

* Fiduciary Duty Claims: They're Everywhere

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Fiduciary Duties: They're Everywhere

KINZBACH TOOL CO., INC. v. CORBETT-WALLACE CORPORATION Tex. 509
 1992 S.W.2d 889

KINZBACH TOOL CO., INC. v. CORBETT-WALLACE CORPORATION et al.
 No. 7828.
 Supreme Court of Texas.
 March 4, 1992.
 Rehearing Denied April 8, 1992.

1. Principal and agent §=70
 Where seller promised to pay commission to buyer'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 §=48
 It is the duty of a fiduciary to deal openly and to make full disclosure to the party with whom he stands in such relationship.

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 required in dealings between ordinary parties.

4. Principal and agent §=70
 Where seller of contract right had agreed to pay commission to buyer's trusted employee if employee was successful in negotiating sale, but directed that employee refrain from disclosing price for which the seller would sell, it was the duty of employee as a fiduciary, on being instructed by buyer to get a price, to give buyer such information and disclose that he was getting a commission from the seller.

5. Principal and agent §=70
 Where seller of contract right agreed to pay buyer's trusted employee a commission for negotiating the sale and employee successfully negotiated the sale without disclosing to buyer amount for which seller would have been willing to sell, or fact that employee was to receive a commission from seller, employee and seller could not justify payment of commission to employee on ground that buyer suffered no damages because he received full value under the sales agreement.

6. Trusts §=23(1)
 Where a fiduciary takes any gift in violation of his duty or acquires an interest adverse to his principal without a full disclosure, he has betrayed his trust and must account to his principal for all he has received.

7. Principal and agent §=48
 Where seller of contract right agreed to pay commission to buyer's trusted employee for negotiating sale and employee negotiated the sale without disclosing to buyer that he was acting in a dual capacity, fact that buyer had not complained of prior similar conduct by employee did not justify employee's violation of his fiduciary relationship.

8. Principal and agent §=162
 A third party knowingly participating in a breach of duty by a fiduciary becomes a joint tort-feasor with the fiduciary and is liable as such.

9. Principal and agent §=162
 Where seller of contract right without buyer's knowledge agreed to pay buyer's trusted employee a commission for negotiating sale, seller became a party to employee's breach of his fiduciary duty and therefore became a joint tort-feasor with employee with regard to rights of the buyer.

10. Principal and agent §=70
 Where seller of contract right without buyer's knowledge had agreed to pay buyer's trusted employee a commission of \$5,000 for negotiating the sale, and after the deal was closed seller paid employee \$200 and agreed to pay an additional \$500 when buyer made installment payment of \$2,000, buyer on learning the facts properly tendered \$1,500 only in full settlement of the installment, since it had right to deduct amount already paid to employee by seller and amount agreed to be paid from proceeds of installment.

11. Tender §=162
 An actual tender is not required when party to whom money is due has signified in advance that he will refuse to accept it.

12. Sales §=91
 Where buyer's trusted employee had breached his fiduciary obligation by acting for seller in negotiating sale, and seller rejected buyer's tender, in settlement of first 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 not required to establish an economic injury as a prerequisite to recovery.

Formal Fiduciary Relationships

Formal fiduciary relationships arise as a matter of law. The scope of duties depends on the nature and purpose of the relationship, and may be amended by the governing documents of an entity or contractual agreements among the parties. Examples include:

- Agents
- Trustees
- Corporate Officers and Directors
- Partners in General Partnership
- General Partner of Limited Partnership
- Employees
- Attorney Client Relationship
- Associate Attorneys

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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