

Bacciottini & Anr v Gotelee and Goldsmith (A Firm)

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Mixed Judicial Consideration

Court

Court of Appeal (Civil Division)

Judgment Date

18 March 2016

Case No: A3/2014/3688

Court of Appeal (Civil Division)

[2016] EWCA Civ 170, 2016 WL 01032294

Before: Lord Justice Davis Lord Justice Lloyd Jones and Lord Justice Underhill

Date: Friday 18th March

2016

On Appeal from the High Court of Justice Chancery Division

HH Judge Simon Barker QC

HC 2013 000094

Hearing dates: 19 & 20 January **2016**

Representation

David Halpern QC and Teresa Rosen Peacocke (instructed by Keystone Law) for the Appellants.
Ian Gatt QC and Graeme Robertson (instructed by Herbert Smith Freehills LLP) for the Respondent.

Judgment

Lord Justice Davis:

Introduction

1. This appeal raises an issue on the applicable measure of damages. It arises out of the admitted negligence on the part of the respondent firm of solicitors. The appellants had acquired a residential property in May 2007. The respondent had negligently failed to advise them that there was a planning restriction attached to the property restricting its residential use. Subsequently, after the purchase had been concluded, the appellants successfully procured the removal of the planning restriction....

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...y reflects the overriding compensatory rule ... ”

He went on to say this at paragraph 36:

“In a case where the normal measure is applicable, the normal measure will not be reduced because particular losses have in fact been avoided, nor will it be increased because the transaction has turned out worse for the claimant than it might have, due to some subsequent misfortune: But that is because the court will have already decided, in the words of Lord Browne-Wilkinson in *Smith New Court* , that the normal measure gives a “*fair result*”, or, in the words of Lord Steyn in the same case, that the normal measure “*give(s) effect to the overriding compensatory rule*”.”

49. I would finally note the recent decision of the Court of Appeal in *The New Flamenco* [2015] **EWCA Civ 1299** . In that case a charterer was in repudiatory breach of a charterparty. The owners accepted the repudiation and claimed for the lost profit of the remaining two years of the time charter. The owners in the event during that period sold the ship for a profit in excess of the lost profits on the time charter. They would not have been able to sell at a profit had they sold after the expiry of the time charter. The Court of Appeal accepted that the sale was an act of mitigation and that the profits arising from the sale of the ship had to be brought into account for the purposes of calculating damages. In the course of his judgment Longmore LJ said this at paragraph 23:

“The important principle which emerges from these citations is that, if a claimant adopts...