



2025 UQ UNJUST ENRICHMENT MOOT

JANET MAYOR v JIMOTHY CARLSON

BRISBANE, AUSTRALIA

28 SEPTEMBER – 1 OCTOBER

Organised by the University of Queensland Law Society Incorporated and
sponsored by Herbert Smith Freehills Kramer

IN THE HIGH COURT OF AUSTRALIA

BETWEEN:

JANET MAYOR

Appellant

and

JIMOTHY CARLSON

Respondent

SUMMARY OF AGREED FACTS

The following facts occurred in Queensland.

1. In June 2019, Jimothy Carlson, a popular automotive journalist and television host, decided to make a \$1.5 million investment in a start-up eco-farm project being developed by his wealthy friend, Janet Mayor, on land that she owns in Northern Queensland. The project was to be managed and run on the ground by Janet's brother, Tom Mayor, also well-known to Jimothy. No formal agency relationship existed between Janet and Tom in respect of the farm business, but Tom was to provide Janet with expertise and services in respect of the project. Tom's relationship with Janet had been strained since 1 December 2018, when he failed to repay a debt of \$3 million that he owed her. Both parties hoped that the project would help to salvage their relationship.
2. On 1 October 2019, Jimothy instructed his bank to make the \$1.5 million payment to Janet in accordance with the instructions he had been given. These were supplied by Tom, but were incorrect, with the consequence that the transfer was not made to Janet's account, but to Tom's. Tom's account was overdrawn by \$2 million at the time the payment was made, but the effect of the payment was to refresh Tom's overdraft facility with the bank. When Tom realised the error, he drew on that facility to transfer the corresponding sum of \$1.5 million to Janet's account. Tom's on-transfer to Janet's account was made on 2 October 2019.
3. Janet was not expecting to receive any payment from Tom. However, in the belief that he was at last living up to his legal responsibilities to her, she accepted the payment in

full discharge of Tom's debt to her. On 3 October 2019, she texted him a thank you message in the following terms: *'Great to receive that money today. Thanks so much. Let us just say that the past is forgiven. Looking forward to working with you on our next adventure.'*

4. On 1 February 2023, planning permission for the farm project was denied. From that date, it became clear to all parties that the project was no longer a viable possibility. Jimothy immediately contacted Janet requesting his money back, but she denied ever having received it: *'I haven't got your money, Jimothy. When I didn't hear or receive anything from you, I just assumed that you were waiting until we had got planning permission for the project.'* By this stage, Tom was nowhere to be found. His debts having spiraled beyond control, he declared personal bankruptcy on 1 March 2023 and left the country.
5. On 1 August 2023, Jimothy issued proceedings by way of an action for money had and received against Janet in the Queensland Supreme Court seeking restitution of \$1.5 million on the ground that his payment of 1 October 2019 was made under a mistake of fact and unjustly enriched her at his expense. He further claimed that Janet had enjoyed the opportunity to use the money as from 2 October 2019 and was therefore liable for its 'use value' from that date to the date of judgment, such that Jimothy was entitled at common law to an award of compound interest at the normal commercial borrowing rate on a non-statutory basis.
6. Janet, by way of defence, pleaded that: (i) she was not a direct recipient of the money, so that the monetary enrichment she had received was at the expense of Tom, not Jimothy; (ii) the opportunity to use money was not a benefit capable of forming the object of a restitutionary claim in Australian law, whether reflected in an award of compound interest or otherwise; (iii) any benefit derived from her opportunity to use the money since 2 October 2019 was an incidental benefit, not one that had been transferred to her by Jimothy; and (iv) she had a total defence of good consideration to any claim, having released Tom in good faith from his debts to her in exchange for the receipt in question.
7. On 1 June 2024, Judge J gave the following orders and reasons:
 - (a) Janet was prima facie personally liable to make restitution of \$1.5 million to Jimothy on the grounds of mistake of fact. Although she was an indirect recipient

of the money, there was a clear ‘but for’ causative relationship between her receipt and Jimothy’s payment, Tom being a mere conduit through whose hands the money had traceably passed to her in a series of coordinated transactions. Alternatively, the money was traceable to Janet’s account because Tom had deliberately used it to refresh his overdraft facility so that an exactly corresponding on-payment could be made to Janet: *Barclays Bank Ltd v W J Simms, Son and Cooke (Southern) Ltd* [1980] 1 QB 677; *Menelaou v Bank of Cyprus UK Ltd* [2015] UKSC 66; *Federal Republic of Brazil v Durant International Corporation* [2015] UKPC 35; *Commissioners for Her Majesty’s Revenue & Customs v The Investment Trust Corporation (in liq)* [2017] UKSC 29; *Point Bay Developments Pty Ltd v Perkins (WA) Pty Ltd* [2021] QSC 272.

- (b) Janet was not entitled to a defence of good consideration. Although Janet had accepted the payment in discharge of Tom’s debt and that debt had in fact been discharged, the payment had not been made in order to discharge that debt: *Aiken v Short* (1856) 1 H&N 210, 156 ER 1180; *Barclays Bank Ltd v W J Simms, Son and Cooke (Southern) Ltd* [1980] 1 QB 677; *Hills Industries Ltd v Australian Financial Services and Leasing Pty Ltd* [2012] NSWCA 380 [186], [200] (Meagher JA); [2014] HCA 14 [101].
- (c) Jimothy was not entitled to claim compound interest. The unrealised opportunity to use money is not a benefit currently recognised by the law of restitution. Even if it is, Janet’s opportunity was not obtained at Jimothy’s expense, because he had not transferred it to her. It was a purely incidental benefit: *Commonwealth v SCI Operations Pty Ltd* (1998) 192 CLR 285; *Sempra Metals Ltd v HM Inland Revenue Commissioners* [2007] UKHL 34; *Prudential Assurance Co Ltd v Revenue and Customs Commissioners* [2018] UKSC 39. Jimothy was therefore entitled only to statutory simple interest pursuant to s 58 of the *Civil Proceedings Act 2011* (Qld).
8. Janet appealed to the Queensland Court of Appeal. Jimothy cross-appealed. On 12 December 2024, the Court of Appeal dismissed both the appeal and the cross-appeal, agreeing entirely with the reasons of Judge J.

9. Special leave has been given to appeal to the High Court of Australia on the following questions:

- (a) Whether Australian law recognises a personal claim at common law for money had and received against the indirect recipient of a mistaken payment and, if so, whether the conditions for such a claim against Janet were made out on the facts.
- (b) Whether the defence of good consideration in Australian law extends to cases in which monies are accepted in good faith in discharge of a debt, where the payor's intention is not to discharge that debt.
- (c) Whether the use-value of money is capable of constituting an actionable 'benefit' in a common law action for money had and received, sufficient to support a claim for non-statutory compound interest upon the sum received.
- (d) If the answer to (c) is 'yes', whether it is a requirement of such an action in Australian law that the benefit of the use value of money be 'transferred' from the plaintiff to the defendant and, if so, whether such an opportunity had been transferred by Jimothy to Janet on the facts.