COLLAS CRILL

Credit Suisse Life (Bermuda) Ltd v Ivanishvili [2025] UKPC 53

NOVEMBER 2025

Court: Privy Council (from the Court of Appeal for Bermuda)
Subject: Fraudulent misrepresentation, requirement of awareness, measure of damages in respect of mismanaged discretionary investments, the double-actionability rule, doctrine of renvoi
Judges: Lord Hodge, Lord Briggs, Lord Leggatt, Lord Richards, Lady Simler

Summary

In a landmark judgment, the Board overturned a controversial line of English authority by finding that it is *not* a legal requirement in a claim for deceit that the claimant was aware of or understood the defendant to have made the representation of fact or law which was false. This has far-reaching implications and is likely to lead to an increase in civil fraud claims involving implied representations of honesty and in contractual arrangements.

The Board further deprecated two older rules of private international law – the double-actionability principle and the doctrine of renvoi.

Further details

The awareness requirement – A line of controversial authorities by first instance Commercial Court (of England and Wales) judges have found that it is a requirement of a claim for claim for deceit that the claimant was aware of the representation or understood it to have been made. Therefore, if C gave no conscious thought to the representation, C's deceit claim failed. Given that most implied representations are not the subject of conscious consideration, reliance on implied representations has been deemed notoriously challenging.

The Board found that there is no such awareness requirement.

While reliance is an essential element of a claim for deceit (or other claim for damages for misrepresentation), reliance can still be established without awareness of the representation. There are two aspects to the reliance requirement. First, the representation must have deceived C by causing C to hold a false belief. Second, C must, because it held that false belief, have acted so as to suffer loss. Both aspects require the representation to operate on the mind of C. However, neither requires C to be consciously aware of the representation at the time when C acts on it.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

As explained by the Board: *'It is an everyday feature of human experience that people form and act on beliefs without any conscious awareness or thought. If someone takes advantage of such unconscious mental processes to deceive another person and cause her to act to her detriment, there is no reason why a claim for damages should not lie. The mischief is no less than in a case involving conscious awareness.'*

In rejecting the awareness requirement, the Board also addressed two key justifications that have been relied upon:

1. **C cannot have relied on a representation when acting on an assumption, because the source of error must lie with C** – The Board found this is a false dichotomy. What matters is whether, in a case where the claimant has acted on an assumption, the assumption was one which C would naturally be expected to make in response to the defendant's words or actions or whether it was one made independently by C. If C has acted as a result of an erroneous belief not caused by the defendant, the defendant will not be liable.
2. **The awareness requirement is necessary to preserve the distinction between misrepresentation and non-disclosure** (such distinction is important as, save where there is a duty to disclose material facts, non-disclosure does not give rise to liability) – The distinction turns on whether the defendant (a) has done something to cause C to hold a false belief on which C has acted to its detriment or (b) has merely failed to inform C of a material fact or to correct a false belief which C independently holds. However, a case may fall in the first category without C being aware of what the defendant has done, but that ignorance does not turn the case into one of non-disclosure.

System of law governing misrepresentation claims and double actionability – The Board indicated in obiter that the *Boys v Chaplin* 'double actionability' rule - i.e. that a claim in tort arising from an act of the defendant done in a foreign country is 'actionable' in England & Wales only if the act is actionable both (1) as a tort under English law and (2) under the law of the foreign country where it was done – should not be the general choice-of-law rule in common law jurisdictions. Accordingly, it would have been open to either side to invite the Board not to follow this rule and to hold that the general rule in Bermuda is that the court should simply apply the law of the place where the tort was committed.

Doctrine of renvoi – Under the doctrine of renvoi, when an issue is governed by the law of a foreign country, the court should seek to decide the issue in the same way as a court of that country would decide it. To achieve this result, the court should look first, not to the internal law of the foreign country, but to its rules of private international law. If those rules would require a court of the foreign country to apply a different system of law from its own, then that law should be applied. However, the Board found that the doctrine should not be adopted in English law, unless this is required by binding precedent. In any event, renvoi plays no part in the private international law rules for tort.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Rocco Cecere

Partner | Cayman

t: +1 345 914 9630 | **e:** rocco.cecere@collascrill.com



Matthew Dors

Partner | Cayman

t: +1 345 914 9631 | **e:** matthew.dors@collascrill.com



Zachary Hoskin

Partner | Cayman

t: +1 345 914 9663 | **e:** zachary.hoskin@collascrill.com



Michael Adkins

Partner (Advocate) | Guernsey

t: +44 (0) 1481 734 231 | **e:** michael.adkins@collascrill.com



David O'Hanlon

Partner (Advocate) | Guernsey

t: +44 (0) 1481 734259 | **e:** david.ohanlon@collascrill.com



Lilla Zuill

Bermuda Managing Partner | Bermuda

t: +1 441 261 9801 | **e:** lilla.zuill@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.