

**In the House of Lords**

## **Gallagher & Gallagher**

**-v-**

## **Gerald Spice Ltd**

In November 1995, Gerald Spice Ltd. wished to purchase an office block in the centre of Pontypridd from the owners, Pleasuredome Properties, for £3.5 million. Spice instructed their solicitors, Gallagher & Gallagher, to represent them. Unknown to Spice, another company, Origami Offices, had already agreed to purchase the block from Pleasuredome for £3.1 million. Origami were also clients of Gallaghers.

Following the sale, Origami immediately sold the block on to Spice for £3.5 million, but Gallaghers deliberately arranged matters in such a way that it appeared to Spice that they were buying the block directly from Pleasuredome. As a result, Spice were unaware of the existence of Origami, the intermediate purchaser, and of the secret profit of £400,000 they were making. Six months after completion of the purchase, when both Pleasuredome and Origami were in liquidation, Spice were able to sell the block for only £1.9 million. The dramatic fall in its market value came as a result of a collapse in the price of commercial property in the area.

By accident, Spice became aware of Origami's role as an intermediate purchase and of their secret profit. Spice chose to bring an action against Gallaghers for breach of fiduciary duty, arising out of their solicitors' conduct at the time of purchase. Spice sought to recover from Gallaghers the £1.6 million they had lost on the re-sale, on the grounds that, if the solicitors had informed them of the intermediate sale to Origami, they would not have completed the purchase, and so would not have lost money on re-sale. Gallaghers conceded that they were in breach of fiduciary duty towards Spice in failing to disclose the intermediate purchaser, but denied that they were liable to compensate Spice for their loss on re-sale.

Mell J., at first instance, found on the facts that, had Spice been aware of the existence of the intermediate purchaser, they would not have completed the purchase of the block, but that Spice was partly to blame for the loss suffered, since they had ignored warning signs which had indicated, at the time of purchase, that the property market was on the brink of collapse. He awarded Spice compensation of £1.6 million, holding that:

- a) the aim of an award of equitable compensation for loss suffered through a breach of fiduciary duty was to put the plaintiff in the position he or she would have been in had the breach not occurred, and common law concepts of causation were not relevant in such a case; and
- b) the Law Reform (Contributory Negligence Act) 1945 did not apply to actions for breach of fiduciary duty, and no analogous doctrine existed in equity whereby an award of compensation could be reduced to take account of the plaintiff's contributory fault, so that Spice was entitled to full compensation notwithstanding that they were partly responsible for their own loss.

The Court of Appeal dismissed Gallagher & Gallagher's' appeal, who now appeal to the House of Lords, on the grounds that:

- i) (relying on *Canson Enterprises Ltd v Boughton & Co* (1991) 85 DLR (4th) 129) equitable compensation for breach of fiduciary duty falls to be assessed by reference to common law concepts of causation, and the application of common law rules of causation in this case meant that Spice's loss on re-sale was not recoverable, since, applying the test laid down by Lord Hoffmann in *South Australia Asset Management Corp v. York Montague Ltd* [1996] 2 WLR 87, the loss caused by the drop in market value of the property was not within the scope of the duty owed by Gallaghers to Spice as a conveyancing solicitor; and
- ii) in the alternative, even if Gallaghers were *prima facie* liable for the loss suffered by Spice on re-sale, compensation should be limited to 50% of that loss (i.e. £800,000) since either the Law Reform (Contributory Negligence) Act 1945 was applicable to actions for breach of fiduciary duty, or, if it was not, (relying on *Day v. Mead* [1987] 2 NZLR 443) a doctrine of contributory fault analogous to the common law doctrine of contributory negligence was.

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*This problem is taken from the final of the Observer-ESU-Lovell White Durrant Mooting Competition 1996-97, and was provided courtesy of the English Speaking Union.*