

Legal Alert

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Unjust enrichment and seller's unpaid lien

The recent Supreme Court case of *Bank of Cyprus UK v Menelaou [2015] UKSC 66* provides some further clarification of the principle of unjust enrichments as it relates to property purchases and legal charges.

In *Menelaou*, Mr and Mrs Menelaou, who were in business together as property developers, owed a large amount of money to the Bank of Cyprus. The debt was secured by way of a charge in favour of the bank over their family home.

Mr and Mrs Menelaou decided to pay off part of the debt by selling their home and downsizing to a smaller, less expensive one. They persuaded the bank to agree to discharge its charge over the old home on the basis that the Bank would be granted a charge over the new one. The bank also agreed that the new home could be bought in the name of Mr and Mrs Menelaou's eighteen year-old daughter. On completion, the daughter would grant the new charge in favour of the bank.

Unfortunately, the daughter was not informed about the plan to grant new security to the bank and her signature was forged on the charge deed.

The bank subsequently tried to enforce the new charge. At first instance, the daughter succeeded in obtaining an order to have the charge removed from the Land Registry. Since the charge hadn't been signed by the daughter, it was void.

The bank appealed. Although the bank acknowledged that the charge was properly removed from the register, it nevertheless argued that it had a claim based on the law of unjust enrichment.

Both the Court of Appeal and the Supreme Court upheld the bank's claim. The daughter had indeed been unjustly (albeit innocently) enriched at the bank's expense. It was thanks to the bank's release of the charge (without full repayment of the underlying debt) over the old home that the daughter became the owner of the new one. In other words, the new home was bought with money that would otherwise have been paid to the bank. The scheme envisaged a charge over the new home; but, since that new charge was void, the daughter became the owner of a property worth considerably more to her than it would have been otherwise. The daughter had therefore been enriched at the expense of the bank.

The courts also held (by way of some impressive legal gymnastics) that the bank had a lien over the new property.

It is established law that a third party who provides some or all of the purchase money for a buyer, thereby discharging the obligation to the seller, can claim the benefit of the unpaid seller's lien by subrogation. The cash for the purchase in this case hadn't come directly from the bank, but nevertheless this legal principle, said both the Court of Appeal and the Supreme Court, still somehow applied. The bank was therefore entitled to a lien over the property, enforceable against the daughter, as if it were an unpaid seller.