



IP ITeasers 036:

This week's IP ITeaser is written by [Adrian de Froment](#) entitled **“Accessory Liability of Individual Directors”**:

Claimants alleging accessory liability against individual directors will need to pay close attention to the recent decision of the Court of Appeal in *Barclay-Watt v Alpha Panareti* [2022] EWCA Civ 1169, where a director escaped liability despite being fully involved in the activity for which the corporate defendant was held liable in tort.

The corporate defendant (D1) had sold packages to investors in the UK that involved the purchase of villas in Cyprus funded by mortgages denominated in Swiss francs to be repaid using rental income from the villas. The villas were never completed (so there was no rental income) and there was a substantial fall in sterling against the Swiss franc, so that the investors faced increasing and overwhelming indebtedness to the bank. The individual director defendant (D2) had been fully involved in the plan to market the properties as the driving force of D1.

The claimants claimed against D1, saying that it had failed to put them on notice of the currency risk inherent in the scheme, and also against D2 as accessory.

The claimants' case was that the three conditions for accessory liability described by Lord Neuberger in *Fish & Fish v Sea Shepherd UK* [2015] UKSC 10 were met: (1) D2 assisted in the commission of an act by D1, his assistance being substantial and not merely trivial; (2) he did so pursuant to a common design between him and D1; and (3) the way in which the properties were marketed constituted a tort committed by D1 against the claimants because of their failure to warn them about the currency risks.

At first sight, one might have expected D1's close involvement in the tortious plan to lead to judgment against him, as it did in *Lifestyle Equities* [2021] EWCA Civ 675, but here the director escaped liability. The decision in *Panareti* might therefore appear troubling to claimants alleging accessory liability in intellectual property cases (and helpful to director defendants), particularly as Lord Justice Males referred to "the artificiality of saying that there is a common design between a company and the individual who acts as its driving force".