

Success in the Court of Appeal for Alexander Wright and Ed Jones on whether or not an innocent victim of fraud is required to give credit for the “time value” of money received in fraudulently induced transactions

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Neutral Citation: [2022] EWCA Civ 23

Court: Court of Appeal

Link: [Tuke v Hood \[2022\] EWCA Civ 23 \(14 January 2022\) \(bailii.org\)](#)

In an important judgment handed down by the Court of Appeal this morning, [Alexander Wright](#) and [Ed Jones](#), acting for the claimant Mike Tuke, have successfully resisted an appeal that raised the “novel” issue as to whether or not an innocent victim of fraud is required to give credit not only for any money received in a fraudulently induced transaction, but also the “time value” putatively earned on that money.

Following a three week Commercial Court trial, Jacobs J had in *Tuke v Hood & Anor* [2020] EWHC 2843 (Comm) held that Mr Hood, the former owner and proprietor of world-renowned classic car dealer JD Classics Limited (“JDC”), was liable in deceit and dishonest assistance to compensate Mr Tuke for transactions involving nearly thirty classic cars. At a consequential hearing in January 2021 ([2021] EWHC 74 (Comm)), damages were assessed in the sum of c. £11.1 million. That figure included damages for “loss of investment opportunity” in the sum of c. £6.9 million. The balance of c. £4.2 million was awarded by way of “base damages”, based on the difference between the consideration paid (including the market value of any cars part-exchanged) by Mr Tuke, and what Mr Tuke received in cash and cars.

The loss of investment opportunity claim arose because Mr Hood had deceived Mr Tuke into entering into a transaction which saw him take out an £8,000,000 loan to purchase 5 Jaguar racing cars, as to which Mr Hood had dishonestly misrepresented both their value and ownership. To repay the loan, Mr Tuke was forced to sell many of his classic cars, including those he held as investments (the “Investment Cars”), predominantly through transactions fraudulently induced by JDC. The market for classic cars subsequently rose significantly but, as a result of Mr Hood’s fraud, Mr Tuke had had to liquidate the Investment Cars earlier and therefore missed out on their capital appreciation.

At first instance, Jacobs J accepted that that gave rise to a compensable head of loss, and awarded Mr Tuke damages for that lost investment opportunity calculated on the basis of the difference between the market value of each Investment Car at the point of sale and its market value in 2020, with a 25% reduction for uncertainties.

On appeal, Mr Hood contended that Jacobs J’s assessment should have accounted for the benefit that Mr Tuke gained over time by receiving cash for the Investment Cars, calculated in the same way as either compound or discretionary

interest.

The court unanimously dismissed the appeal. Andrews LJ gave, in summary, the following reasons:

- The putative credit contended for by Mr Hood would not reverse over-compensation but leave Mr Tuke under-compensated. That is because the capital sum upon which a “time value” was said to be required was subsumed in the market valuation which formed the starting point of the enquiry (§43).
- The time value of the cash had insufficient nexus with the fraudulent transaction and was not intrinsic to it (§§ 44-48). The loss of investment opportunity was based on the appreciation in capital value between when Mr Tuke would have sold the Investment Cars (at market peak) and when he actually sold them. It was not a “time value” claim akin to one for interest. The cash Mr Tuke received, and any “time value” of that money, was irrelevant to the calculation of that loss (§53).
- Measuring the time value of cash, which is fungible and transitory, would require complex and speculative analysis (§49). In any case, Mr Tuke used the cash to settle debts directly caused by the initial fraud (§51).
- Mr Hood’s analogy with interest was flawed. Since the loss of investment opportunity claim was alternative to a claim for interest, there was no award of interest to be counterbalanced by the victim giving credit for the benefit of receiving cash (§54). Further, the discretion to award interest under s.35A of the Senior Courts Act 1981 applies only to a claim for “debt or damages”, and for interest claimed at common law under the rule in *Sempra Metals*, as damages for late payment of debt, actual losses must be pleaded and proven (§55). Any analogy with compound interest awarded in the court’s equitable jurisdiction was even more difficult to maintain, as such an award was an adjunct to dishonest behaviour and thus entirely inappropriate to apply to an innocent victim of fraud (§56).
- There were strong policy reasons for rejecting this approach. It would create an incentive for fraudsters to conceal their wrongdoing for longer to reduce the recoverable damages (§58). Further, it undermined the fundamental aim of compensating a victim of fraud for all losses flowing from a fraudulent transaction (§59).

Coulson LJ delivered a short concurring judgment underscoring in particular that if a fraudster was allowed to “...reduce his or her ultimate liability to the victim by obtaining credit for the “time value” of the money” that “...would only encourage the fraudster to hide the deception for as long as possible” (§62). Baker LJ agreed with both judgments.

Alexander and Ed were instructed by Phillip Sharpe and Daniel Lewis of Wilmot & Co Solicitors LLP, which has one of the country’s leading practices for classic car litigation.