

Baden v Société Générale pour Favoriser le Développement du Commerce et de l'Industrie en France [1993] 1 WLR 509

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Facts

- Mr George Baden, Jacques Delvaus and Ernest Lecuit were liquidators of the Luxembourg Mutual Investment Fund.
- They claimed that Société Générale owed it \$4,009,697.91, which it held for its customer, the Bahamas Commonwealth Bank Ltd (**BCB**) in a trust account.
- In May 1973, it followed BCB's instructions, in an arrangement with Algemene Bank, transferred the money to Banco Nacional de Panama, to a non-trust account in BCB's name.
- Baden claimed that these actions made Société Générale a constructive trustee, and therefore had a duty to account.
- Alternatively, Baden claimed that Société Générale owed Baden a duty of care, and that it was liable in damages for the loss suffered.

Held

- Société Générale was not liable because it had no knowledge at the time of the fraud in which it assisted.
- The relevant knowledge had to be knowledge of the facts. Recklessly refraining to make enquiries that a reasonable banker would have made would be enough to indicate knowledge of something awry.
- A banker had an obligation to comply with lawful instructions, save in exceptional circumstances, in which it came under a duty to enquire about the true nature of the transaction.

Quotes

"What types of knowledge are relevant for the purposes of constructive trusteeship? Mr. Price submits that knowledge can comprise any one of five different mental states which he described as follows: (i) actual knowledge; (ii) wilfully shutting one's eyes to the obvious; (iii) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make; (iv) knowledge of circumstances which would indicate the facts to an honest and reasonable man; (v) knowledge of circumstances which would put an honest and reasonable man on inquiry."

(Peter Gibson J)

The above quote is what is referred to as the "Baden knowledge scale".

The first four levels of the Baden scale were confirmed in *Farah Constructions v Say-Dee*.

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