



## Favourite Cases: *Target Holdings Ltd v Redferns*

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**Peter Dodge**

Call: 1992

Barrister

Peter Dodge specialises in banking and financial services, property and professional liability disputes. Having started his career as a fund manager at a leading investment bank, he has a particular interest in matters concerning asset management and investment products.

### Reported at [1996] AC 421

During the early 1990s, average house prices fell from their peak in 1989 by an inflation-adjusted 35 per cent. There were numerous repossessions with many more borrowers falling into negative equity. It was against this background that there arose later in the 90s a body of case law concerning the principles applicable to claims by lenders, usually in negligence or its contractual equivalent, seeking to pass on to professionals, particularly solicitors and valuers, losses sustained as a result of fraud or overvaluation. This body of law includes cases such as *SAAMCo (South Australia Asset Management Corp v York Montague)*, *Bristol and West v Mothew* and *Bristol and West (again) v May, May & Merrimans*.

Whilst there was a claim for damages in *Target*, the novel point which the House of Lords had to consider related to the lender's claim for breach of trust and concerned the proper compensation for such a breach. As Lord Browne-Wilkinson asked:

"Is the trustee liable to compensate the beneficiary not only for losses caused by the breach but also for losses which the beneficiary would, in any event, have suffered even if there had been no such breach?"

*Target* considered itself to be the victim of a fraud. It had agreed to lend £1.525 million to a company called *Crowngate* on the security of commercial property in the Jewellery Quarter of Birmingham. It instructed *Redferns*. The security was valued at £2 million with *Target* believing this to be the true purchase price payable by *Crowngate*. In fact, there was a series of sub-sales with the original primary purchaser, a Jersey company called *Panther*, paying only £775,000. Needless to say, when the security was eventually realised, the sale proceeds were substantially less than the amount of the outstanding loan.

Target paid the mortgage monies to Redferns' client account. Redferns then paid them away without having obtained a charge and before Crowngate had even acquired title. This was a breach of trust. However, Crowngate later executed a charge and so, in that sense, Target obtained exactly what it had originally intended.

Target applied for summary judgment. The hearing of this application, before Warner J, was the first which I attended as a pupil. Counsel for Target (Patten LJ as he is now) argued that Redferns had come under an immediate duty to restore the whole of the money paid away in breach of trust, that common law principles of causation did not apply and that it was irrelevant that Target had received exactly the security that it was intending to obtain. In the alternative, it was said, applying ordinary principles of causation, that, if the mortgage monies had remained in Redferns' client account pending completion (as they should have done), the entire transaction would have fallen through. Warner J held that the breach of trust claim was "very nearly strong enough" to justify summary judgment but instead gave leave to defend conditional upon the payment into court of £1 million.

The Court of Appeal allowed a cross-appeal by Target and gave summary judgment. The House of Lords allowed Redferns' appeal against that decision and restored the order of Warner J. Two dicta of Lord Browne-Wilkinson have proved to be of particular significance. First, he said this:

"I do not intend to cast any doubt on the fact that moneys held by solicitors on client account are trust moneys or that the basic equitable principles apply to any breach of such trust by solicitors.

He continued:

"I have no doubt that, until the underlying commercial transaction has been completed, the solicitor can be required to restore to client account moneys wrongly paid away."

Fraud methodologies evolve. Whereas many cases of the 90s concerned mortgage fraud, the 2010s brought a new line of authority arising from identity frauds or "home hijacking". Nevertheless, Lord Browne-Wilkinson's observations, made in the context of a different type of fraud, have proved to be authority enabling trust law to provide a remedy to victims where there has been no genuine completion, be they lenders (as, for example, in *Lloyds TSB Bank plc v Markandan & Uddin*) or cash purchasers (as in *Dreamvar (UK) Ltd v Mishcon de Reya*, in which Patten LJ sat in the Court of Appeal). As is clear from *Dreamvar*, the principles stated by Lord Browne-Wilkinson apply not just to a client's own solicitors.

*Target* shows the importance, when analysing any failed transaction, of "following the money": that is to say, identifying through whose hands it has passed and considering whether those persons were subject to any trust or other fiduciary obligations. It has proved to be of lasting significance.

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