negligence does not impose liability for mere omissions. In this respect, he accepted that it was true that the complaint was that BB did something: it paid away the money. This payment was alleged to be the breach of duty rather than the conduct which generated the duty. This duty was generated by service of the injunction orders. The question of whether the orders can have generated a duty of care is comparable with the question of whether a statutory duty can generate a common law duty of care. The answer is that it cannot. Consequently, you cannot derive a common law duty of care from an order of Court. The order carries its own remedies and its reach does not extend any further.