



## DESAI & ANOR V WOOD & ANOR

[2025] EWCA Civ 906

### KEY TAKEAWAYS:

1. Liability insurance proceeds received by an insolvent company are not held on trust for the third party claimants to whom the company owes the relevant liability.
2. The Court of Appeal recognised that the conclusion reached might be said to be one that “runs counter to a common sense view of the proceedings” (Re Harrington Motor Co Ltd [1928] Ch 105).
3. Parties are not precluded from seeking to provide, by express terms, protection against an insured's insolvency, whether by grant of a proprietary right or security interest.

### ISSUE

Whether liability insurance proceeds are held on trust for third-party claimants.

### FACTUAL BACKGROUND

Boscolo Limited (“the Company”) was engaged by the Appellants to design a refurbishment scheme for a property. The Design Contract was made on a standard form “Model of Memorandum of Agreement” incorporating the conditions of the British Institute of Interior Design. The Company had the benefit of a policy of professional indemnity insurance with Royal & Sun Alliance Ltd (“RSA”). The Company informed the Appellants' agent that they carried professional indemnity insurance for £250,000 for any one claim and public indemnity insurance for £1 million for any single event. Once notified of the claim, RSA appointed solicitors to defend the claim and a standstill agreement was entered into. Before any legal proceedings had been issued, RSA's solicitors informed the Company that RSA had made the decision to exercise its power under Claims Condition 7 of the Policy (see right). The Appellants issued proceedings against both the Company and RSA, claiming among other things that the Insurance Proceeds were held on trust for them, and claiming damages against the Company in excess of £700,000. The Company entered creditors voluntary liquidation, having been insolvent for many years.

### CLAIMS CONDITION 7 OF THE POLICY OF PROFESSIONAL INDEMNITY INSURANCE

In connection with any Claim against the Insured the Insurer may at any time pay to the Insured the Limit of Indemnity (after deduction of any sums already paid as damages or claimant's costs and expenses in respect of such Claim) or any less amount for which such Claim can be settled and thereupon the Insurer shall relinquish the control of such Claim and be under no further liability in connection therewith except for Defence Costs for which the Insurer may be responsible under this Insurance in respect of matters prior to the date of such payment.

# GROUND S OF APPEAL

## FIRST INSTANCE

HHJ Paul Matthews  
(sitting as a Judge of the  
High Court)

The application determined by the judge was [an application for directions](#) issued by the liquidators of the Company, as to [what they should do with the remainder of the Insurance Proceeds](#).

The Appellants submitted that it was either an:

- [express term](#) on the true construction of Condition 9; or
- [implied term](#) of the Design Contract that any insurance monies received by the Company in respect of a claim by the Appellants were to be [held on trust](#) for them.

The judge [rejected](#) this argument.

in the alternative, the Appellants contended that [the Insurance Proceeds were the subject of a constructive trust](#) because:

- it was [unconscionable](#) for the Company to assert its own beneficial entitlement given the circumstances of the Company at the time it was received; or
- a constructive trust was necessary to [prevent the unjust enrichment](#) of the Company.

The judge [rejected](#) both arguments.

The Appellants advanced [two alternative cases of implied term](#).

### 1. Implied Term in the Design Contract

"if [the Company] had reasonable grounds to believe that [the Company] might be unable to meet the Appellants' claim in due course from its other resources ([the "Relevant State of Mind"](#)) it would not dissipate those insurance monies or use them to pay other creditors or for any purpose conflicting or inconsistent with the ["Paramount Purpose"](#)..."

### 2. Implied Term in both the Design Contract and the Policy

"if (A) the Appellants as clients made a professional negligence claim against [the Company], and (B) the claim was covered by [the Company's] insurance and (C) Insurers investigated the claim; and (D) Insurers decided to pay, and paid, insurance monies in respect of the claim to [the Company]; and (E) [the Company] had the Relevant State of Mind; then [the Company] would [transfer the insurance monies to the client](#) (or alternatively would in any event not use those insurance monies otherwise than for the paramount purpose for which the insurance was (compulsorily) required (and the insurance claim was paid) namely [to secure that \[the Company\] was financially able to compensate its clients](#): see Impact Finding Solutions Ltd v Barrington Service Ltd [2017] AC 73 per Lord Hodge at [16]-[18] ([the "Paramount Purpose"](#))."

Counsel for the Appellants accepted at the hearing of the appeal that the Company could use the Insurance Proceeds for the purpose of [funding its defence](#) of the Appellant's claim.

## OUTCOME OF THE APPEAL

The Court of Appeal [dismissed](#) the appeal.

Lord Justice Zacaroli recognised that, in a case where insurance proceeds are paid in respect of an established liability, the conclusion reached against the implication of a term might be said to be one that ["runs counter to a common sense view of the proceedings"](#)(Re Harrington Motor Co Ltd, ex p Chaplin [1928] Ch 105).

His Lordship attributed this consequence to the [long-established position in law](#) and the fact that the Third Party (Rights against Insurers) Act 2010 identifies going into liquidation as the [trigger-point for an assignment of rights to third parties](#).

## IMPLIED TERM

Critical Question - whether a term was to be implied that the Company had to deal with the Insurance Proceeds in such a way that had the consequence in law of giving rise to a trust in favour of the Appellants.

The Court of Appeal accepted that one of the purposes of the Policy was to benefit the Company's clients, including the Appellants.

However, their Lordships held that the Policy's direct purpose was to benefit the Company.

The benefit of the Policy to the Company's clients was indirect and no implied term was required to recognise it.

The fact that clients most need to access the insurance proceeds when the insured is insolvent was found to be far from sufficient to imply either of the terms for which the Appellants contended.

There were insurmountable difficulties both as regards the requirements for necessity and certainty of an implied term.

It was impossible to say of any one possible solution that it was necessary to give business efficacy to the Design Contract or that the notional bystander would say it went without saying that the parties must have intended that solution.

## IMPLIED TRUST

Even if a term was to be implied as contended for by the Appellants, it would not give rise to any trust as a trust requires certainty of intention, subject matter and objects.

There was no indication anywhere in the Design Contract, even in the implied terms contended for, that the Company was required to ring fence the Insurance Proceeds, so that they were segregated from its own funds.

## CONSTRUCTIVE TRUST

Absent any implied term in the Design Contract sufficient to create a pre-existing right to any trust, the argument that the Insurance Proceeds were subject to a constructive trust fails.

It can hardly have been unconscionable for the Company to retain the Insurance Proceeds given that it was accepted that it could use them to fund its defence.

## THE RIGHTS OF THIRD PARTIES IN RESPECT OF LIABILITY INSURANCE

Absent some special condition in the policy, third party claimants against an insured generally have no rights either against its insurer, or in the proceeds of such a policy.

The Third Party (Rights against Insurers) Act 1930, replaced by the 2010 Act, sought to cure the problem by providing for a statutory assignment of the rights of the insured under a liability insurance policy to the third party claimants to whom the insured is liable, in the event that the insured suffers one or other of a series of insolvency events.

It was common ground in this case that the 2010 Act did not apply in this case to cause an assignment of the Company's rights under the Policy in favour of the Appellants, because by the time the Company went into voluntary liquidation its rights under the Policy had been compromised by payment of the Insurance Proceeds by RSA to the Company under Claims Condition 7.

The case of Re Harrington prevented an argument that the proceeds of the insurance policy in the hands of the insured are subject to a trust in favour of a third party merely because they are specifically referable to that third party's claim.

ALEXANDER'S PRACTICE  
ENCOMPASSES INSOLVENCY,  
ARBITRATION AND COMMERCIAL  
CHANCERY. THIS INCLUDES  
CONSIDERABLE CROSS-BORDER  
AND OFFSHORE EXPERIENCE.

IF WE CAN ASSIST FURTHER,  
PLEASE FEEL FREE TO CONTACT -  
NO5 CLERKS - BP@NO5.COM  
ALEXANDER HEYLIN -  
AHE@NO5.COM  
0845 210 5555