

## 13.2 The Fiduciary Nature of Trusteeship

Fiduciary duties can apply in many walks of life and the courts often have to remind people of the strict nature of these duties.

### ***Imageview Management v Jack*** [2009] 2 All ER 666

Kelvin Jack was Trinidad and Tobago's international goalkeeper. He agreed that Imageview would act as his agent. That company negotiated a two year playing contract for him with Dundee United, for which Imageview received 10 per cent of his salary.

Imageview also agreed with Dundee United, that Dundee would pay Imageview £3000 for negotiating a work permit for Mr. Jack. Jack did not know about this other agreement and when he found out about it he stopped paying the 10 per cent to Imageview.

HELD:

Imageview were in breach of their fiduciary duty as an agent.

Jacob LJ at 669:

"...Imageview in negotiating a deal for itself had a clear conflict of interest. Put shortly, it is possible that the more it got for itself, the less there would or could be for Mr. Jack. Moreover it gave Imageview an interest in Mr Jack signing for Dundee as opposed to some other club where no side deal for Imageview was possible.

There is no answer to this. The law imposes on agents high standards. Footballers' agents are not exempt from these. An agent's own personal interests come entirely second to the interest of his client. If you undertake to act for a man you must act 100 per cent, body and soul, for him. You must act as if you were him. You must not allow your own interest to get in the way without telling him. An undisclosed but realistic possibility of a conflict of interest is a breach of your duty of good faith to your client.

That duty should not cause an agent any problem. All she or he has to do to avoid being in breach of duty is to make full disclosure."

This case reiterates the strict duties laid down in ***Bray v Ford*** [1896] AC 44.

### 13.7.5 The Doctrine of Laches

A claim to the court must be brought within a reasonable time. Equity has a flexible approach and looks at all the factors in the case.

### ***Fisher v Brooker*** 2009 WL 2207452

Fisher had composed and played the organ part on the original recording of the 1967 pop hit "A Whiter Shade of Pale" by the group *Procol Harum*. Thirty-eight years later, he claimed copyright for his contribution and his rightful share of future royalties. The leader of Procol Harum, Brooker, defended the claim by saying that it would be unfair to the defendants for Fisher to bring his case after this lengthy delay.

HELD:

Their Lordships did not wish to make fine distinctions between the doctrines of laches, estoppel and acquiescence.

Lord Neuberger at para 62:

"Thirdly, laches and estoppel are well established equitable doctrines. However, at least in a case such as this, I am not convinced that acquiescence adds anything to estoppel and laches. The classic example of proprietary estoppel, standing by whilst one's neighbours builds on one's land believing it to be his property, can be characterised as acquiescence - see per Oliver J in *Taylor Fashions Ltd v Liverpool Victoria Trustees Ltd* 1980 2Q de 133, 151. Similarly, laches, failing to raise or enforce an equitable right for a long period, can be characterised as acquiescence."

Para 63:

"... one would expect the respondents to succeed in estoppel only if they could show that they reasonably relied on his having no such claim, that they acted on that reliance, and that it would be unfairly to their detriment if he was now permitted to raise or to enforce such a claim."

Para 64:

"Although I would not suggest that it is an immutable requirement, some sort of detrimental reliance is usually an essential ingredient of laches, in my opinion."

Para 79:

"... laches only can bar equitable relief, and a declaration as to the existence of a long-term property right, recognised as such by statute, is not equitable relief... They cannot show any prejudice resulting from the delay, and, even if they could have done so, they have no answer to the judge's finding... that the benefit they obtained from the delay would outweigh any such prejudice."

Brooker had enjoyed the royalties for thirty-eight years. It was not unfair to allow Fisher to bring his claim now, particularly as he was asserting a legal, not an equitable right.