

BEWARE SUSPECT SOURCES OF FUNDS

Leighton Contractors Pty Ltd v O'Carrigan [2016] QSC 223 is a recent case which highlights why you should not have any involvement with money obtained in breach of duty.

The Key Facts

1. O'Carrigan was a senior manager of Leighton. O'Carrigan defrauded Leighton of more than \$20 million over a number of years by issuing fraudulent invoices to Leighton that he then approved the payment of. The payments were made to an account controlled by O'Carrigan.
2. Leonard, the fourth defendant in the proceedings, met O'Carrigan through an online prostitution service and developed an ongoing close relationship.
3. Leonard obtained significant sums of money from O'Carrigan. O'Carrigan also paid Leonard's expenses.
4. Leonard purchased chattels, plant and equipment, horses and made improvements to her land.
5. O'Carrigan was charged with fraud and imprisoned after entering a guilty plea.

Issues before the primary judge

6. Leighton sought to recover from Leonard the funds that she received from O'Carrigan.
7. There were two main issues in question:
 - (a) did Leonard purchase her assets using the funds misappropriated from Leighton; and
 - (b) did Leonard receive the misappropriated funds:
 - (i) as a volunteer; or
 - (ii) under an agreement in which she was paid for providing sexual and other services to O'Carrigan.

Decision of the primary judge

8. The judge was satisfied that any funds O'Carrigan provided to Leonard from the account the fraudulent invoices were paid into had been misappropriated from Leighton.

9. Whether the assets purchased by Leonard was paid from those funds depended on a tracing exercise based on the following rules:
 - (a) the first funds paid into an account are the first funds to be paid out of that account, unless there is a mixture of funds in the account belonging to different parties;
 - (b) if a defaulting fiduciary pays funds into an account in which there is trust money of a third party, it is presumed that the first funds drawn out of the account are the defaulting fiduciary's own money; and
 - (c) if funds are deposited into the account of a volunteer and there is no mixing of funds, the volunteer holds the funds on behalf of the true owner.
10. The judge observed the financial records in evidence including:
 - (a) the bank account that the fraudulent invoices were paid into; and
 - (b) the credit card given by O'Carrigan to Leonard to use.
11. Through a forensic tracing exercise, the judge found that over \$300,000 of purchases made by Leonard were made through the use of funds misappropriated from Leighton.
12. The judge held that Leonard was a volunteer in receiving the funds from O'Carrigan:
 - (a) her withdrawals of money were inconsistent with a regular retainer under an agreement;
 - (b) her argument that she required the approval of O'Carrigan before having her expenses paid was not credible given her persistent spending pattern;
 - (c) the payment amounts were inconsistent with any agreement;
 - (d) emails between Leonard and O'Carrigan were inconsistent with the alleged agreement;
 - (e) the arrangement was one of a "mistress relationship" in which Leonard obtained funds as a consequence of a relationship of affection;
 - (f) there were no limits to the funds provided or any requirement that payment was only in exchange for services rendered;
 - (g) even if there was an agreement in place, it would be void on the grounds that an agreement for sexual and other services in the nature of a "mistress relationship" is against public policy.

13. The judge held that Leighton's claim was a personal claim against Leonard. This meant the relief that Leighton's sought, which in part included Leonard's real property, was not affected by indefeasibility of title.
14. The judge held that in equity Leonard was required to account to Leighton for the amounts that she received from O'Carrigan and used to purchase real property and other assets.

Conclusion

The case emphasises the risks of dealing with money obtained as a result of breach of duty, or without providing full value. Third parties who receive the benefits of the breach for no "proper" return are also at risk, even if they are not involved or aware of the fraud being carried out.

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