**Stoffel & Co v Grondona**

Supreme Court (Lord Reed P, and Lords Lloyd-Jones, Hodge, and Ladies Black, Arden)

30 October 2020

[2020] UKSC 42

*Solicitor’s negligence – mortgage fraud – transfer of title – failure to register – illegality*

In or about March 2000 Maria Grondana (G) entered into an agreement with C L Mitchell (M), whereby G agreed to lend her name to M for the purposes of applying for and obtaining mortgage loans. In return G would receive a share of the profits when the relevant properties were sold. In or about July 2002 M paid the sum of £30,000 to the freehold owner of a property for the grant of a 125-year lease of part of the freehold, comprising a ground floor flat. To enable M to purchase it M entered into a £45,000 loan agreement with BM Samuels for six months, secured by a legal charge against the property (the BM Samuels charge). A leasehold interest in the property was registered in M’s name at the Land Registry, along with the BM Samuels charge.

In October 2002 G purchased from M, M’s leasehold interest in the property for the sum of £90,000, with the assistance of a mortgage advance from Birmingham Midshires (BM) for the sum of £76,475. This advance was to be secured by a charge over the property (the BM charge). On the mortgage application G dishonestly represented that the sale was not a private sale, that the deposit monies were from her own resources, and that she was managing the property. Stoffel & Co (S) acted as the solicitors for G, M, and BM in connection with the transaction.

M executed form TR1 in favour of G and delivered it to S. S then paid the sum of £76,475 received by way of mortgage advance from BM to BM Samuels, the existing chargee. S failed to register at the Land Registry the transfer of the property to G, failed to register the BM charge granted by G, and also failed to register the release of the BM Samuels charge. As a result of this failure M remained the registered proprietor of the property, and BM Samuels remained the registered proprietor of the BM Samuels charge, under which further advances were made to M.

G defaulted on payments to BM, and BM obtained summary judgment against her. G brought a Part 20 claim against S for an indemnity, contribution, and/or damages for breach of duty and/or breach of contract. BM also brought claims against S and BM Samuels, which were settled. The leasehold interest was sold by BM Samuels to satisfy sums owed by M under the BM Samuels charge.

At trial S argued that damages were not recoverable by G, since the purposes of the transaction was unlawful, to obtain finance for M by misrepresentation. At first instance Her Honour Judge Walden-Smith held that G was a knowing and dishonest participant with M in mortgage fraud, that the mortgage transaction was a sham, but that the illegality defence did not apply, since the claim against S was conceptually separate from the fraud. S appealed. The Court of Appeal (Gloster LJ and Flaux LJ) held ([[2018] EWCA Civ 2031](https://www.bailii.org/ew/cases/EWCA/Civ/2018/2031.html); [2018] P.N.L.R. 36) that the mortgage was not a sham and was intended to take effect, there was an intention to transfer the legal title to G, and illegality did not bar G’s claim.

S appealed to the Supreme Court arguing that the claim was barred by illegality in that the Court of Appeal erred in its application of the *Patel v Mirza* [2016] UKSC 42; [2017] A.C. 467 guidelines. It was common ground that subject to the defence of illegality the cause of action against S was complete.

**Held:** The appeal should be dismissed,

1. The illegality defence is founded on public policy. Following *Patel v Mirza* [2016] UKSC 42; [2017] A.C. 467 which balances the underlying policies, the question for the court is whether allowing recovery produces inconsistency and disharmony in the law so as to cause damage to the integrity of the legal system ([1], [22]).
2. In assessing whether the inconsistency and disharmony is sufficient to deny the claim a court must consider: (a) the transgressed prohibition’s underlying purpose, (b) any other relevant public policies rendered ineffective or less effective by denying the claim, and (c) the proportionality of this denial. The first and second factors should be examined at a high level of generality. The third, which requires a close scrutiny of the case at hand, only needs examining where the balance of (a) and (b) suggests a denial of the claim ([22]-[26]).
3. Registration was necessary to protect BM’s interests, and to ensure that G had assets to meet her liabilities if sued. To permit G’s claim would not undermine the public policies of criminalising mortgage fraud, and could in fact protect the interests of the victim of the fraud, the mortgagee ([29]-[31], [35]).
4. To deny G’s claim would be contrary to the important public policy that the victims of a solicitor’s negligence should be compensated for their losses, and to do so would disincentivise solicitors from diligently performing their duties ([32], [35]).
5. Given the law’s recognition that G had an equitable property right notwithstanding that the contract under which it passed was tainted by illegality, to deny G’s claim against S on the basis of this illegality would create an incoherent contradiction in the law (*Mortgage Business PLC v O’Shaughnessy* [2012] EWCA Civ 17; [2012] 1 W.L.R. 1521, considered) ([32]-[35]).
6. It would be disproportionate to deny the claim. G suffered a genuine wrong, to which her unlawful conduct was incidental. Whilst the need to rely on illegal conduct to establish a claim is no longer determinative of the illegality defence, it is still relevant to the issue of centrality. S’s breach of duty was distant to the fraud, and related to a failure to register title. How G had obtained her finances was irrelevant to this duty. Additionally, since the claim was in respect of losses, to permit the claim would not mean that G would profit from her own wrongdoing (*Sweetman v Nathan* [2003] EWCA Civ 1115; [2004] P.N.L.R. 7, discussed) ([40]-[44]) (Obiter).

**Cases referred to in the opinion:**

*Snook v London and West Riding Investments Ltd* [1967] 2 Q.B. 786

*Attorney General v Guardian Newspapers Ltd (No 2)* [1990] 1 A.C. 109

*Hall v Hebert* [1993] 2 S.C.R. 159

*Tinsley v Milligan* [1994] 1 A.C. 340

*Sweetman v Nathan* [2003] EWCA Civ 1115; [2004] P.N.L.R. 7

*Mortgage Business PLC v O’Shaughnessy* [2012] EWCA Civ 17; [2012] 1 W.L.R. 1521

*Hounga v Allen (Anti-Slavery International intervening)* [2014] UKSC 47; [2014] 1 W.L.R. 2889

*Les Laboratoires Servier v Apotex Inc* [2014] UKSC 55; [2015] A.C. 430

*Bilta (UK) Ltd v Nazir (No 2)* [2015] UKSC 23; [2016] A.C. 1

*Patel v Mirza* [2016] UKSC 42; [2017] A.C. 467

**Appeal** from a decision of the Court of Appeal dated September 13, 2018 ([2018] EWCA Civ 2031; [2018] P.N.L.R. 36).

*Michael Pooles QC* and *Dan Stacey* (instructed by Levi Solicitors LLP (Leeds Central)) for the Appellant

*Andrew Warnock QC*, *Maurice Rifat*, and *Laura Giachardi* (instructed by WH Matthews & Co Solicitors (London)) for the Respondent

**LORD LLOYD-JONES** (with whom Lord Reed P, Lord Hodge, Lady Black and Lady Arden agree):