



In *Patel v Mirza* [2014] EWCA Civ 1047, the Court of Appeal considered whether the claimant was entitled to recover money paid under an illegal agreement the performance of which had been frustrated.

The Court of Appeal has held that it is possible to recover money paid under an illegal agreement, the performance of which has been frustrated.

The claimant (C) sought to recover £620,000 paid to the defendant under an illegal contract which envisaged insider trading. The agreement was not carried out because the insider information was not forthcoming.

At first instance, it had been held that the claim was barred on the basis of illegality, but the judge stated that the position would have been different if C had withdrawn from the agreement before it became frustrated. C appealed on two grounds, namely that he:

1. Was entitled to recover the money without relying on the illegality.
2. Could recover money paid under an illegal agreement whose performance had been frustrated.

The Court of Appeal allowed the appeal on the second ground. Applying established principles, C would have been able to recover if he had withdrawn from or repudiated the agreement, even though he would have had to rely on the illegality. The court held that the same approach should apply where the agreement was not capable of performance, as long as no part of the illegal agreement had been carried into effect before the claim was brought. If it had not, then the claimant was prima facie entitled to recover sums paid to the defendant.

The decision is significant because it confirms that a claimant who has paid money to a defendant under an illegal contract is not prevented from recovering the money if the agreement cannot be performed, a point on which there does not appear to be any direct authority. The court emphasised that this scenario was no different from the situations where the contract was no longer needed or the claimant had simply changed his mind.

(*Patel v Mirza* [2014] EWCA Civ 1047.)