Fiduciary Duty Claims: They're Everywhere

GIBBS& BRUNS Presenter: David M. Sheeren Author: Robin C. Gibbs Gibbs & Bruns, LLP 42nd Annual Page Keeton Civil Litigation Conference

Fiduciary Duties: They're Everywhere

KINZBACH TOOL CO., INC. v. CORBETT-WALLACE CORPOR 100 B.W.2d 000

WALLACE CORPORATION et al. No. 7828.

Supreme Court of Texas. March 4, 1942.

Rehearing Denied April 8, 1942. Principal and agent ©=70 Where seller promised to pay comm

Where seller promised to pay commis sion to buycr's trusted employee if employee was successful in negotiating sale of a contract right, relationship of employee to buyer was that of a "fiduciary", and employee

in representing both parties without disclosing to buyer his adverse interest in the deal violated his duty as a fiduciary. See Words and Phrases, Permanent Edition, for all other definitions of

"Fiduciary". 2. Principal and agent (5-48) It is the duty of a fiduciary to de openly and to make full disclosure to t

ship.
3. Principal and agent ⊕=48 One occupying a fiduciary relationship to another must measure his conduct by high equitable standards and not by the standards receiption deallows between each

hary parties. 4. Piracipal and agent (≈70 Where seller of contract right had agroup to pay commission to buyer's tranted agroup to pay commission to buyer's tranted seller would be but directed that semployees refrain from disclosing price for which the soller would well, it was the duty of employee as a fluctary, on being instructed by buyer to got a price, tog the buyer sech

a commission from the seller. 5. Principal and agent 0=70Where seller of contract right agreed to any buyre's trusted employee a commission for negotiating the sale and employee successfully negotiated the sale without dissecting the seller of the seller of the secnomial the second second second second second would have been willing to sell, or fact that suployee was to receive a commission from the suployee was to receive a commission from the second sec

GIBBS_& BRUNS c. employee and sener could not justify for sener could not justify for sener could not justify for sener could be an encounter of the sener could be an encould be an encould

atton of his duty or acquires an inverse dverse to his principal without a full disloaure, be has betrayed his trust and musicount to his principal for all he has recived. Principal and agent 4746 Whore seller of contract right agreed to ay commission to buyer's trusted employees or megoliating mile and employee negotiation.

sale without disclosing to buyer that he acting in a dual capacity, fact that buyad not complained of prior similar conby employee did not justify employee's tion of his fiduciary relationship.

a breach of duty by a fiduciary becomes olat tort-fonsor with the fiduciary and able as such.

"is knowledge agreed to pay buyer" ted employee a commission for negotian ale, seller became a party to employee ch of his fiduciary duty and therefore me a joint tort-feasor with employe regard to rights of the buyer.

Where seller of contract right without yet's have/release had agreed to puy buy-'s trated employees a commission of 8's and the seller paid employee 800 did agreed to pay an additional 3000 where yets make installment payment of \$2.00, yets make installment payment of \$2.00, read \$1,000 only in full settlement of the hu limest, since it had right to deduct diment, are the had right to deduct dimenti agreed to be paid from processin dimetalinest.

An actual tender is not required when party to whom money is due has signified in advance that he will refuse to accept it.

at Where buyer's trusted employee has more breached his fluctury obligation by acting for seller in negotiating sale, and soller ro sected buyer's conder, in settlement of firs be installment, of amount of installment less commission paid by seller to employee and amount agreed to be paid from proceeds of "The term 'fiduciary' ... applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. In short, the term includes those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations. *Kinzbach Tool Co., Inc. v. Corbett-Wallace Corp.*

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Critical Decision Points in Litigating Fiduciary Claims

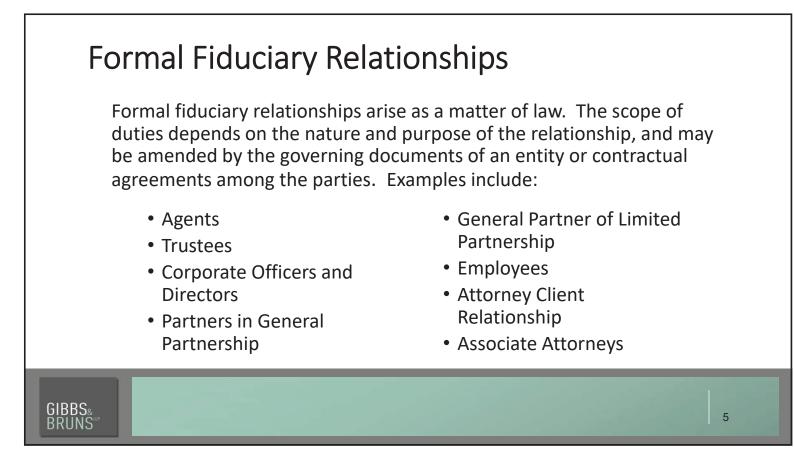
- Determine the existence, nature and scope of the duties
- Determine standing/capacity to assert the claims
- Properly allocate burdens of proof
- Application of the Court's flexible powers to tailor relief



Fiduciary Duty Claims: The Basics

- The essential elements of a claim for breach of fiduciary duty are:
 - Existence of a fiduciary relationship between the plaintiff and defendant;
 - Breach of the fiduciary's duties to the beneficiary; and
 - Injury to the plaintiff **or** the fiduciary's receipt of an improper benefit.
- A plaintiff is <u>not</u> required to establish an economic injury as a prerequisite to recovery.





Informal Fiduciary Relationships

- Informal fiduciary relationship can arise when a party is justified in placing confidence in the belief that another person will act in the party's best interests.
- Courts consider factors including the duration of the relationship, the existence of family ties, whether the parties have cohabitated, and substantial disparities in business expertise, among others.
- To sustain prove an informal fiduciary relationship, the confidential relationship must have arisen prior to and apart from the challenged transaction.



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