


Rukhadze and others v Recovery Partners GP Ltd: Fiduciary duties and the duty to account for profits

04 April 2025  Marlene Henderson, Janet Arkwright and Alice Smith

The Supreme Court's judgment in *Rukhadze and others v Recovery Partners GP Ltd* [2025] UKSC 10 stands as a significant reminder of the stringent fiduciary principles that govern corporate opportunities, conflicts of interest, and the duty to account for profits (the 'profit rule').

This decision reaffirms the profound implications of fiduciary breaches, particularly where fiduciaries exploit confidential information or divert business opportunities for personal gain. The case further emphasises the non-negotiable nature of fiduciary duties, setting a clear precedent for those in positions of trust within corporate structures.

Facts of the case and High Court decision

The case concerned an asset recovery opportunity that arose after the death of Georgian businessman Arkadi Patarkatsishvili.

Recovery Partners GP Ltd, the claimant company specialising in asset recovery, alleged that its former directors, including Rukhadze, had breached their fiduciary duty by misusing confidential business information obtained during their tenure with the company. The company contended that the directors exploited this information to secure a lucrative contract with Patarkatsishvili's family. The company further argued that the asset recovery business was an opportunity that belonged to the company and that the directors had unlawfully diverted it for their own gain.

The High Court ruled in favour of the Recovery Partners GP Ltd, finding that the directors had indeed acted in breach of their fiduciary duties by misusing confidential information and diverting a corporate opportunity. The court ordered an account of profits, requiring the directors to disgorge the financial benefits obtained from the asset recovery business.

Previous Appeal decision [2023] EWCA Civ 305

The directors appealed the original High Court decision.

The Court of Appeal upheld the High Court's ruling, affirming that the directors had breached their fiduciary duties by misusing confidential information and diverting a corporate opportunity. The court confirmed that the profits derived from the asset recovery business were subject to an account of profits claim. However, a 25% equitable allowance was awarded to the directors in recognition of their skill and effort in generating the profits. Whilst the appeal was dismissed, the directors reserved their right to seek a modification of fiduciary principles before the Supreme Court.

Supreme Court's decision [2025] UKSC 10

In a decisive ruling, the Supreme Court reinforced the strict application of fiduciary principles, emphasising the importance of deterrence in cases of breaches of fiduciary duty.

A key issue in the appeal was the extent to which the directors should be liable to account for "*profits caused by their breaches of fiduciary duty...*" and to determine whether where there is such a causal connection, a 'but-for' test, should be applied. The directors argued that the court should depart from the well-established principles in cases such as *Regal (Hastings) Ltd v Gulliver* and *Boardman v Phipps* and

it was high time that the 'but for' test be extended to the counterfactual i.e. to ask the question of what profit would have been made if there had been no breach of fiduciary duty so that the directors would only be required to account for the difference between the profits they actually earned and the profits that could have been earned if there was no breach. The Supreme Court unanimously rejected this approach and concluded that there was no reason to disturb the well settled principles and change the law. Lady Rose was mindful of the fact an attempt to include a counterfactual analysis "*would be a difficult task and one which it is not appropriate for this court to undertake.*"

Commentary

Whilst the directors' arguments were sensible, if they were accepted the impact would have been far reaching, beyond a simple disturbance of 50 years of settled law. It would have affected the incidences in which fiduciary duties arose and it would have run the risk of relaxing not only the profit rule but also that as to any conflict of interest.

The preservation of the established profit rule gives D&O insurers, certainty as to the application of policy terms and conditions in evaluating fiduciary breaches and in particular the application of any exclusion clause. The Judgment should leave directors under no illusion that they would not be allowed to avoid the application of the profit rule. However, it would be naïve to assume it will serve as any greater deterrent where human frailty often prevails.

For further insights on how this landmark decision impacts corporate governance and fiduciary responsibilities, or to discuss how these principles apply to your specific circumstances, please do not hesitate to contact us.

Contact



Marlene Henderson

Partner

marlene.henderson@brownejacobson.com

+44 (0)115 976 6133



Janet Arkwright

Professional Development Lawyer

janet.arkwright@brownejacobson.com

+44 (0)3300452627

Related expertise

Services

Directors and officers

Dispute resolution and litigation

Insurance claims defence

