

Court of Appeal upholds rescission of \$400m of derivative contracts involving UBS and the Leipzig Water Company

08/11/2017 (Commercial)

The Court of Appeal has handed down judgment in *UBS AG v. Kommunale Wasserwerke Leipzig GmbH* (“KWL”), upholding the decision of Males J of November 2014 and dismissing UBS’s appeal.

The claim arose out of the sale by UBS to KWL of four highly complex derivatives known as “STCDOs”, worth approximately USD 400 million. The STCDOs sustained a total loss during the 2007-2009 financial crisis.

It subsequently emerged that KWL’s former financial advisors (“Value Partners”) had both (a) paid bribes to KWL’s former managing director, and (b) engaged in a scheme with UBS to sell the STCDOs to KWL without regard to KWL’s interests. Against this background, Males J held that KWL was entitled to rescind its transactions with UBS.

Males J also found that UBS’s portfolio management arm (“UBS GAM”) had negligently managed the STCDO portfolios, causing all of KWL’s losses, such that KWL would have been able to recover any sums due to UBS as damages for negligence.

The Court of Appeal (Briggs LJ and Hamblen LJ, with Gloster LJ dissenting) upheld the Judgment on both issues.

The majority found that KWL’s claim for rescission succeeded on the basis that UBS’s conscience was affected by the bribe, in circumstances where UBS was aware of Value Partners’ conflict of interest, even if UBS was not aware of the bribe itself. In any event, UBS’s direct knowledge of Value Partners’ conflict of interest was a sufficient ground for rescission. Gloster LJ (dissenting) thought it unreal to introduce into commercial transactions “the moral standards of the vicarage”.

The Court of Appeal was unanimous in upholding the finding that UBS GAM had negligently managed the portfolios. The majority held that the Judge was also right to find that this negligence had caused all KWL’s losses. Gloster LJ (dissenting) would have remitted the issues of causation of loss to a different trial judge.

BRICK COURT CHAMBERS

BARRISTERS

The judgment is [here](#).

Members of Brick Court Chambers acted for both KWL and UBS in the dispute, at trial and on appeal:

KWL was represented by Tim Lord QC, Simon Salzedo QC, Stephen Midwinter QC and Craig Morrison, instructed by Addleshaw Goddard LLP.

UBS was represented by Richard Slade QC and Edward Harrison, instructed by Mayer Brown LLP.

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