

United Dominions Corporation Ltd v Brian Pty Ltd (1985) 157 CLR 1

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Facts

- UDC, Brian, and SPL had been joint venturers in land development, UDC being the main lender of money. The developments realised a substantial profit, but Brian did not receive from UDC repayment of its contributions or its share of the profit.
- UDC claimed to retain all profits because of a ‘collateralisation clause’ in a mortgage given to it by SPL before the agreement was concluded.
- Default occurred under the mortgage. SPL was liquidated. The clause, unknown to Brian, charged the joint venture land with repayment of all amounts advanced by UDC to SPL on any account, or otherwise owed to UDC by SPL. Brian contended that the clause breached a fiduciary duty owed by UDC as a joint venturer.

Collateralisation Clause

“...with all amounts from time to time advanced by the Mortgagee to the Mortgagor on any account whatsoever or otherwise owing by the Mortgagor on any account whatsoever or otherwise owing by the Mortgagor to the Mortgagee and whether advanced to the Mortgagor solely or jointly with any other person and whether for money lent or paid on account of the Mortgagor or for any sum or sums a liability to pay which may have been incurred by the Mortgagee on behalf of the mortgagor and whether present, future or contingent...”

Issues

Whether UDC stood in a fiduciary relationship to Brian before the mortgage with the collateralisation clause was signed with SPL on 24 Oct 1973

Held

- A fiduciary relationship can arise and fiduciary duties can exist between parties who have not reached and who may never reach, agreement upon the consensual terms which are to govern the arrangement between them.
- A fiduciary relationship with the fiduciary obligations may exist between prospective partners who have embarked upon the conduct of the partnership before the terms of the agreement have been settled.
- The mutual trust and confidence of a consensual fiduciary relationship are likely to be more readily apparent than in the case where mutual rights and obligation shave expressly been defined

in a formal agreement.

- The relationship between prospective partners or participants in a proposed partnership to carry out a single joint undertaking or endeavour will ordinarily be fiduciary if the prospective partners have reached an informal arrangement to assume the relationship and taken steps for its establishment.
- UDC acted to obtain an advantage without the knowledge of the other participants. It could not rely on the collateralisation clause to deny Brian's entitlement under the Joint Venture.

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