

Some comments as to *Byers v Saudi National Bank*

29 February 2024

Justice Ashley Black

Supreme Court of New South Wales

Professor Mitchell's comments on *Byers v Saudi National Bank*

The decision of the United Kingdom Supreme Court in *Byers v Saudi National Bank* [2024] 2 WLR 237; [2023] UK 51 (“*Byers SC*”), as discussed in Professor Mitchell’s paper, highlights a potential divergence as to the scope of liability for knowing receipt in English and Australian law, in addition to a well-known difference as to the scope of liability for knowing assistance. There are at least two situations where that divergence may matter, where (1) a recipient of a transfer could not establish that it was a bona fide purchaser without notice, because it had at least some notice of a breach of trust or breach of fiduciary duty, but a plaintiff also could not establish an exception to indefeasibility under s 42 of the *Real Property Act* or (2) the applicable law of the transfer treats it as extinguishing a claimant’s proprietary interest in the property, irrespective of notice. I will first address elements of that divergence and Professor Mitchell’s paper before turning, briefly, to other open areas within Australian principles of knowing receipt.

I should commence with a reference to *Barnes v Addy* (1874) 9 Ch App 244 at 251-252, where Lord Selborne observed that:

“Strangers are not to be made constructive trustees ... unless [they] receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees.”

That proposition is generally treated as authority that a third party may be liable, including as constructive trustee, if he or she receives trust property with notice that it was transferred in breach of trust, or he or she knowingly assists a trustee in a dishonest and fraudulent design.

The divergence that has since developed between the English and Australian law approach to knowing assistance¹ is well known. In *Grimaldi v Chameleon Mining NL*

¹ At least since *Consul Developments Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373, a plaintiff who seeks to establish a knowing assistance claim under Australian law must establish a dishonest and fraudulent design on the part of a trustee or fiduciary and the third party’s knowing participation in that conduct. That approach focuses on the conduct of the fiduciary, in order to establish the element of dishonesty or fraud, and then on the third party’s knowledge of the requisite matters. By contrast, English law since the mid 1990s has focussed on dishonesty on the part of a third party rather than requiring a dishonest and fraudulent design on the part of the trustee or fiduciary. *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378; *Twinsectra Ltd v Yardley* [2002] 2 AC 164; *Barlow Clowes International Ltd (in liq) v Euro Trust International Ltd* [2006] 1 WLR 1476. In *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89; [2007] HCA 22 at [160]-[164], the High Court pointed to the difference in the two approaches and emphasised that Australian Courts should continue to apply the approach required by *Consul Developments* until the High Court further dealt with the matter.

(No 2) (2012) 87 ACSR 260; [2012] FCAFC 6 (“*Grimaldi*”) at [249], the Full Court of the Federal Court (Finn, Stone & Perram JJ) observed that:

“The extent of discord both within and between common law jurisdictions as to what should be taken to be the contemporary burden of the principles enumerated by Lord Selborne [in *Barnes v Addy*] is marked to the point of being babel-like ”

Turning now to the decision in *Byers SC*² and Professor Mitchell’s paper, Professor Mitchell refers to Hoffman LJ’s formulation of the elements of knowing receipt in *El Ajou v Dollar Land Holdings Plc* [1994] 2 All ER 685 at 700 as follows:

“The plaintiff must show, first, the disposal of his [or her] assets in breach of fiduciary duty; secondly, the beneficial receipt by the defendants of assets which are traceable as representing the assets of the plaintiff; and thirdly, knowledge on the part of the defendant that the assets he [or she] received are traceable to a breach of fiduciary duty.”

That formulation has also been quoted in the Australian case law and does not necessarily give rise to the issues arising from *Byers SC*. Professor Mitchell recognises that the language “his asset” there requires that the claimant *have*, or at least that the claimant *had* (prior to the impugned transaction), an ownership interest in property. Professor Mitchell also recognises that a requirement that the claimant continue to have an equitable proprietary interest of the kind that beneficiaries have in trust assets, so as to bring a claim for knowing receipt, excludes a claim where the challenged transaction extinguishes that equitable interest. Obviously enough, that will depend on whether effect should be given to the challenged transaction in extinguishing an equitable proprietary interest, and thereby also defeating any claim for knowing receipt in respect of the impugned transaction.

Turning to the *Byers* proceedings, the liquidators of a company there brought a claim in knowing receipt in respect of the transfer to a third party of shares that had been held on trust for the company. The claim for knowing receipt failed at first instance and on appeal, where the transfer of those shares to the third party extinguished the company’s equitable proprietary interest in the shares under the law applicable to the transfer, namely the law of Saudi Arabia.

At first instance³, Fancourt J held that a claim for knowing receipt must fail where the defendant took the property free of any interest of the claimant at the point of the transfer. On appeal, the Court of Appeal placed weight on Professor Mitchell’s view, expressed in an earlier article⁴, that liability for knowing receipts arises from extending the rules requiring trustees to comply with the trust terms to third parties who receive trust property and know that their receipt of that property is inconsistent

² On appeal from, and affirming, *Byers v Samba Financial Group* [2021] EWHC 60 (Ch) (Fancourt J) and *Byers v The Saudi National Bank* [2022] 4 WLR 22; [2022] EWCA Civ 43 (Court of Appeal) (“*Byers CA*”).

³ For brief references to the first instance decision, see J Glister, “Security interests and knowing receipt” (2023) 45 *Legal Studies* 624; O Morris “Great Investments and Good Returns: Knowing Receipt as an Equitable Wrong Independent of Contracting” (2023) 46 *Melb UL Rev* 502 at 519-520.

⁴ C Mitchell and S Watterson, “Remedies for Knowing Receipt” in C. Mitchell (ed), *Constructive and Resulting Trusts*, 2010.

with the terms of the trust. Consistent with that view, the Court of Appeal observed in *Byers CA* (at [49]), quoted by Professor Mitchell in his paper (at p 5), that:

“It is the existence of that equitable interest which gives rise to the custodial duties [of knowing recipients]. In particular, it is incumbent on a recipient with knowledge of a breach of trust “to restore the property immediately” because the beneficiaries have equitable rights to it. Conversely, it is inapt to talk of a custodial duty, or a duty to restore, if the recipient acquires full and unencumbered title as a result of the transaction by which he receives the property.”

That Court of Appeal summarised that approach (at [79]) in observing that:

“In short, a continuing proprietary interest in the relevant property is required for a knowing receipt claim to be possible. A defendant cannot be liable for knowing receipt if he took the property free of any interest of the claimant.”

The Court of Appeal’s decision in *Byers CA* was subsequently reviewed and applied in somewhat different circumstances by Sir Launcelot Henderson (with whom Lady Justices Macur and Asplin agreed) in the Court of Appeal in *Davies v Ford* [2023] EWCA Civ 167 at [74], which treated it as establishing:

“... not only that a defendant must have received trust property (or its traceable proceeds) before he can be liable in knowing receipt, but also that the transaction whereby he received the relevant property must itself have constituted a breach of trust or fiduciary duty, *such that the claimant could in principle have asserted a proprietary claim to the property in the hands of the defendant.*”

This reasoning treats the availability of a proprietary claim as necessary to a personal claim for knowing receipt, an approach which is later confirmed in *Byers SC*.

Professor Mitchell also refers to the approach taken by Lord Briggs and Lord Burrows in the United Kingdom Supreme Court in *Byers SC*. Lord Briggs gave priority to the proprietary character of a claim for knowing receipt and treated a personal claim for knowing receipt as subordinate to the proprietary claim, so that it was lost when the proprietary claim was lost. That approach is plain in his observation (at [44]) that:

“there is a serious lack of logic in the view that while overreaching or overriding may kill off the equitable interest necessary to maintain a proprietary claim, it nonetheless leaves in place a claim in knowing receipt, with the same liability to return the property to the claimant as if there was a proprietary claim...”

Lord Burrows also observed (at [157]-[159]) that:

“Once one recognises that knowing receipt is an equitable proprietary wrong that depends on the claimant having a continuing equitable proprietary interest in the asset received, or retained, by the defendant, it becomes clear that the personal knowing receipt claim has the same essential proprietary basis as the equitable proprietary claim to the asset. So, if the defendant still retains the asset, in which the claimant has a continuing equitable proprietary interest, the claimant is entitled to an equitable proprietary remedy for the return of that asset. But if the defendant no longer retains the asset, the claimant still has a personal claim for knowing receipt provided the claimant had a continuing equitable proprietary interest, and the

defendant had the requisite knowledge, at the time of the defendant's receipt or retention.

The equitable personal and proprietary claims are therefore fundamentally linked. Both are defeated if the defendant takes legal title to the asset unencumbered by equitable interests, as where, for example, the defendant is equity's darling [ie a bona fide purchaser for value without notice].

... given the linkage between the personal and proprietary claims, it would equally be odd if the appellants could turn from inevitable failure, if they had made a proprietary claim to the shares, to success in a knowing receipt claim. The reason the equitable proprietary claim would here fail is the same reason why the personal claim in knowing receipt should fail.”

Lord Hodge (with whom Lord Leggatt and Lord Stevens agreed) agreed (at [6]), there referring to Lord Briggs (at [44]) and Lord Burrows (at [158]-[159], [172] and [201]), that:

“the extinction or overriding of a proprietary equitable interest by the time when the recipient receives the property defeats a proprietary claim. As Lord Briggs observes, given the close link between the proprietary claim and the personal claim in knowing receipt, it would be logically inconsistent for the law to allow the personal claim in knowing receipt to survive where the proprietary claim has been defeated by the lack of a continuing proprietary equitable interest.”

For completeness, Lord Hodge also noted a difference in the reasoning between Lord Briggs and Lord Burrows, which was not necessary to resolve, so far as Lord Briggs characterised a claim in knowing receipt as “ancillary to a proprietary claim” and Lord Burrows characterised it as an “equitable proprietary wrong”.

Returning now to Professor Mitchell’s paper, he also points to a degree of uncertainty as to the scope of an “equitable proprietary interest”.⁵ That issue will be of lesser significance in Australia, at least in respect of personal claims, if the different Australian approach which I will note below remains in place.

Professor Mitchell also refers to the approach adopted in a knowing receipt claim brought by a company arising from a director’s breach of duty, where no separate property interest existed prior to the claim. The English and Australian cases adopt a common approach in respect of claims of that kind.⁶ The Supreme Court had to reconcile the approach adopted in those cases to the approach that it took in *Byers SC* and sought to do so in the manner described at page 7 of Professor Mitchell’s

⁵ C Mitchell, “Knowing Receipt, Equitable Proprietary Rights and Fiduciary Duties” at 6.

⁶ *Belmont Finance Corp v Williams Furniture Ltd (No 2)* [1980] 1 All ER 393; *Rolled Steel Products (Holdings) Ltd v British Steel Corp* [1986] Ch 246; *Robins v Incentive Dynamics Pty Ltd* (in liq) (2003) 175 FLR 286; 45 ACSR 244; [2003] NSWCA 71; *Kalls Enterprises Pty Ltd (in liq) v Baloglow* (2007) 63 ACSR 557; [2007] NSWCA 191 at [152]-[159]; *Grimaldi* at [275]; *Relfo Ltd (in liq) v Varsani* [2012] EWHC 2168 (Ch), affd [2015] 1 BCLC 14; [2014] EWCA Civ 360; *Gordon in his capacity as liquidator of Lyon Form Pty Ltd (in liq) v Leon Plant Hire Pty Ltd (in liq)* [2015] NSWSC 397 at [61]ff; *Twigg v Twigg (No 4)*; *Lambert v Twigg Investments Pty Ltd (No 3)* (2020) 147 ACSR 389; [2020] NSWSC 1159 at [201]ff, on appeal *Twigg v Twigg* (2022) 402 ALR 119; [2022] NSWCA 68; *K & A Laird (NSW) Pty Ltd (in liq) v Aidzan Pty Ltd (in liq)* [2023] NSWSC 603 at [114]ff.

paper. That difficulty may not arise under the different approach taken in the Australian case law.

For completeness, Professor Mitchell also develops an alternative analysis, founded not a breach of a duty of loyalty (or, as Australian Court would likely say, a breach of trust or breach of fiduciary duty) but on a breach of a duty of due administration. While I would not venture to predict whether that approach is prospective in the United Kingdom; I suspect it may be less prospective in Australia; and, in any event, I will not address it further.

The Australian approach

It seems to me that the Australian approach to knowing receipt has been somewhat different in at least three respects. First, the Australian case law arguably approaches knowing receipt not as the continuance of the earlier trust but as a form of accessorial liability, which may allow the imposition of a constructive trust as remedy. Second, the Australian case law has placed weight on the personal remedy available for knowing receipt, and not treated that remedy as subordinate to the proprietary remedy or limited by the availability of a proprietary remedy. Third, and likely consequentially, at least the Court of Appeal in New South Wales has been prepared to contemplate that a personal remedy for knowing receipt may survive the transfer of the property to a bona fide purchaser for value without notice, a result that is plainly inconsistent with *Byers SC*.

It is now well established that a proprietary claim for knowing receipt is not available in respect of Torrens Title land, where the third party has become registered as owner and the in personam exceptions to indefeasibility are not available: *Macquarie Bank Ltd v Sixty-Fourth Throne Pty Ltd* (1998) 3 VR 133 at 156-157 (“*Sixty-Fourth Throne*”); *LHK Nominees Pty Ltd v Kenworthy* (2002) 26 WAR 517; [2002] WASCA 291 (“*LHK Nominees*”). In *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 (“*Farah*”), the High Court reached a partly similar result to *Byers SC* by a different route, holding that that a proprietary claim for knowing receipt was not available in respect of Torrens Title land, absent an exception to statutory indefeasibility under s 42 of the *Real Property Act* 1900 (NSW).⁷ The High Court there observed (at [193]) that:

“An exception operating outside the language of s 42(1) can exist in relation to certain legal or equitable causes of action against the registered proprietor. So far as Say-Dee was relying on *Barnes v Addy*, it was certainly alleging a recognised equitable cause of action. In [*Sixty-Fourth Throne*], Tadgell JA (Winneke P concurring, Ashley AJA dissenting) held that a claim under *Barnes v Addy* was not a personal equity which defeated the equivalent of s 42(1) in Victoria, namely the *Transfer of Land Act* 1958, s 42(1)...”

In *Super 1000 Pty Ltd v Pacific General Securities Ltd* (2008) 221 FLR 427; [2008] NSWSC 1222 at ([213]-[237]), White J (as His Honour then was) undertook a full

⁷ For commentary, see H Atkin, “Knowing Receipt following *Farah Constructions Pty Ltd v Say-De Pty Ltd* (2007) 29 *Sydney LR* 713 at 721, cited in *Turner v O’Byan-Turner* (2022) 107 NSWLR 171; (2022) 398 ALR 711; [2022] NSWCA 23 at [102].

review of these cases. His Honour observed (at [213]-[214]) (and by contrast with the emphasis on proprietary relief in *Byers SC*) that:

“The liability of a constructive trustee under either limb of *Barnes v Addy* is a personal liability, but the available remedies include proprietary remedies. A person liable under the first limb of *Barnes v Addy* [for knowing receipt] may be liable to pay equitable compensation or account for profits even if he or she no longer holds the property. But proprietary remedies are also available and, depending upon the circumstances, the beneficiary may be entitled to trace the property and assert a beneficial interest in it or in its traceable proceeds, or may be entitled to a charge over other property to which it can be traced.”

His Honour observed at ([217]) that:

“As a claim that the defendant is liable as constructive trustee under either limb of *Barnes v Addy* is a claim that the defendant be personally liable as constructive trustee, and arises because of the defendant’s personal conduct which involves knowledge of a breach of duty, it might be assumed that such claims fell within the in personam exception to indefeasibility. That appears to have been the assumption until 1998.”

His Honour’s reference to 1998 appears to be to the decision in *Sixty Fourth Throne*. He then referred to that decision, *LHK Nominees* and *Farah* and observed (at [219]) that:

“The effect of those decisions, particularly *LHK Nominees Pty Ltd v Kenworthy*, is that the in personam exceptions to indefeasibility do not extend to claims arising under the first limb of *Barnes v Addy*. It will be necessary in due course to consider the reasoning in these cases in more detail to deduce whether it follows that no remedy, including a personal remedy for an account of profits, is available against Super 1000 because it registered its mortgage without fraud.”

White J (reviewed the reasoning in *LHK Nominees* in detail (at [228]ff) and expressed a degree of disquiet about it. His Honour went on to note (at [234]) that:

“I am bound to follow [LHK Nominees]. It follows that at least no proprietary remedy is available against Super 1000 as an accessory to Mr McLay’s breach of fiduciary duty by having taken a mortgage over the company’s property. The mortgage is not liable to be rescinded and is not held on trust for PacGen...”

However, his Honour left open (at [235]ff) the possibility of a personal claim, which had not there been sought, as follows:

“There was no discussion in [*Sixty-Fourth Throne*], or in [*LHK Nominees*], or in [*Farah Constructions*], whether personal remedies against a third party liable as a constructive trustee under the first limb of *Barnes v Addy* are also excluded because the person acquired the title to the property by registration.”

His Honour then invited further submissions as to that question, but I have not found a reported case that indicates the ultimate outcome.

I made a modest attempt to engage with these issues in *Break Fast Investments Pty Ltd v Giannopoulos (No 5)* [2011] NSWSC 1508 (“*Break Fast*”), where I distinguished *Heperu Pty Ltd v Belle* (2009) 76 NSWLR 230; [2009] NSWCA 252,

where no defence under s 42 of the *Real Property Act* was raised in that case, and observed (at [102]) that:

“In my view, that the same result must follow in respect of a claim under *Black v S Freedman & Co* [(1910) 12 CLR 10; [1910] HCA 58] which arises from the fact that a person is placed on notice of an unauthorised receipt of funds, which does not amount to an allegation of fraud in the sense of dishonesty, as distinct from an allegation that that person is bound in conscience to recognise the claimant’s rights once they are placed on notice of them.”

Gleeson JA (with whom Meagher and Barrett JJA agreed) approved that observation in *Sze Tu v Loew* (2014) 89 NSWLR 317; [2014] NSWCA 462 (at [243]). I also observed (at [126]) that a proprietary claim against a property on the basis of knowing receipt would there fail for the reasons noted in these cases.

The Full Court of the Federal Court subsequently reviewed the scope of a claim for knowing receipt in *Grimaldi*. The Full Court there recognised (at [251]) that a third party who acquires legal title to trust property as a purchaser in good faith for value and without notice of any breach of trust or prior equitable interest has a defence in equity to any claim for specific restitution of the property or for compensation for its value to restore the trust property. The Full Court emphasised (at [253]) “the essential characteristic of the *Barnes v Addy* liabilities” is that “they expose the persons to whom they apply to personal, to in personam, liabilities”. The Full Court also recognised (at [253]) that:

“In knowing receipt cases, the recipient can be required to pay compensation for loss arising from the misapplication of the trust property, or to account for gains made from it. These liabilities do not depend upon the third party retaining any part of the property received (or its traceable proceeds) in his or her hands although, if such property is retained, it must be accounted for specifically.”

The Full Court also recognised (at [254]) the extension that principle claims in respect of corporate property, arising from a breach of a company director’s fiduciary duties, also reviewed in *Byers SC* and observed that:

“If the directors dispose of corporate property in a dealing which is beyond their authority, whether actual, ostensible or usual, the dealing ordinarily is void and no interest passes to the third party donee, purchaser, etc. However, if the dealing occurs in a transaction which is within the directors’ authority but which is not in the company’s interests (that is an abuse of power) or is otherwise in breach of fiduciary duty, the transaction will only be voidable ... As Australian law now stands, even if the third party recipient falls within the knowing receipt limb of *Barnes v Addy*, the company will not ordinarily be able to bring a proprietary claim against the recipient *as distinct from a personal one*, unless and until the transaction itself has been avoided Though we later question the correctness of this particular requirement, what needs to be emphasised is that it still allows that a knowing recipient can be held accountable in rem for such of that property (or its traceable proceeds) as remains extant in that person’s hands...”

The above are all cases where the property or interest sought to be recovered (or its traceable proceeds) is, *or had been*, the property of the claimant.

The reference to “*had been*” plainly leaves open a wider approach than that taken in *Byers SC*, where the property (or the equitable interest in it) has previously been transferred, at least other than to a bona fide purchaser for value without notice. For completeness, the Full Court also there recognised (at [278]) the complexity arising where property is transferred under a voidable contract, so that a right of rescission would need to be exercised before bringing a claim to a constructive trust over the transferred property.

The Court of Appeal in New South Wales has since left open the possibility of a personal claim where a proprietary claim for knowing receipt is not available⁸, likely including circumstances such as in *Byers SC*. In *McFee v Reilly* [2018] NSWCA 322 (at [108]), Leeming JA observed that:

“The personal liability to account to the person to whom a fiduciary obligation was owed exists even if the property has ceased to exist, or has been transferred to a third party, or (as in the present case) is incapable of being held on constructive trust by dint of statute. Thus, although statute prevents a court ordering that the sisters hold [the property] as constructive trustees, they are still liable to account to the estate for the value of the property. I did not understand their counsel to submit to the contrary.”

In *Turner v O’Bryan-Turner* (2022) 107 NSWLR 171; (2022) 398 ALR 711; [2022] NSWCA 23, White JA (with whom Meagher and McCallum JJA agreed) also held that a personal claim for knowing receipt was available, notwithstanding that a proprietary remedy for such a claim would be inconsistent with the indefeasibility provision in s 42 of the *Real Property Act*, although that claim was not established on the facts of that case. White JA there observed (at [101]-[103]) that:

“Whatever might be one’s views about that reasoning ... the High Court’s decision in [*Farah Constructions*] establishes for courts below the High Court that the in personam exceptions to indefeasibility do not extend to proprietary claims arising under the first limb of *Barnes v Addy*.

I do not think that the reasoning of Tadgell JA in [*Sixty-Fourth Throne*], and its endorsement in [*Farah Constructions*], goes further. ... In [*Farah Constructions*], the High Court (at [193]) expressly characterised Tadgell JA’s reasoning as holding that a claim under the first limb of *Barnes v Addy* was not a personal equity which defeated the Victorian equivalent of s 42(1) of the *Real Property Act 1900* (NSW), thereby impliedly accepting that, but for the operation of s 42(1), a *Barnes v Addy* claim for knowing receipt could otherwise be made good if the requisite knowledge were established...

The reasoning in [*Farah Constructions*] does not preclude a personal remedy for knowing receipt.”

⁸ For commentary on the issue, see M Harding, “*Barnes v Addy* Claims and the Indefeasibility of Torrens Title” (2007) 31 MULR 343 at 357ff and R Chambers, “Knowing Receipt: Frozen in Australia” (2007) 2 J Eq 48 at 51-52, both noted in *Turner v O’Brien Turner* [2022] NSWCA 23 per White JA at [101]; J Glister, “Knowing Receipt, Knowing Assistance, and Torrens Land” (2022) 96 ALJ 388.

In *NSW Trustee and Guardian v Obeid (No 2)* [2022] NSWSC 1117, Schmidt AJ referred to *LHK Nominees* and *Break Fast* and also treated a personal claim for knowing receipt as available although a proprietary claim was not, consistent with *McFee* and *Turner* (which were not cited) and contrary to *Byers SC*. Her Honour observed that:

“On the approach of Murray J in *LHK Nominees*, after registration and the resulting acquisition of indefeasible title, the Trustee would not be obliged to restore the property. But the beneficial owner would have the right to pursue an in personam claim against the Trustee in pursuit of a constructive trust. Such a trust is remedial and moulded to the circumstances of a particular case ... in an appropriate case.”

That reasoning is plainly inconsistent with *Byers SC* and with the underlying premise of that reasoning, that there is an inconsistency in allowing a personal claim for knowing receipt where the proprietary claim is not available. As I foreshadowed above, this difference of approach may at least have real practical importance if (1) a recipient of a transfer of real property could not establish that it was a bona fide purchaser without notice, because it had at least some notice of a breach of trust or breach of fiduciary duty, but a plaintiff also could not establish the exception to indefeasibility under s 42 of the *Real Property Act* or (2) as in *Byers SC*, the applicable law of the transfer treats it as extinguishing a claimant’s proprietary interest in the property, irrespective of notice.

Other potential claims

Finally, and for completeness, I should also note that the Australian case law has emphasised the availability of alternative claims to a claim for knowing receipt. In *Great Investments Ltd v Warner* (2016) 114 ACSR 33; [2016] FCAFC 85 (at [52]ff), the Full Court of the Federal Court expressed the view that a claim in knowing receipt was not applicable (or, I interpolate, at least not required) where a company claims property transferred without authority to a recipient, where the question is whether the recipient was a bona fide purchaser for value without notice although such a claim would be necessary to seek to obtain equitable compensation or an account in disgorgement of a recipient’s profits. Subsequent cases also recognise the potential for a strict liability claim against a recipient of company assets transferred without authority and the possible application of the principle in *Black v S Freedman & Co* (1910) 12 CLR 105; [1910] HCA 58, where property is stolen or misappropriated.⁹

⁹ *Wambo Coal Pty Ltd v Ariff* (2007) 63 ACSR 429; [2007] NSWSC 589; *Sze Tu v Lowe* (2014) 89 NSWLR 317; [2014] NSWCA 462; *Fistar v Riverwood Legion and Community Club Ltd* (2016) 91 NSWLR 732; [2016] NSWCA 81; *Re DCA Enterprises Pty Ltd* (2023) 166 ACSR 156; [2023] NSWSC 11; *K & A Laird (NSW) Pty Ltd (in liq) v Aidzan Pty Ltd (in liq)* 2023] NSWSC 603.