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Daniel and another v Tee and other [2016]: new legal developments on standard of care for professional trustees

Briefing

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In this case, the High Court decided that the trustees could rely on the advice of their investment managers. They escaped liability for losses to the fund because they had acted prudently. It is likely that the same reasoning would apply to the trustees of pension schemes.

Introduction

Richard Spearman QC, Deputy Judge in the High Court, has ruled that two solicitors, acting as professional trustees of a £3.4 million will trust, (and a third solicitor at the firm who was also involved) were not liable for trust losses suffered as a result of investments in technology, IT and telecom sector equities when the "dot.com" stock market bubble burst in 2001.

Two of the trust beneficiaries, who were minors at the time, subsequently sought compensation for the trust's loss of almost £1.5 million. They argued that the trustees had acted in breach of their duty of skill and care during the period 2000-2002 in their management of the trust investments and their reliance on investment advice given by a firm of independent financial advisers.

This case is an important examination of the standard of care required of professional trustees, who may wish to consider its findings in relation to management of their own clients' trust investments.

Background

The case involved a claim for breach of trust, and raised questions relating to the duties of trustees. A particular issue was the extent to which professional solicitor trustees, with no expertise in managing investments, could be said to have acted imprudently by relying on the advice of independent financial advisers, which transpired to be incorrect.

The claimants were the children of Mr Daniel, a farmer who had died unexpectedly in 1999. The children were aged 13 and 16 at the time of their father's death and, under the terms of the trust, would come into their inheritance when they reached age 25.

The defendants were three solicitors at Stanley Tee & Co, subsequently Stanley Tee LLP (Stanley Tee). The second and third defendants were the firm's senior partner and another partner who had been at the firm all his working life. They had drafted the will, were executors of the estate and trustees of the will trust.

The first defendant was the former head of the firm's private client department. He was appointed as a trustee on the retirement of the third defendant from the practice in 2015 and after the alleged investment losses, but he had been involved in the investment of the trust funds from an early stage and he accepted in the litigation that this meant, effectively, he took on the role of trustee.

During the period 2000 to 2002, the trustees relied on investment advice provided by independent financial advisers, Taylor Young Investment Management Limited (Taylor Young). Taylor Young had been chosen by Stanley Tee to advise on several previous occasions, not only in respect of other clients' trusts administered by the defendants, but also, in the case of two of them, in respect of their own personal pension investments.

The claimants alleged that the trustees were in breach of trust in that they

- Had failed to take appropriate care in formulating and monitoring the overall investment strategy
- Had failed to properly consider diversification or suitability of the investments
- Were at fault in relying too heavily on Taylor Young's recommendations.

The claimants engaged a financial expert, who calculated that the trust assets would have been worth £3.46 million by March 2002 if they had been invested less heavily in equities. In fact, at that time, they were worth £2.44 million. Taking into account lost growth since 2002, the claimants sought damages of almost £1.5 million.

The trustees argued that the losses were not caused by any breach of trust. They also argued that in the event their defence against breach of trust failed, they had acted honestly and reasonably and therefore ought fairly to be excused from the breach of trust under Section 61 of the Trustee Act 1925.

The relevant law

The High Court considered both the trustees' equitable duty of care and section 61 of the Trustee Act 1925.

Duty of care

Trustees have a duty to act prudently. In other cases, the Court of Appeal has framed this duty by saying that a trustee ought to conduct the trust business in the same way that an ordinary prudent man of business would conduct his own. Beyond that, there is no liability or obligation on the trustee. The duty is to take such care as an ordinary prudent man would take in making an investment for the benefit of other people for whom he felt morally bound to provide. The Court of Appeal has also held that the relevant test is whether the investment decisions were ones which a reasonable trustee, acting prudently, could have made.

As regards causation, the normal common law rules applied and the Court would look at the level of loss caused to the beneficiaries by any breach of duty which may be established.

Trustee Act 1925

Section 61 of the Trustee Act 1925 was also relevant. It provides

"If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same."

The decision

Breach of trust

The judge accepted the claimants' arguments that there had been breaches of trust in that the trustees had failed to

- Devise a realistic investment strategy for the trust at the outset
- Conduct periodic reviews which specifically considered whether the investment strategy remained appropriate to the trust's attitude to risk
- Adopt a well-balanced and diversified approach to the trust's investments, focusing too heavily on equities and cash, to the exclusion of other forms of investment.

However, although the claimants had established some breaches of duty, they failed to prove that they suffered loss as a result of those breaches.

Causation

The judge held that although there had been some breaches of trust, the claimants had failed to prove that any such breaches resulted in them suffering any loss.

Liability for losses would not be established unless the breach of duty resulted in investment choices which were imprudent, and then only to the extent to which those choices proved more disadvantageous than choices following a more appropriate investment strategy would have been.

The case had involved a series of investment decisions in relation to a "growth portfolio" made over a number of years. The judge found that the result would not have been very different if the trustees had made alternative investment decisions. Even when the stock market began to fall, it had not necessarily been an error by the trustees to continue to invest in equities to try to make good the losses, taking into account the economic and financial conditions prevailing at the time.

Reasonableness

In determining whether there had been a breach, the judge asked himself whether each investment decision concerned was one which no trustee, complying with the duty to act prudently, could reasonably have made in the circumstances.

The decision to opt for a growth portfolio recommended by Taylor Young, and comprising 80 per cent or 85 per cent equities, had to be viewed in the context of the economic conditions and perception of the markets which were applicable at the time. While the trustees may have been at fault in believing that investment in Taylor Young's "growth portfolio" was in keeping with the realistic risk strategy of the trust, the judge was not persuaded that "no reasonable trustee, acting with appropriate prudence", could reasonably have decided to invest the trust assets to the same extent in IT, telecom and technology companies at the time.

Delegation

The claimants alleged that the trustees acted in breach of the equitable duty of skill and care, and that any impermissible delegation which occurred was an aspect of that breach. However, the Court found that none of the trustees' dealings with the assets of the trust had been unauthorised. On the contrary, the trustees were found to have adopted an approach which they believed to be permissible and in the best interests of the trust, both regarding the involvement of their fellow private client partner whom they considered better qualified to deal with investment decisions, and in following the advice of Taylor Young. There had been no "blanket delegation" by the trustees of their duties to the private client partner, and he in turn did not delegate all investment decision-making to Taylor Young. The judge considered there had been no contravention by the trustees of the prohibitions on delegating fiduciary discretions.

In the event that decision was incorrect, the judge considered he was able to relieve the trustees from personal liability under the provisions of section 61 of the Trustee Act 1925. Although the fact that the trustees had been paid for their services was a "weighty factor" against such relief being granted, having regard to all the circumstances of the case, the trustees had not been "cavalier, self-interested or unthinking". On the contrary, the judge found that they had worked hard and consistently over a long period of time, to the best of their abilities and in reliance on what they reasonably believed to be the competent advice of Taylor Young, to achieve the best results for the trust. Their sincere intention was to their advantage.

Comment

This decision includes useful summaries of a number of breach of trust cases where issues arise about the scope of the duties of professional trustees. This case involved solicitors acting as professional trustees using independent advisers in relation to investment advice.

The claimants in this case ultimately failed to show a causal link between a number of accepted criticisms of the trustees' actions over the years and the eventual financial losses to the trust fund. The Court found that the losses (or a large part of them) were likely to have been sustained even if the trustees had followed a different investment strategy.

This lack of causality was a principal driver in the Court's decision to relieve the trustees of personal liability, and the degree of harm to the beneficiaries which could be directly attributed to any trustee breaches was a key factor in deciding whether the trustees "ought fairly to be excused".

Overall this appears to have been a practical decision which focussed on whether the claimants could prove they had suffered loss as a result of the trustees' actions, rather than on whether the trustees had, in fact, committed any breaches.

It is likely that the reasoning behind this decision would apply equally to the trustees of pension schemes. Here, the trustees were entitled to rely on the advice of their investment managers. Furthermore, and essentially, they escaped liability because they had acted prudently and were not found by the Court to have acted as no reasonable trustee would have done.

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Contacts

If you would like further information please contact:

Peter Ford
Partner
Tel+ 44 20 7444 2711
peter.ford@nortonrosefulbright.com

Lesley Browning
Partner
Tel+ 44 20 7444 2448
lesley.browning@nortonrosefulbright.com

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