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When does a solicitor's lien on costs arise?

Bott & co Solicitors Ltd v Ryanair DAC (2022) UKSC 8

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).

The appellant solicitors (Bott) handled a large volume of passenger compensation claims for flight cancellation and delays, primarily on a "no win, no fee" basis. A high proportion of those claims were 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 had 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 was on notice that Bott had 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

IN BRIEF

A majority of the Supreme Court held that a solicitor's lien on costs arose when the solicitor (within the scope of the retainer with its client) provided services in relation to the making of a client's claim (with or without legal proceedings) which significantly contributed to the successful recovery of a fund by the client.

equitable lien in circumstances where compensation was 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 (2018)*, which decided that a solicitor's equitable lien could arise where no proceedings had been started. The Court of Appeal dismissed Bott's appeal on the basis that unless and until Ryanair disputed a claim for compensation, Bott was not providing a litigation service in the promotion of access to justice.

By a 3/2 majority, The Supreme Court allowed Bott's appeal. The majority judges, gave three separate judgments but all agreed with the test for an equitable lien.

The majority found that *Gavin Edmondson* confirmed that access to justice underpins solicitors' equitable liens. That case supported a clear, principled and easy-to-apply test for recognising a solicitor's equitable lien that did not turn on whether or not a dispute had arisen. In *Gavin Edmondson*, no proceedings had been issued, no real dispute had yet arisen, 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. On this basis, Lord Burrows set out the relevant test for a solicitor's equitable lien as whether a solicitor (within the scope of the retainer with its client) provided services in relation to the making of a client's claim (with or without legal proceedings) which significantly contributed to the successful recovery of a fund by the client. On the facts of this case, Bott had 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 had significantly contributed to the recovery of compensation. Therefore, Bott was entitled to a lien over that compensation for its costs. This decision promoted access to justice because the vindication of a client's rights, through the making of claims, was more likely to be effective if solicitors knew that they had the security of a lien to recover their fees.

Lady Arden held that any extension of equitable liens must be principled. Effective access to justice included ensuring that a person could get advice and was now a foremost animating principle of the lien. Transactional work could be distinguished.

Lord Briggs highlighted his primary considerations when analysing this difficult question. First, the disproportionate cost of engaging solicitors for relatively low-value claims was a significant obstacle to access to justice in England and Wales. Bott's scheme allowed consumers to benefit from professional assistance to recover compensation at a low cost, with no cost at all in the absence of recovery. Second, there was a need for reasonable certainty as to the existence and scope of a solicitor's lien, given that an equitable lien was a property right that did not depend upon the court's exercise of discretion.

The full report may be found at: [Bott & Co Solicitors Ltd v Ryanair DAC \[2022\] UKSC 8 \(16 March 2022\) \(bailii.org\)](#)

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