



## Press Summary

16 March 2022

### **Bott & Co Solicitors Ltd (Appellant) v Ryanair DAC (Respondent)** **[2022] UKSC 8** ***On appeal from [2019] EWCA Civ 143***

**Justices:** Lord Briggs, Lady Arden, Lord Leggatt, Lord Burrows, Lady Rose

#### **Background to the Appeal**

A passenger whose flight is cancelled or delayed has rights to compensation under Regulation (EC) No 261/2004 (which is retained law in the UK following Brexit).

Bott & Co Solicitors Ltd handles a large volume of passenger compensation claims for flight cancellation and delays, primarily on a “no win, no fee” basis. A high proportion of these claims are for compensation from Ryanair.

Prior to 2016, Ryanair dealt with Bott in respect of the claims it handled, and when claims were admitted, would pay compensation directly into Bott’s client account. In early 2016, Ryanair changed its practice and began communicating directly with Bott’s clients, and paying compensation directly to them. As a result, instead of deducting its fees from the compensation paid into its client account, Bott now has to pursue its clients for payment.

Following this change, Bott brought proceedings against Ryanair claiming an equitable lien over the compensation in respect of its costs, and an injunction restraining Ryanair from paying compensation directly to customers when Ryanair is on notice that Bott has been retained by them. An equitable lien would allow Bott to pursue Ryanair for fees unpaid by its clients.

In the High Court, the judge held that he was bound by previous authority to find that a solicitor’s equitable lien arose only once proceedings had actually been started. As a result, there could be no equitable lien in circumstances where compensation is paid out by Ryanair without passengers having commenced legal proceedings.

Bott appealed. By the time the Court of Appeal heard its appeal, the Supreme Court had given judgment in *Gavin Edmondson Solicitors Ltd v Haven Insurance Co Ltd* [2018] UKSC 21, which decided that a solicitor’s equitable lien can arise where no proceedings have been

started. The Court of Appeal dismissed Bott's appeal on the basis that unless and until Ryanair disputes a claim for compensation, Bott is not providing a litigation service in the promotion of access to justice. Bott appealed to the Supreme Court.

## Judgment

The Supreme Court allows Bott's appeal by a 3-2 majority. The majority judges, Lord Burrows, Lady Arden and Lord Briggs, give three separate judgments but all agree with the test for an equitable lien adopted by Lord Burrows. Lord Leggatt and Lady Rose jointly dissent. The facts and background are set out in the minority's judgment [5-63].

## Reasons for the Judgment

The Court finds that *Gavin Edmondson* confirmed that access to justice underpins solicitors' equitable liens [19, 54, 87, 110, 154].

Lord Burrows considers that *Gavin Edmondson* supports a clear, principled and easy-to-apply test for recognising a solicitor's equitable lien that does not turn on whether or not a dispute has arisen [77]. In *Gavin Edmondson*, no proceedings had been issued [81], no real dispute had yet arisen [82], and the solicitors who claimed the lien had done little in the way of progressing the legal claim beyond entering it in an online portal [83]. On this basis, Lord Burrows sets out the relevant test for a solicitor's equitable lien as whether a solicitor (within the scope of the retainer with its client) provides services in relation to the making of a client's claim (with or without legal proceedings) which significantly contribute to the successful recovery of a fund by the client [88]. On the facts of this case, Bott has provided services to its clients in relation to the making of claims for compensation for flight cancellation and delay provided for by Regulation 261, which have significantly contributed to the recovery of compensation [93]. Lord Burrows therefore holds that Bott is entitled to a lien over that compensation for its costs and allows Bott's appeal [77, 102]. Lord Burrows makes clear that this decision promotes access to justice because the vindication of a client's rights, through the making of claims, is more likely to be effective if solicitors know that they have the security of a lien to recover their fees [87].

Lady Arden holds that any extension of equitable liens must be principled [104]. Effective access to justice includes ensuring that a person can get advice and is now a foremost animating principle of the lien [109]-[111]. Lady Arden critically examines *Meguerditchian v Lightbound* [1917] 2 KB 298, laying down the mere negotiation rule relied on by the Court of Appeal [112]-[116]. Lady Arden agrees with the claim-based test set out by Lord Burrows in para 88 [122]. Transactional work can be distinguished [126].

Lord Briggs highlights his primary considerations when analysing this difficult question. First, the disproportionate cost of engaging solicitors for relatively low-value claims is a significant obstacle to access to justice in England and Wales [158]. Bott's scheme allows consumers to benefit from professional assistance to recover compensation at a low cost, with no cost at all in the absence of recovery [160]. Second, there is a need for reasonable certainty as to the existence and scope of a solicitor's lien, given that an equitable lien is a property right

that does not depend upon the court's exercise of discretion [166]. Lord Briggs finds that the minority's approach introduces an unacceptable level of uncertainty [170]. Lord Briggs therefore agrees with the test set out by Lord Burrows, and regards his reasoning and that of Lord Burrows to be closely aligned. He also indicates his agreement with the central thrust of Lady Arden's reasoning [179].

Lord Leggatt and Lady Rose, dissenting, disagree with the majority view that solicitors' equitable liens ought to be extended beyond circumstances involving an actual or reasonably anticipated dispute [65-67]. A test based on whether the client is 'making a claim' is uncertain. It would appear to extend the lien to some transactional work carried out by a solicitor, work which the majority accepts should not be covered [69]. Furthermore, such extension means the link with the animating principle of access to justice is broken [71]. Lord Leggatt and Lady Rose therefore would dismiss Bott's appeal [75].

*References in square brackets are to paragraphs in the judgment*

**NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**