

Joint liability of partnerships

This newsletter provides an overview of joint liability partnerships in light of a recent Court of Appeal decision, which could affect owners of businesses that trade as a partnership.

The court held that a partner was jointly and severally liable to a third party for the breach of fiduciary duty of another partner (L). This was the case even though L's breach of duty occurred after L had resigned from the partnership.

In this instance, the innocent partner was not exonerated from liability arising from acts that were sufficiently closely connected with the acts that the defaulting partner had been authorised to do, as they were regarded as being done in the ordinary course of the partnership's business.

The partners were also held to be jointly and severally liable for the claimants costs in pursuing the claim and appeal, subject to a 50% reduction to reflect the fact that the claim in negligence had failed.

Joint and several liability in partnerships

A partnership is jointly and severally liable for a breach of duty by one partner. The partnership will be liable to the same extent as the partner in breach for "any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners".

The key point is the connection between the wrongful conduct and the acts the partner was authorised to do and, in particular, whether the connection is strong enough that the wrongful conduct could be regarded as done by the partner while acting in the ordinary course of the business of the partnership.

What is a fiduciary relationship?

A fiduciary relationship arises where two parties agree that one party will act on behalf of or for the benefit of the other in circumstances that give rise to a relationship of trust and confidence. To determine whether a relationship is fiduciary, the substance of the relationship must be examined in light of its commercial context and all the obligations that are undertaken.

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This newsletter outlines the law as it stands at the date of writing in September 2015.