Breach of Fiduciary Duties in Louisiana

I. OVERVIEW

A fiduciary duty exists where there is a relationship between the person holding the fiduciary duty and the person entitled to be the beneficiary of it. A fiduciary is required to act in the highest good faith toward his or her principal and not seek to obtain any advantage over him or her by the slightest misrepresentation or concealment. Full and complete disclosure of all important information is required even if the relationship between them becomes strained or is in conflict.

To pursue a claim for breach of fiduciary duty, the elements of the cause of action are: (1) existence of a relationship giving rise to a fiduciary duty; (2) existence of a fiduciary duty; (3) the breach of the fiduciary duty; (4) damages caused by the breach of fiduciary duty.

II. SELECT CASES

MORGAGEE

In re *Liljeberg Enterprises, Inc.*, 304 F.3d 410 (La. 5 Cir. 2002)

No fiduciary duty on the part of a collateral mortgagee to protect collateral mortgager against third party's exercise of its rights involving an entirely different instrument.

ATTORNEYS

Peneguy v. Porteous, 823 So.2d 380 (La. App. 4 Cir. 2002)

No breach of fiduciary duty by attorneys; where attorneys successfully litigated on behalf of their clients and claim is brought against heirs of attorneys who receive one-third of the 40% of a decedents trust for representing the decedent's wife and daughters in a lawsuit to set aside trust. Wisner ladies executed a Notorial Act on March 11, 1930 instructing trustee to direct one-third of their 40% share of trust to

the law firm of Milner & Porteous pursuant to the contingency contract before representation. Representation was successful and attorneys and/or their heirs have received over $7 million dollars from the trust.

CORPORATIONS-DIRECTORS AND OFFICERS

Silliman Private School Corp. v. Shareholder Group, 819 So.2d 1088 (La. App. 1 Cir. 2002)

No violation of fiduciary duties regarding opportunity to purchase shares of stock where the ability to purchase the shares or take advantage of the opportunity was clearly present. Evidence showed all shareholders received financial statements showing how much authorized and unissued stock was available for purchase.

Mohnot v. Rajeev Bhansali, WL 603049 (E.D.La. 2002)

Claims for breach of fiduciary duty dismissed where there were derivative claims for injury to the corporation. Plaintiffs had failed to make demand upon the board of directors to pursue action as required by Illinois law and therefore had no standing to pursue the action.

Haney v. Delta Petroleum Company, Inc., (La. App. 4 Cir. 2002), 811 So.2d 1200

The former shareholders of corporation brought action against corporation, directors, and officers for breach of fiduciary duty, alleging that as officers they breached their fiduciary duties by telling shareholders that corporation had only a minority interest in a subsidiary when in fact it held a majority interest in the subsidiary which allegedly would cause the corporation to know that its shares were worth more than its tender offer. The Court found that no breach of fiduciary duty existed regarding any alleged representations about defendants interest in the subsidiary company.

Lawson v. Bridget White, (La. App. 3 Cir. 2002), 815 So.2d 958

Sole shareholder of corporation brought action against president alleging breach of fiduciary duty. The Court held that the president was not a true officer of the company, but acted as a front for the sole shareholder, therefore was not acting as a fiduciary and there was no violation of La. R. S. 12:91, and 12:95.

Giardina v. Ruth Fertel, Inc., WL 1005922 (E. D. La.)

Plaintiff brought claims for breach of fiduciary duty relating to stock valuation claims, where stock was repurchased. Defendants relied on La. R. S. 12:92(E), which states "a director shall, in the performance of his duties, be fully protected in relying in good faith upon such information, opinions, reports, or statements presented to the corporation, the board of directors, or any committee thereof by any of the corporation's officers or employees, or by any committee of the board of directors, or by any counsel … or independent or certified public accountant". Representations regarding value; however, were not based on Johnson Rice's valuation, but was based on the defendants telling the plaintiff that the $14.00 price per share was a minority value. Defendant therefore was not entitled to rely on any statutory protection.

Ward v. Freeman, 854 F.2d 780 (La. App. 5 Cir. 1988)

Officers and directors of the corporation would not be held to the "slightest conflict of interest" standard unless they derive a personal benefit from a transaction which did not devolve upon the corporation or on all stockholders generally. Normal proper standard for judgment should have applied by the directors carrying out their duties to shareholders in good faith and with that diligence, care, judgment and skill, which ordinarily prudent men would exercise under similar circumstances and like positions. Here is approval of a stock redemption for the corporation. The tender offer advised each shareholder to consult with his financial advisor in evaluating the offer. The defendants were minority shareholders but their percent in shares increased after the share redemptions. Then they sold the company to the Coca-Cola Company for a substantial amount, and received more per share than the share redemption price.

INVESTMENT BANKERS/BROKERAGE FIRMS

Riess v. Morgan Stanley, WL 922379 (E.D.La. 2002)

No finding of fiduciary duty owed to plaintiff who was not owner of the brokerage account. Financial institution owes a fiduciary duty only where there is a written agency or trust agreement wherein the financial institution specifically agrees to act and perform in the capacity of a fiduciary. See La. R.S. 6:1121(4), 1124. Plaintiff's wife, before her death, sold securities in her account in her name and her husband was obligated to pay the capital gains on the sale of those securities.

Copeland v. Wasserstein, Perella & Co., 278 F.3d 472 (La. App. 5 Cir. 2002)

Principal of corporation, which had sought to acquire fast food restaurant chain, brought suit against investment bank hired to provide financial advice. The Court held that this claim sounded in negligence, rather than breach of fiduciary duty and were therefore subject to a one-year prescriptive period, rather than ten-year prescriptive period applicable to fiduciary duty claims. The Court held that the issues of whether an investment bank acting as financial advisor owes a corporate client any fiduciary duty; and, if such a duty is owed, a controlling shareholder can maintain a cause of action for breach of such duty to the corporation, were novel questions under Louisiana law, but would not be decided since plaintiffs claims against defendant were prescribed. The Court distinguished between issues involving fiduciaries where failure to allege self-dealing, breach of the duty of loyalty, fraud, or breach of trust caused the claims to sound in negligence and be subject to a one-year prescriptive period.

FINANCIAL INSTITUTIONS

Cook v. Hibernia National Bank, (La. App. 4 Cir. 2002), 816 So.2d 901

No fiduciary duty regarding a financial institution where no written agency or trust agreement listed in which the financial institution specifically agreed to act and perform in the capacity of a fiduciary. La. R. S. 6:1124. There is no evidence that Hibernia had agreed to act as a fiduciary towards the business enterprise much less the individual investor. The Court further noted the plaintiffs lack of standing to pursue an individual claim.

"Officers and directors shall be deemed to stand in a fiduciary relation to the corporation and its shareholders, and shall discharge the duties of their respective positions in good faith, and with that diligence, care, judgment and skill which ordinary prudent men would exercise under similar circumstances in like positions". The Court referred to La. R. S. 12:91.

The Court held the statute set forth the nature of the fiduciary duty and did not set forth an individual right of action.

It further held that a shareholder may only sue to recover losses where there is a breach of fiduciary duty secondarily through the shareholder's derivative suit.

There must be a direct loss to the shareholder, which affects that shareholder personally as opposed to all shareholders in a similar situation. Then the shareholder, but not the corporation, suffers a loss that is considered direct to the shareholder, and the shareholder may have a right to sue the officers and directors of the corporation for breach of fiduciary duty. The damages found were to the corporation, as the alleged conduct caused a devaluation of the entire enterprise, and not the individual shareholder's share. The damage was not found to be separable from that sustained by the corporation itself.

ERISA

Musmeci v. Schwegmann Giant Super Markets, 159 F.Supp.2d 329

Retirees filed suit under ERISA, regarding pension benefits in the form of retirement grocery vouchers and/or monetary payments. The Court held that the employer breached fiduciary duties under ERISA by failing to fund grocery voucher program, and terminating it without providing for protection of the retirees' vested rights. The Court found that fiduciary status is not limited to individuals and corporations, partnerships, or other business entities including the plan sponsor can be an ERISA fiduciary. The Court further found that Mr. Schwegmann and the Schwegmann partnership are plan fiduciaries. The Court found this case was not a way to make groceries.

EMPLOYER/EMPLOYEE

Merrill Lynch v. Roland Doubleday, WL 1716271 (E. D. La.)

Brokerage firm filed a complaint against defendant for various causes of action including breach of fiduciary duty and duty of loyalty. Defendant was former financial consultant employed by plaintiff. Plaintiff sought temporary restraining order regarding solicitation of Merrill Lynch customer, information contained in the records of Merrill Lynch, solicitation of any business from Merrill Lynch customers, and the destruction of records in his possession from Merrill Lynch. These claims were based on certain non-competition and non-disclosure agreements. The Court ordered that defendant provide plaintiff a list of customers he serviced at Merrill Lynch and later wrote to them on letterhead of Salomon, Smith and Barney. Further hearing on preliminary injunction was set.

Dufau v. Creole Engineering, Inc., 465 So.2d 752 (La. App. 5 Cir. 1985)

The Court held that outside salesman breached fiduciary duty owed to his employer by soliciting and diverting employer's customers to his own company, prior to terminating his employment with employer. The Court also held that there was a violation of the Unfair Trade Practices Act.

ADMINISTRATION OF ESTATES

Dela Vergne v. Hughes J. Dela Vergne, (La. App. 4 Cir. 1999), 745 So.2d 1271

Action by the decedent's son for breach of fiduciary duty by executor of the decedent's estate. Executor had purchased certain family properties for less than he knew they were worth. The Court held that La. R. S. 9:2005(3) allowed seizure of trust income as well as principal to judgment based on offenses or quasi-offenses as applicable to executor's breach of fiduciary duty, which was an offense within the meaning of the statute. The Court reasoned that the fiduciary should be held to a higher standard; therefore, not be exempt from the statute of dealing with offenses and quasi offenses. The Court found that while breaches of fiduciary duty are considered personal actions and subject to ten-year prescription and not offenses or torts, it could be considered an "offense" for purposes of the statute which allows the action against the executors personal trust.

In re *Succession of Parham,* 755 So.2d 265 (La. App. 1 Cir. 1999)

The Court held that lawyer breached his fiduciary duties by naming himself as residuary legatee and his spouse as alternate legatee in a will prepared for an unrelated client. It also found the lawyer's efforts to be appointed executor of the estate was null and void. The Court held that an executor has a fiduciary duty to succession and the attorney's violation of Rule 1.8(c) of the Rules of Professional Conduct exhibited a violation of that fiduciary relationship.

Scurria v. Hodge, 31 So.2d 207 (La. App. 2 Cir. 1998), 720 So.2d 460, 466

Defendant succession administrator, sold the succession's one-third interest in a closely held corporation between himself and his nephew, for $100,000. Five months later the corporation itself was sold for a net value of $1,550,000. The Court of Appeals found that the succession administrator had violated his fiduciary duties in reference to this succession.

LIQUIDATION/DISSOLUTIONS

Levy v. Billeaud, 443 So.2d 539 (La. 1983)

Shareholder and director abused his right to liquidate a company and sought to eliminate the interest of the other shareholder, and was liable to the abused shareholder. Defendant shareholder was a liquidator, shareholder, and director. He was held liable to the plaintiff shareholder by formulating and effectuating a liquidation plan that was unduly oppressive to him. The corporation's assets were transferred to a partnership controlled by another corporation as a general partner. The minority shareholders did not receive an actual distribution of their proportionate share of the dissolved corporation's assets and they were not offered a payment of the fair value of their shares. They were only offered an opportunity to become partners in a partnership controlled by the liquidator and other directors representing the majority shareholders.

Thibaut v. Thibaut, 607 So.2d 587 (La. App. 1 Cir. 1992), *writs denied,* 612 So.2d 101, 612 So.2d 37, 38 (La. 1993)

New partners engage in a scheme to dissolve the existing partnership and transfer its assets to the defendants' new corporation, enabling them to become sole owners of the business that was originally 50% owned by the plaintiffs. The Court found

that the defendants' actions violated their fiduciary duties to their partners. The Court held that partners have a duty to deal fairly and honestly with each other, and each partner must refrain from taking any advantage of the other partners by the slightest misrepresentation or concealment of material facts. Full and complete disclosure of all important information is required. This is true even if the relationship between the partners have become strained or in conflict.

Lebold v. Inland Steel Co., 125 F.2d 369 (7 Cir. 1941), *cert. denied*, 316 U.S. 675, 62 S. Ct. 1045, 86 L.Ed. 1749 (1942)

The defendant began dissolving the Steamship Company and bought its major assets. After purchasing the vessels, defendant continued the business of the Steamship Company and operated the vessels and now realized all the profits to the exclusion of minority shareholders. The Court held that with the business over and operated as their own company of which they were fiduciaries, was clearly and obviously against the best interests of the company and the minority shareholders. This is true even though they were within their statutory right to force a dissolution.

Page v. Page, 359 P.2d 41 (Cal. 1961)

Two partners, each held an equal interest in a linen supply company. Plaintiff had given notice of dissolution just when the partnership was becoming profitable. The plaintiff operated the business and was its major creditor, and was in a unique position to obtain the profitable business opportunities of the partnership upon dissolution and operate it to the exclusion of the other partner. The Court found that the partner may not appropriate a business to his own use by "freezing out" a co-partner. He may not dissolve a partnership to gain the benefits of the business for himself unless he fully compensates his co-partner for his share of the prospective business opportunity. His fiduciary duties are at least as great as those of the shareholder of a corporation.

Noakes v. Schoeborn, 841 P.2d 682 (Ore. App. 1992)

The Court found that is was prohibited to liquidate a closely held business to squeeze out other shareholders.

PRINCIPAL AND AGENT

Woodward v. Steed, 715 So.2d 629 (La. App. 2 Cir. 1998)

Principal sued agent for breach of fiduciary duty in buying land from principal and selling it at a higher price to a third party. The Court held that damages would be the loss of profit sustained by the party owed the fiduciary duty and not the breaching party's actual gain. The Court cited La. CC Art. 1995 for this proposition.

Noe v. Roussel, 310 So.2d 806 (La. 1975)

Seminal decision. The Court held that "an agent who acquires his principal's property or one who otherwise acts in a fiduciary capacity bears the burden of establishing that the transaction was an arms length affair. This means that the agent or fiduciary must handle the manner as though it were his own affair. It also means that the agent or fiduciary may not take even the slightest advantage, but must zealously, diligently and honestly guard and champion the rights of his principal against all other persons whom so ever, and is bound not to act with antagonism, opposition or conflict with the interest of the principal to even the slightest extent". Here liquidator of corporation breaches fiduciary duty by manipulation of minority shareholder's stock and by knowingly selling property for inadequate consideration.

INSURANCE AGENCY-INSURED

Zinsel Co., Inc. v. J. Everett Eaves, Inc., 749 So.2d 798 (La. App. 5 Cir. 1999)

The Court recognized that an insurance agency's fiduciaries duties included advising a client of recommended coverages. It found in this case however that no violation has occurred.