

Commercial Fiduciary Relationships

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CATEGORY:
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Schemes which cause substantial losses to large numbers of people, do not always reach the court in the form of claims for 'fraud and deceit'. This is so not because the Claimants do not regard their losses as having been caused by fraud and deceit, but because on legal advice, an alternative claim – for example for breach of trust – would be more effective. The following case appears to be an example of this.

Facts of the Case

Investors provided moneys to Taylor Ventures Ltd (TVL). The only documentation they received was a 'speedy memo' in return. This recorded the amount of money provided and the number of shares in one of TVL's real estate projects.

TVL promised the investors 20% interest on their investment, redeemable at any time, and a further share of profits if an investor stayed in until completion of the project.

All the investors agreed that TVL had discretion as to how and when to sell the project or the lots created in the development. They did not own or have any security over the real estate in any project; nor were they shareholders of TVL. TVL went into receivership, and the investors lost their investments.

The claim made was not against the insolvent TVL but the Westminster Savings Credit Union ('WSCU') which the investors alleged took part in a scheme or at least ignored signs that should have put it on inquiry into a possible breach of trust or fiduciary obligation.

The Court found through a course of conduct, that it was accepted by the investors that decisions as to the development of the property, the expenditure incurred in that development, and the timing of sale of the property or lots were matters left entirely to the discretion of TVL. The court found that it was not agreed that TVL would not mix the funds from the project with either its own funds or with the funds of another project; but that it was agreed that TVL would not mortgage the properties (other than to obtain the initial financing against the property.)

The Claimants argued that firstly there was a trust; if not, the investments were to be regarded as a loan; secondly that there was a special purpose or 'Quistclose' Trust: the loans were for specific projects and thus a trust arose with respect to those particular funds; and thirdly that there was a fiduciary relationship between the investors and TVL because it 'acted as a professional advisor and manager with absolute discretionary power over the investors' funds or over their interest in or connected to the properties.'

The Decision

The court found that there was no trust or Quistclose Trust in existence.

It was held that "it is ... significant that this was not a normal commercial relationship. It was a bargain between an experienced real estate developer and unsophisticated investors". The lack of restrictions on the use of investors funds and the wide discretion given to TVL led the judge to find that there was "significant vulnerability on the part of investors to the exercise of... discretion by TVL". These two factors were held to be sufficient to give rise to fiduciary obligations on the part of TVL; this imputes an obligation on TVL to act honestly and in the best interests of the investors, or their joint interests in exercising its discretion.

Unfortunately for the investors, although the transactions in question amounted to a breach by TVL of its fiduciary obligations, WSCU was not liable for knowing assistance and knowing receipt for a breach of fiduciary duty. This was because the court did not find that it would have been reasonable for WSCU and the particular account manager, knowing what they knew and making enquiries that they ought reasonably to have made, to have concluded that there was a fiduciary relationship between TVL and the investors or indeed that the consequent fiduciary duty was not discharged.

Points of Interest

Normally, in order for a Claimant to trace money which is held by a third party it is necessary to show that the third party holds that money in some capacity for the Claimant's benefit: this is established where there is a fiduciary relationship but does not apply to a commercial relationship such as one between lender and borrower.

In a departure from the norm, Judge Sigurdson of the British Columbia Supreme Court found that there was a fiduciary relationship within a commercial transaction between parties at arms length. There are many examples where this approach could assist victims of fraud and we look forward to the English Courts adopting this approach in future.