Judgment handed down in James & James v HSBC UK Bank plc [2026] EWCA Civ 88

Overview

On 17 February 2026, the Court of Appeal dismissed an appeal arising out of a long-running dispute between the Claimants and HSBC UK Bank plc concerning an allegedly unauthorised loan account and associated debits over a number of years. The appeal was from an order striking out the claim in full and refusing permission to amend.

Although the allegations were framed in terms of "fraud", the case ultimately turned on two points of recurring practical importance: (i) when time begins to run where a claimant relies on "late discovery" under s.32 of the Limitation Act 1980; and (ii) the circumstances in which the court will revisit (or refuse to revisit) an earlier ex tempore Judgment before the order is sealed.

James Purchas and Anna Hoffmann appeared for the successful Respondent bank, instructed by Eversheds Sutherland (International) LLP.

Background

The Claimants alleged that a loan account had been opened in 2004 without authority and that payments were then taken from their accounts over time. They contended that they only later appreciated the true nature of what had occurred and sought to invoke s.32 of the Limitation Act 1980 to postpone the running of time. Proceedings were issued in 2022.

Procedural history

At first instance, the claim was struck out in full and permission to amend was refused. The Judge had delivered an initial *ex tempore* Judgment in October 2023, later followed by a further *ex tempore* Judgment in July 2024 after additional submissions on a point the Judge had raised (i.e. a potential argument that a constructive trust existed over the monies transferred from the allegedly unauthorised account). On appeal, the Claimants argued that the Judge should have revisited (and altered) the earlier Judgment before the order was sealed, on the basis that it proceeded on a misunderstanding of a key document. The Judge, when considering the matter again in July 2024, found that he had not made a mistake and that in any event the alleged mistake would not have been relevant and would not have altered the conclusions he had reached previously.

Issues on appeal

By the time of the appeal, the dispute had narrowed to whether the Judge was wrong not to revisit his earlier Judgment. The Claimants contended that an error in interpreting a document was material because it affected the limitation analysis, including the conclusion as to when the Claimants had sufficient information (with reasonable diligence) to plead dishonesty for the purposes of s.32.

Decision

The Court of Appeal dismissed the appeal.

4 Pump Court, Temple, London, EC4Y 7AN
T: +44 (0)20 7842 5555 F: +44 (0)20 7583 2036
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The Court first confirmed that the decision of HHJ Blohm KC to strike out the claims based on fraud and deceit had been plainly correct and that it was therefore right that these points were not being appealed: "*Fraud, as the Judge rightly said, is not itself a separate cause of action; it is a description of behaviour which may be an ingredient in various causes of action. Deceit, by contrast, is a cause of action, but the essence of the tort is that the claimant was deceived by the defendant.*" [56] The Court had found that the Claimants had not been deceived by the Bank and not relied on any representations by the Bank to their detriment.

The parties were agreed that the reference in s. 32(1)(a) to an "*action based upon the fraud of the defendant*" does not mean any action in which the defendant is alleged to have acted fraudulently, but only one where fraud is a necessary allegation to establish the cause of action: see *Beaman v ARTS* [1949] 1 KB 550, a decision of this Court on s. 26(a) (the corresponding provision) of the Limitation Act 1939, and *Seedo v El Gamal* [2023] EWCA Civ 330, [2023] Ch 473 at [43]. The Court agreed and found that this section would not assist the Claimants in their claims premised on a breach of contract [58].

The Court also commented that there were "real doubts" as to whether the constructive trust and restitutionary arguments had any real prospect of success conceptually:

"61. I think there are real doubts whether any such claim is well founded, leaving aside any question of limitation. I have no problem with the proposition that if A acquires B's property by fraud, A may hold the property on a constructive trust for B; or with the proposition that if A is in possession of B's property, B can recover it. But I think there is real difficulty in fitting either proposition to the (alleged) facts of the present case. It is trite law that the relationship between a bank and its customer is, absent some special feature, that of debtor and creditor: see for example Chitty on Contracts (36th edn, 2026), Vol II, §37-342. If a customer's bank account is in credit, that simply means that the bank owes the customer money (and vice-versa if the account is overdrawn). So although we talk of having money in the bank, that does not mean that a customer with a credit balance can lay claim to any particular money or other asset held by the bank; what it means is that the customer has a chose in action consisting of the right to claim payment of the credit balance from the bank. All of this is well established and uncontroversial. … I think it very doubtful in those circumstances whether there was anything for a constructive trust or restitutionary claim to attach to."

On the questions of whether the Judge at first instance should have re-opened his Judgment on the basis of the alleged mistake made, the Court found that the Judge had been right not to do so. Even if there had been a mistake in the Judge's reading of a key document, it was plain that this was not determinative of the outcome. The Judge's second Judgment expressly recorded that: *"…even if I had considered the matter afresh… I would have come to the same view."* ([74], quoting the Judge's second Judgment at [17]) The Court concluded that the Judge had given sufficient reasons and that the conclusion had been open to him [77]-[79].

Discussion

The Judgment provides a useful reminder of four points of general relevance:

1. **Limitation and s.32:** the Court will focus on when a claimant had enough material to plead dishonesty with reasonable diligence, not when they later obtain fuller detail or further documents. The Judgment is also a useful reminder that s. 32(1)(a) only operates where the alleged fraud is a necessary ingredient to establish the cause of action pleaded.
2. **Restitutionary Remedies**: The Judgment contains key obiter comments doubting the concept of a constructive trust where monies are transferred between bank accounts.
3. **Revisiting *ex tempore* Judgments:** where an alleged error would not have affected the result, the Court will not re-open an earlier Judgment before sealing merely because a different reading of a document is arguable. The key authority on this is now *AIC Ltd v Federal Airports Authority of Nigeria* [2022] UKSC 16, [2022] 1 WLR 3223.

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4. **Pleading strategy and remedies:** historic disputes framed as "fraud" claims may fail at the level of identifying a viable cause of action (and, for deceit, reliance). In addition, attempts to characterise account movements as giving rise to proprietary claims are likely to fail.

James Purchas and Anna Hoffmann appeared for the successful Respondent bank, instructed by Daniel Murphy and William Tinkler of Eversheds Sutherland (International) LLP.

Read the full judgment here.

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