

Privy Council Clarifies When Innocent Bank is Liable to Victims of Theft

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To what extent must a bank make inquiries as to the commercial purpose of a transaction, particularly a transaction involving an offshore structure? And when is a bank liable to compensate a victim of theft for receiving funds deriving from stolen assets and using them for its own benefit?

These were the questions addressed in *Credit Agricole v Papadimitriou* by the UK's Privy Council (the court of final appeal for the UK's overseas territories and Crown dependencies, and for Commonwealth countries that have retained it as the ultimate appeal Court; its decisions are authoritative in English law as it comprises judges from the UK Supreme Court).

It is an important and potentially far-reaching decision.

An honest bank, which had unknowingly received stolen funds and used them to repay itself a loan made to the fraudster, was required to compensate the victim of the theft. It must do so because it failed to investigate the commercial purpose of the transaction under which it received the funds in circumstances where the unnecessarily complex structure and cost of the transaction were indicative of money laundering.

The impact of the judgment may reverberate around the risk departments of financial institutions (or, indeed, other regulated entities). It is relevant where stolen funds, or funds deriving from stolen assets, have been used, for example, (a) to discharge a loan or overdraft, (b) to pay substantial fees for a transaction or (c) where the bank has enforced security taken over a stolen asset.

The case concerned the proceeds of sale of artworks stolen from a private collector. It could equally apply to assets or funds stolen by a public official from a bank, or to bribes, which the bank has used for its benefit, for example to pay fees or to pay-off a loan or overdraft. A bank facing a claim from an aggrieved state could be found liable if it failed to seek an explanation when it had serious cause to question the proprietary of a transaction.

The rationale of the case is not, however, applicable where the Bank has simply received funds into a customer's account and transferred them away on the customer's instructions. In those circumstances, a claim would only be available against the Bank if it has been dishonest.

Finally, it is noteworthy that the Privy Council reached its decision applying the standards of money-laundering legislation in place in 2000, not the much higher requirements that apply under the present money-laundering regime. In our view, this suggests that the courts will apply a much higher standard to more recent conduct.

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