

Crown Prosecution Service (Appellant) v Aquila Advisory Ltd (Respondent)

Case ID: UKSC 2019/0105

Case summary

Issue

Where a proprietary claim is brought by a company against its directors to recover proceeds of crime received in breach of fiduciary duty: (1) Can that proprietary claim be asserted in priority to a confiscation order obtained by the Crown Prosecution Service? (2) Can the illegality of the directors be attributed to the company in circumstances where the company suffered no loss and stood to profit from the crime?

Facts

Two directors of a company used the company to commit a criminal offence, from which they personally obtained a benefit of £4.55 million. They were prosecuted and convicted of the criminal offence and were made the subject of confiscation orders based on that benefit. However, in an action between Aquila Advisory Ltd (to which the company's rights had been assigned) and the directors, in which the Crown Prosecution Service intervened, the High Court determined that the company, and hence Aquila Advisory Ltd, could recover what remained of the £4.55m from the directors because they had acted in breach of their fiduciary duty to the company and thus held the proceeds of the crime on constructive trust for the company. The CPS seeks to prevent Aquila from recovering the £4.55m in priority to the confiscation orders.

Judgment appealed

[\[2019\] EWCA Civ 588](#)

Parties

Appellant(s)

Crown Prosecution Service

Respondent(s)

Aquila Advisory Ltd

Appeal

Justices

Lord Lloyd-Jones, Lord Sales, Lord Burrows, Lord Stephens, Lady Rose

Hearing start date

27 Apr 2021

Hearing finish date

27 Apr 2021

Watch hearing

27 April 2021 [Morning session](#) [Afternoon session](#)

Judgment details**Judgment date**

3 November 2021

Neutral citation

[2021] UKSC 49