

BRITISH VIRGIN ISLANDS HIGH COURT

Appleby Corporate Services (BVI) Limited - v- Citco Trustees (BVI) Limited Claim No. BVIHC (Com) 156 of 2011

BVI DISCRETIONARY TRUST - SOLE ASSET
ENTIRE ISSUED SHARE CAPITAL OF INVESTMENT
COMPANY - MANAGEMENT OF INVESTMENTS
DELEGATED TO PROFESSIONAL MANAGERS -
ALMOST ENTIRE VALUE OF TRUST FUND LOST -
DUTIES OF TRUSTEE - WHETHER TRUSTEE
UNDER A DUTY TO REVIEW - PERFORMANCE OF
MANAGERS - APPROACH TO THE ASSESSMENT
OF EQUITABLE COMPENSATION - COURT'S
POWER TO AWARD INTEREST IN EQUITY

In this case the current trustee of a BVI discretionary trust, Appleby Corporate Service (BVI) Limited ("Appleby") sought an Order requiring the former trustee, Citco Trustees (BVI) Limited ("Citco") to reconstitute the trust fund by compensating the trust for losses, which it claims were suffered by the trust as a result of the negligence of Citco. The sole asset of the trust was the entire issued share capital of an investment company. The investments were delegated to professional managers who disregarded contractual investment guidelines with a resultant loss of almost the entire value of the trust fund.

The Court held that any person, such as a trustee, holding property on behalf of others who delegates dispositive powers and functions such as the management of investments representing the property held, is under a duty to have in place appropriate risk management procedures in order to be able to satisfy himself that such delegated powers and functions are adhered to and not abused by the agents to whom they have been delegated. Applying the well-established principle as set out in the case of *Bartlett -v- Barclays Bank Trust Co Ltd* [1980] 1 Ch. 515, the Court held that a trustee should not (subject always to the provisions of the trust in question) take more risks with the trust property than would a prudent man of business with his own. Further, Citco, as sole owner of the Company, being the only asset of the Trust, had a duty not only to respond

to information giving cause for concern about the management of the Company's assets but also to inform itself at appropriate intervals on the state of the Company's portfolio and the manner in which it was being managed.

The Court held that among the duties owed by Citco to the beneficiaries of the Trust was a duty to take reasonable steps to satisfy itself at appropriate intervals that the investment guidelines were being observed and that the overall value of the fund had not been affected by any abuse on the part of investment manager of its delegated authority. Having found that Citco did not undertake regular periodic review of the investment manager's conduct or never addressed itself to the question whether continued delegation was in the best interests of the company that these failures amounted to a negligent breach of duty on the part of Citco.

The Court held that Citco could not rely on Section 31(1) of the *Trustees Act* to exonerate itself since that was a section dealing with vicarious or secondary liability and here the breach of duty was that which was owed directly to the beneficiaries. In the Court's judgment, a trustee cannot escape liability by saying that the proximate cause of the resulting loss was the default of the agent to whom powers have been lawfully delegated.

Finally, the Court held the Citco's failure to spot what was happening was causative of the depreciation in the value of the Trust fund and that it was obliged to reconstitute the trust fund to the value which it would have had if Citco had conscientiously performed its duty of supervision. The Court confirmed that although it did not have the power to award pre-judgment interest on common law claims, it had the inherent power to award interests in equity.

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