Robert megarry and equity – four cases considered essay sample

“ Liability for knowing receipt requires proof that the defendant had knowledge of the breach of trust and received trust property with that knowledge. The knowledge must exist at the time of receipt. ”[6] It must be recognised that, at the time, more emphasis was put on whether there was any fault and whether failing to make enquiries or notice relevant circumstances may indicate fault, but this notion was improved by Lord Megarry in Re Montagu’s Settlement Trusts (1987). Lord Megarry stated that the recipient’s conscience must be affected and therefore constructive knowledge would not be enough, there must be some “ want of probity”[7].

A similar approach is found in BCCI (Overseas) Ltd v Akindele (2000)[8] where Lord Nourse said, the question was whether the third party had enough knowledge that it would be unconscionable for them to retain the property received. Lord Megarry established the notion of fault-based liability, despite previous authorities in favour of strict liability, most equity cases still emphasise that there must be fault on the part of the recipient; this includes without agreeing on the degree of fault required.

In Re Montagu, Lord Megarry accepted that the recipient had to be guilty of dishonesty or, in terms of the Baden Delvaux scale[9] in the Baden & Lecuit case, he had to have knowledge of the defect in his entitlement at least at point three, wilfully and recklessly closing his eyes to the inquiries that an honest and reasonable man would make. In addition, trustees had mistakenly misdirected trust assets to the then Duke of Manchester.

Under the terms of the trust deed they should not have released those assets unless and until they had conducted an exercise of judgement to

determine which should be added to the trust capital. The Duke did not keep them but realised them and spent the proceeds. Many years later, after his death, the persons now entitled under the trust sought restitution from the estate of the deceased beneficiary[10]. Lord Megarry held that the receipt by the deceased beneficiary had been absolutely innocent.

But he went on to indicate that he would only have allowed the claim if dishonesty had been proved. This concept enhanced the original precedent on fault and equity in general. Yet it must be acknowledged that there is a contrast in Re Diplock 1951[11] which is evident. The only substantial difference between the two cases appears to be that one is concerned with the administration of a deceased's estate and the other a family trust established inter vivos.

It is not easy to see how that could explain the leniency shown to the Duke and the rigour of the earlier court's treatment of Guy's Hospital and the other charities. Nevertheless, the position taken by Lord Megarry has subsequently been adopted by prevailing judges and that the case of Re Montagu can be regarded as a unique and valid case. Shepherd Homes Ltd v Sandham – [1970] The company had bought and developed a housing estate in Glamorganshire. Each lease and conveyance contained a covenant prohibiting (inter alia) the erection of any fence or hedge in front of the building line.

Early in September 1969, the defendant, who was the purchaser of one of the plots, on which he had built a house, erected a fence on his plot in front of the building line to prevent repeated incursions of sheep and some horses,

which were causing considerable damage to his garden. On 11 September, the company's solicitors wrote to the defendant's solicitors to ask for the fence to be removed[12]. On 23 October, the company issued a writ against the defendant seeking a mandatory injunction that he forthwith demolishes the fence erected in breach of the covenant.

The company did nothing further until 25 February 1970 when it gave notice of motion in the same terms. By cross-motion, the defendant subsequently moved for leave to apply to the Lands Tribunal under the Law of Property Act 1925[13], s 84a, and a stay of proceedings against him in the meantime. Injunctions were a serious problem in the rule of equity and brought consequences for their unorthodox application and it became part of the rule of equity not to grant the remedy only in cases where a right or title in equity was proved to exist.

It was understood that equity required a prima facie or a strong prima facie case to be established before a prohibitory injunction would issue[14]. With regards to a mandatory injunction a higher standard was needed. For a remedy to be exercised the requirement was that the defendant did a positive act, relief was usually withheld in the absence of an unusually sharp and clear case. This approach continued unbroken until Shepherd Homes Ltd v Sandham 1970[15].