Cases for Principles of Equity

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CASES – Establishing a fiduciary relationship

Hospital Products Ltd v United States Surgical Corporation

Facts:

- USSC was a US company, which manufactured surgical stapling products
- USSC entered into an oral contract with Blackman who later became the Australian distributor of USSC's products in Australia. Blackman's Australian company was Hospital Products.
- USSC's products were not patented in Australia. In competition with USSC, HP repackaged USSC's products and sold them under the HP brand. In addition, HP and Blackman reverse engineered USSC's surgical stapling devices, thus enabling competing products to be developed and sold into other markets including the US. HP thus competed with USSC in the US and Australian markets.
- USSC terminated its distribution contract with Blackman and sued him and HP for breach of contract and breach of fiduciary duty.
- HP argued that their relationship was merely contractual thus USSC should only be able to garner contractual remedies.
- USSC argued that as one of the terms of the contract was the HP would endeavour to explore the Australian market to the benefit of both parties, this implied a term that HP would not sell its own products to the detriment of USSC and thus HP had undertaken to act as fiduciary for USSC in undertaking such a relationship of trust.

Note: The breach of confidence will not establish a constructive trusts, nor will a breach of contract give them an account of the profits. A fiduciary relationship will open to USSC a more appropriate remedy, specifically, a constructive trust over the HP business.
Note: The relationship – supplier distributor, is not a presumed fiduciary relationship.

Judgement: The majority did not find a fiduciary duty on the facts

Held:

Gibbs CJ (Wilson & Dawson agreeing)

- The HCA held unanimously that HP had broken its contractual obligations to USSC.
- HCA held by majority that there was no fiduciary obligation owed by HP – Mason J dissenting.
- Although there was an implied term that HP would make its best efforts to promote sales in Australia, there was not a second implied term that they had agreed ONLY to act in the best interests of USSC. They agreed to promote USSC's products - they did not agree to NOT act in their own interests. HP were entitled to act in their own interests.
- Showing a fiduciary relationship involves multiple indicators –
    - Relationship of trust and confidence
    - Inequality of bargain power
    - Property holding
- HP had not accepted responsibility for the sort of loyalty needed to make it a fiduciary relationship. It is not enough that you undertake to act for someone else – the undertaking must be one to NOT act in your own best interests. It was important that this was a commercial contract prepared by USSC themselves. USSC had not included the term that might have imposed a fiduciary relationship. HP are not under an obligation NOT to take a profit. Even thought there was reliance by USSC on HP, there was no undertaking by HP to act in USSC's best interests.

Mason J dissenting

Defined fiduciaries: *'The accepted fiduciary relationships are sometimes referred to as relationships of trust and confidence or confidential relations; trustee and beneficiary, agent and principal, solicitor and client, employee and employer, director and company, and partners. The critical feature of these relationships is that the fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense. The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person, who is accordingly vulnerable to abuse by the fiduciary of his position. The expressions 'for', 'on behalf of' and 'in the interests of' signify that the fiduciary acts in a 'representative' character in the exercise of his responsibility.'*

- Must be consistency between the fiduciary relationship and the contractual arrangement out of which the fiduciary relationship arises – *'If it is to exist at all it must accommodate itself to the terms of the contract so that it is consistent with and conforms to them. The fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation, which the contract was intended to have according to its true operation.*

- HP was at liberty to make some business decisions by reference to its own interests, subject to the obligations arising under the best efforts promise and the other terms of the contract express and implied. *This presents an overwhelming obstacle to the existence of the comprehensive fiduciary relationship found by the Court of Appeal.*
- The relationship was fiduciary in some regards but not others. *A constructive trust was too far remedial – and excessive on the facts.*
- *A fiduciary to agree to a higher level of responsibility. The notion of an undertaking is crucial.*
- Here limited duty in respect of 'product goodwill'
- *Mason J would have ordered an account of profits.*

Principles:

- It is crucial to look at the terms of the contract to garner an implied or express term that the party had undertaken to act in the interests of another and agreed not to act in their own interests.
- However, if the contract covers the whole of the relationship, there may be no room for the imposition of a fiduciary relationship. The fiduciary relationship cannot be superimposed on the contract in a way that alters the underlying effect of the contract.

Mason J – 4 distinct requirements in proving a fiduciary relationship;

1. The fiduciary must undertake or agree to the act for or on behalf or in the interests of another person
2. The fiduciary must be exercising discretion or power
3. This discretion must affect the principle in a legal or practical sense
4. The relationship must give the fiduciary a special opportunity to exercise power and discretion to the detriment of the other person who is accordingly vulnerable to abuse by the fiduciary.

Spincode Pty Ltd v Look Software Pty Ltd – duty / duty conflict

Facts

- Moore is director of Spincode – Rogers is director of G-Wiz
- Spincode and G-wiz merge to form 'Look Software' (each were 30% owners in LS); LS retains McPherson & Kelly (MPK) to act for them.
- LS hire additional employees – the Kay Brothers and Dee; MPK were not engaged in any contested work at this point.
    - However, during this time, bills sent by MPK name LS as their client
    - The registered contact names include Moore and Dee
    - Journal vouchers name the company as client
- Employees begin to fight over pay, shares and other entitlements; Moore threatens to sue LS in order to resolve the dispute.
- Subsequently, Spincode engages the assistance of MPK to look after LS to wind it up.
- MPK is still acting for LS, but attempts mediation with Spincode which collapses
- Moore asks MPK to fax LS in forming them of their intentions, which MPK does.
- LS receives a letter saying M&K acts for Moore & Spincode

Issue: Was there a BoFD?

Judgement

- Brooking JA described the situation as 'remarkable and reprehensible'
- Where a solicitor discharges himself for the very purpose of acting for the opponent, he will be restrained. 3 justifications for restraint;
    - Risk of disclosing confidential information
        - Lawyers like all professions have a legal and ethical duty to maintain the secrecy of information acquired from or about their clients when acting for them
        - The obligation of secrecy subsists after the termination of the retainer; this duty sets limit on when a lawyer may act against a former client.
        - A risk of disclosing confidential information will usually warrant intervention, but it is not the only ground.
    - Duty of loyalty
        - The need for justice to appear to be done and the likely impressions of a properly informed and reasonable observer where a lawyer changes side are to be considered.
        - The spectacle that a lawyer can readily change sides is subversive of the appearance that justice is being done
        - A duty of loyalty means 'to act selflessly and with undivided loyalty' in the service of another so until each client agrees to the contrary, they are entitled to the undivided loyalty of the fiduciary they have engaged; there needs to be fully informed consent before a lawyer can undertake a duty to another which is inconsistent with his duty to a past client.
        - The new matter must be 'the same or as closely related matter' to that in which the solicitor originally acted for the former client
        - It is this 'obligation of "loyalty" which forbids not only the concurrent holding of 2 inconsistent engagements by different clients in the same matter but also the holding of 2 successive inconsistent engagements.
    - Officer of the Court (Ormiston JA)
        - No experienced solicitor of sound judgment would have done what has been done in this case – the nature and objectives of the court's jurisdication to discipline its officers point to the fact that the court must consider the conduct of the solicitors who attempt to act in a manner inconsistent with a former retainer
        - It would be pessimi exempli if MPK were not called to account
        - If is desirable to restrain solicitors as officers of the court
- Another possible approach is suggested by contract; there may be implied term in a retainer between MPK and LS preventing MPK from acting against it in a dispute relating to the matter for which they have been retained.
- Here Australian Law diverges from English law;
    - English law – the duty of loyalty largely perishes along with the retainer from which it sprang, the only survivor being that aspect of the duty which protects confidential information.
    - Australian law – loyalty is considered to impose an abiding negative obligation not to act against the former client in the same matter.
        - The equitable obligation of 'loyalty' is breached where a solicitor 'acts against a former client *in the same matter* (at 522).

- MPK had confidential information about LS – and would be acting against their interests if acting for constituent agent Moore.
- LS was the client – they paid the bills – all correspondence was in the company's name.
- It would be unconscionable for MPK to ignore their fiduciary obligations to LS by ending the retainer
- There was an ongoing obligation not to act against a company that was previously a client- MPK can act for someone who was previously part of LS (i.e. Moore), but not so as to act against LS itself.

Decision:

Appeal is dismissed. An injunction granted – MPK should be prevented from acting for Moore.