31 October 2018

PRESS SUMMARY

Dooneen Ltd (t/a McGinness Associates) and another (Respondents) v Mond (Appellant) (Scotland)
[2018] UKSC 54
On appeal from [2016] CSIH 59

JUSTICES: Lord Reed (Deputy President), Lord Kerr, Lord Hodge, Lady Black, Lord Briggs

BACKGROUND TO THE APPEAL

In September 2006, Mr Davidson (the Second Respondent) entered into a trust deed for the benefit of his creditors. It was a "protected trust deed" to which provisions of the Bankruptcy (Scotland) Act 1985 ("**1985 Act**") applied. Clause 11 of the deed provided for the deed's termination on the occurrence of one of three events, one of which was a "final distribution" of the estate.

Before he entered into the deed, Mr Davidson had been mis-sold payment protection insurance ("**PPI**"), for which the bank agreed to pay him compensation of around £56,000 in April 2015. Dooneen Ltd (the First Respondent) was Mr Davidson's agent for the purpose of making the claim and Mr Davidson had assigned 30% of any compensation received to Dooneen.

The dispute between the parties was about whether Mr Mond (the Appellant), as trustee, or the Respondents were entitled to the compensation. This turned on whether Mr Mond had made a "final distribution" when he distributed what he called a "first and final dividend" of 22.41 pence in the pound to the creditors in November 2010 and was discharged accordingly in circumstances where he did not know at the time that Mr Davidson had been mis-sold PPI in respect of which he was entitled to compensation.

The Lord Ordinary, Lord Jones, found in favour of the Respondents, and that decision was upheld by the Inner House. Mr Mond now appeals to the Supreme Court on the ground that the courts below had misinterpreted "final distribution".

JUDGMENT

The Supreme Court unanimously dismisses the appeal with the result that Dooneen and Mr Davidson are entitled to the payment of compensation. Lord Reed, with whom the rest of the Court agrees, delivers the judgment.

REASONS FOR THE JUDGMENT

Mr Mond argued that, regardless of whether or not the trustee knew of all of the assets, a "final distribution" can only occur when either all assets are distributed or enough assets are distributed so as to pay all creditors in full. This construction is rejected because it would have consequences which the debtor cannot have intended when granting the deed [**12**].

First, one could never be certain whether any distribution was in fact "final" so that the deed would potentially be of indeterminate duration. This would be particularly difficult to reconcile with other parts of the deed that vest in the trustee assets and income acquired by the debtor during the currency of the trust deed [**13**].

Second, it would make it impossible for the debtor or anyone doing business with him to know whether or not the debtor has been finally discharged [**14**].

Third, it would undermine the purpose of the public Register of Insolvencies, where certificates are registered under the 1985 Act signifying that a final distribution has been made, as it could no longer be relied on as accurate [**15**].

Lord Reed observes that the outcome of the case is scarcely satisfactory, and notes that the Court raised with the parties the question whether the relevant acts of the trustee might be reduced (set aside) if they were the result of an error as to the extent of the trust estate. Although the parties were invited to make submissions on this, they declined to do so, and it would accordingly not have been appropriate for the Court to consider these matters on this occasion [**23**].

References in square brackets are to paragraphs in the judgment.