Tracy v Mandalay (1953) 88 CLR 215


Facts

- Mandalay Pty Ltd (Mandalay) was incorporated to acquire a parcel of land at Potts Point in order to build and manage houses, restaurants and office spaces.
- Mandalay alleged that various people who had been associated with Mandalay had breached their fiduciary duties by participating in a scheme where Mandalay purchased land shares at inflated prices. This produced significant gains for these people.
- Many of these people were not openly involved in forming Mandalay or the suspected transactions.

Issues

- Were the people who were profiting from the non-disclosure who were not actively involved in Mandalay's formation promoters?
- Was rescission available?

Held

- The High Court held that non-active participants in the formation process may be promoters.
- In the absence of approval by an independent board after full disclosure, sales by a promoter to a company formed by him are in the same position as any other sales by a trustee of his property to a person towards whom he has a fiduciary relationship.
- These kinds of sales are voidable at the option of the purchaser, but if the purchaser decides to affirm the transaction he must affirm it according to its terms.
- Rescission was not available to Mandalay, but the promoters were liable to repay Mandalay the profit gained by paying equitable damages.

Quotes

"But it is not only the persons who take an active part in the formation of a company and the raising of the necessary share capital to enable it to carry on business who are promoters. Persons who leave it to others to get up the company upon the understanding that they also will profit from the operation may become promoters."

(Dixon CJ, Williams and Taylor JJ at page 242)

Full Text
The full text is available here: https://jade.io/summary/mnc/1953/HCA/9

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