

# US \$20m commercial fraud victory for Simon Goldstone in the Court of Appeal

This morning the CA (LLJ Longmore, Coulson, Peter Jackson) handed down judgment dismissing the Claimant's appeal against the decision of Mr Justice Teare in of *Nederlandse Industrie Van Eiprodukten ('NIVE') v Rembrandt Enterprises, Inc.*

NIVE had agreed to export millions of dollars of egg product to Rembrandt. Rembrandt terminated the contract early. NIVE sought damages for loss of profits, but the quantum of their claim demonstrated that the price they had agreed with Rembrandt had been dishonestly and artificially inflated. In addition, the claim included profits lost by a sister organisation called Henningsen. Rembrandt defended the claim on the basis that (a) it was entitled to rescission of the contract on the basis of NIVE's fraud and (b) it was not liable in respect of Henningsen's profits.

This is a leading case regarding the test for causation in fraud cases; and the circumstances in which a contracting party can bring a claim for losses sustained by a third party.

The judgment lays down two important principles:

- To succeed in a claim for fraudulent misrepresentation it is sufficient for the claimant to demonstrate that the lie 'influenced' his decision – the 'but for' test does not apply. Once a material misrepresentation is made out, a presumption of influence arises, which the defendant can rebut with appropriate evidence.
- A claim for transferred losses will fail unless the claimant can prove that at the time of contracting, there was a common intention and/or it was the known object of the contract to benefit the third party or a class of persons to which the third party belonged.

The First Instance Judgment is [here](#).

The C/A Judgment is [here](#).

Gavin Kealey KC, Simon Goldstone and Henry Moore appeared for the successful respondent, instructed by Christopher Webber and Kate Wakeham of Squire Patton Boggs UK LLP.