

RBarton and others (Respondents) v Morris and another in place of Gwyn-Jones (deceased) (Appellants) [2023] UKSC 3

On appeal from: [2019] EWCA Civ 1999

Date: 25 January 2023

Justices

Lord Briggs, Lord Leggatt, Lord Burrows, Lord Stephens, Lady Rose

Background to the Appeal

Foxpace Limited ("**Foxpace**"), the Fourth Respondent, owned a property known as Nash House in London. This appeal concerns an oral agreement between Foxpace and Mr Barton, the First Respondent, about Nash House. In the High Court it was held that Foxpace agreed to pay Mr Barton £1.2 million if he introduced a purchaser for Nash House who bought it for £6.5 million. The £1.2 million represented deposits and other expenses that Mr Barton had lost on two previous attempts to buy Nash House.

Mr Barton introduced to Foxpace a purchaser called Western UK (Acton) Limited ("**Western**"). Documents were drawn up for the sale of Nash House to Western for £6.55 million. However, it came to light that Nash House fell within an area safeguarded for the purpose of the construction of the HS2 rail link. As a result, Western acquired Nash House for £6 million plus VAT. Since the oral contract between Foxpace and Mr Barton made no provision as to what would happen if Nash House was sold for anything less than £6.5 million, Foxpace argued there was no contractual obligation to pay anything to Mr Barton. Accordingly, Mr Barton brought a claim for the reasonable value of his services.

The first instance judge held that Mr Barton was not entitled to any payment. In case he was wrong, the judge assessed a reasonable fee for Mr Barton's services as being £435,000. The Court of Appeal allowed Mr Barton's appeal and held that he was entitled to a reasonable fee. The Appellants now appeal to the Supreme Court.

Judgment

By a majority the Supreme Court allows the appeal. Lady Rose gives the lead judgment, with which Lord Briggs and Lord Stephens agree. Lord Leggatt and Lord Burrows give separate dissenting judgments.

Reasons for the Judgment

Foxpace could be contractually bound to pay a fee to Mr Barton in three different ways: (1) an express term; (2) a term implied on the facts; and (3) a term implied by law [11]. Alternatively, Foxpace could be obliged to pay a fee to Mr Barton under the law of unjust enrichment. The majority hold that none of these avenues leads to the conclusion that Mr Barton should be paid a fee [76];[107].

The express terms of the contract

The only obligation found by the judge was for Foxpace to pay Mr Barton £1.2 million if Nash House sold for at least £6.5 million to a purchaser whom Mr Barton had introduced. There was no express contractual term creating an obligation on Foxpace to pay Mr Barton a fee if Nash House was sold to Western for less than £6.5 million [17-18].

A term implied as a matter of fact

The majority hold that implying a term that Foxpace is contractually bound to pay Mr Barton an unspecified sum if a purchaser buys Nash House for less than £6.5 million contradicts the express terms of the contract **[24-25]**. It is not possible to say that there is any particular fee to which the parties would clearly have agreed, or which is so obvious that it goes without saying. Further, it is not necessary to imply such a term to give the agreement business efficacy **[32]; [37]; [40]**.

A term implied as a matter of law

Section 15 of the Supply of Goods and Services Act 1982 implies a term that the party contracting with the supplier for services will pay a reasonable charge where consideration for the service is not determined by the contract. The majority hold that this section does not apply in the circumstances of this case because consideration was in fact determined by the contract and, possibly, because Mr Barton was not contractually obliged to provide a service, namely the introduction to Foxpace **[41]; [43]**.

The law also implies a term as an incident of the particular kind of contract in issue, for example in a lease for a flat in a block of flats or in an employment contract **[44]**. Mr Barton relied on a series of cases in which the courts have implied an entitlement to commission as an incident of informal contracts commonly entered into between sellers of property and estate agents when the property is sold to a purchaser introduced by the estate agent. The majority hold that Mr Barton's contract is not the same as the contracts in those cases **[67-68]**. First, Mr Barton was not an estate agent and this was a one-off contract **[69]**. Second, the fee of £1.2 million was several times the reasonable fee for the introduction **[71-72]**. Third, the fee was calculated by reference to sums that Mr Barton had properly forfeited to Foxpace in the two earlier transactions **[73-74]**. The contract provided Mr Barton with an opportunity to recover those forfeited sums in certain circumstances and he took a risk that if he did not find a buyer at £6.5 million, he would not be able to recover those sums or any part of them **[75-76]**.

The claim in unjust enrichment

The majority hold that Mr Barton's claim in unjust enrichment also fails **[106]**. An obligation on Foxpace to pay any commission to Mr Barton when there has been no sale to Western for £6.5 million is at odds with what was agreed and the law of unjust enrichment cannot be relied on to circumvent the terms of a subsisting contract **[103]**. The benefit to Foxpace of a sale to a purchaser introduced by Mr Barton, for no reward to him, would not be unjust. This is because it was an outcome provided for by the agreement. Although the outcome may seem harsh to Mr Barton, unjust enrichment mends no-one's bargain **[107]**.

Dissenting judgments

Lord Leggatt and Lord Burrows dissent and would both dismiss the appeal. Lord Leggatt holds that Mr Barton was entitled to a reasonable remuneration under a term, implied by law, to pay a reasonable sum for the supply of services where no sum is fixed by the contract **[111]; [125]**. He holds that this entitlement to reasonable remuneration is not inconsistent with the inference that, if Nash House sold for less than £6.5 million, Foxpace would not be obliged to pay Mr Barton £1.2 million **[170-177]; [183]; [188]; [194-195]**. Lord Leggatt also holds that the law of unjust enrichment does not assist Mr Barton's claim **[189]**.

Lord Burrows holds that there was a term implied by law into the contract that Mr Barton would be paid reasonable remuneration by Foxpace if he successfully introduced the buyer of Nash House to Foxpace **[220]**. He holds that the express terms of the contract, for payment of £1.2 million if the purchase price of Nash House was £6.5 million, did not exclude this implied term **[225]**. Lord Burrows also holds that had there been no such implied term, the same result would have been reached in the law of unjust enrichment **[226-227]; [236]; [241]**.

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 online. [Decided cases](#)