

The court of appeals decision and effects law company business partnership essay

[Law](#)



Introduction

Imageview Management Ltd v Jack is one of the cases in which Imageview appealed against a decision of the judge for unpaid agency fees from the respondent footballer (Jack). This coursework will focus on the main segments. In the first place, this coursework will show a brief summary of the facts of the case Imageview Management Ltd v Jack. Another point is an evaluation and critical analysis of the court of appeal's decision and the effects of the Court of Appeal's decision. Many reasons affected the Court of Appeal decision to dismiss the Imageview's appeal. Firstly, the agent entered into an undisclosed side deal with the Dundee United club to get secret profit. Furthermore, the agent had a conflict of interests and could not avoid himself from it and then breached his duty. All the points above will be critically analysed by using references if they are relevant. Finally, the conclusion of this coursework will conclude all main points of the body.

The background of the fact in Imageview Management Ltd v Jack case

Kelvin Jack was an international footballer. Imageview Management Ltd, a footballer's agency acted for Jack. Jack decided to play professionally in the United Kingdom. Mr Mike Berry (whose company, Imageview Ltd, was the footballer's agent)[1] was authorised to negotiate a deal with a United Kingdom club and to represent Jack in connection with any contract which he might wish to enter into and act in his best interests. Jack agreed that to pay 10 percent of his monthly salary if Imageview Management Ltd successfully made a contract for him to sign with the UK club. Mr Berry negotiated a contract for Jack to play for Dundee United and the Dundee United paid <https://assignbuster.com/the-court-of-appeals-decision-and-effects-law-company-business-partnership-essay/>

£3000 for obtaining a work permit for Jack which he needed because he was a national from Trinidad and Tobago. Mr Berry obtained the work permit, but he omitted to inform Jack about this arrangement and Dundee United club paid £3000 to Mr Berry. Jack signed a contract and started to play for Dundee United and according to the term of the contract, Jack started to pay 10 per cent to Mr Berry. After one year had passed, Jack discovered about the work permit contract and stopped paying commission to Imageview Management Ltd. Eventually, Mr Berry sued Jack for the unpaid commission but the court decided against Imageview. Also, Jack counterclaimed against Imageview for return of the commission already paid. The judge held that Mr Berry acted in breach of his fiduciary duty and he had a clear conflict of interests. Jack stopped paying when he learned about the undisclosed side deal but the judge held that he was not liable for unpaid commission. Furthermore, Jack could receive the commission already paid and also recover the whole of the £3000 received by Mr Berry for the work permit. Imageview appealed against the decision but the Court of Appeal rejected Imageview's appeal and upheld the lower court's decision. The judge found that (a) Imageview obtained a work permit for Jack but did not tell him. (b) Mr Berry breached his fiduciary duty in good faith to his principal. (c) Mr Berry had a clear conflict of interests but he could not refrain from it. (d) Mr Berry received £3000 as a secret profit but did not account for Jack. (e) The real value was £750 but Mr Berry received £3000.[2]

Evaluation and critical analyses of the Court of Appeal's decision and effects

An agent must act on behalf of his principal and the agent is under obligation to make full disclosure.[3] An agent should notify the whole of his action to his or her principal,[4] and not make any profit in the course in the matter of his agency without the knowledge and consent of his principal.[5] 'The agent also has a duty to give to the principal all relevant information which the principal is likely to want, no matter how the agent acquired the information'[6]. Accordingly, if any agent finds himself in a position where he can obtain remuneration from a third party in connection with work undertaken for his principal he must disclose the existence of that benefit. In addition, an agent must act in his best interest and avoid conflict of interest. In this case the judge rejected Imageview's claim for an unpaid agency fee from the respondent footballer (Jack). It is clear that Imageview breached his fiduciary duty. Mr Berry made an undisclosed side deal with the Dundee United for his own benefit because he entered into a contract for Jack but did not tell him. In the case *Keppel v Wheeler*,[7] the plaintiff decided to sell property and told the defendants to find the best purchaser. Both agreed that the agent's duty would not finish until the plaintiff accepted an offer ... The defendants suggested the prospective purchaser to sell the property and make a profit. Eventually, the plaintiff brought an action against the defendants because he lost the extra £600 (the difference between both offers). The judge held that the defendants were liable in an action and also they breached the contract and finally the plaintiff lost the tenant's offer because the defendants did not tell the plaintiff about the tenant's offer. The agency footballer should not enter into any undisclosed contract with

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Dundee United. There will be no breach of duty if the agent makes full disclosure of all material facts to the principal.[8]The Court of Appeal relied on a good point which was " good faith" to dismiss the Imageview's appeal, because Imageview obtained a profit from Dundee United from an undisclosed side deal. As the Court of Appeal said that an undisclosed but realistic possibility ... breach of agent's duty of good faith to his principal. [9]The main point of the Court of Appeal to reject the Imageview's appeal was secret profit. Secret profit is a profit made by Mr Berry which was not disclosed to the principals. One of the agent's duty is that an agent should not make a secret profit.[10]In this case the Court of Appeal stressed the secret profit was which made by Mr Berry and this profit breached his fiduciary duty. Mr Berry obtained a work permit for Jack but did not tell him. The Dundee United paid £3000 for obtaining the work permit and it was set by Mr Berry. The judge found that the Imageview was liable for breach of his duty not only because the profit was greater than the work done, but because Mr Berry entered into a contract on behalf of Jack but received a secret profit for himself but did not account for Jack. The Court of Appeal upheld the judge's decision. In Boston Deep Sea Fishing & Ice Co v Ansell, [11]The Court of Appeal held that Ansell was liable in breach of his duty and he should account for all the commission and bonuses to his own plaintiff because Ansell was a managing director of the plaintiff's company. He acted on behalf of a company but he agreed to obtain a bonus and commission from another company for his personal interest. The fact of the case Andrews v Ramsay,[12]The plaintiff had a house and the defendants were auctioneer and estate agents. In 1903, the plaintiff instructed them to find a purchaser

to sell the house at the price of £2500. The plaintiff agreed to pay £50 as a commission if they sold a house at that price. The plaintiff refused Mr Clutterbuck's offer at the price of 1900. Eventually, the plaintiff sold the house to Clutterbuck for £2100. Clutterbuck paid £100 as a deposit to the defendants and the plaintiff obtained 50 from them and consented to pay another £50 as a commission. Finally, the plaintiff learned that the defendants had an undisclosed side deal with Clutterbuck to obtain £20 as a commission from him. The plaintiff brought an action against the defendants for the secret commission of £20. The defendant paid that amount into court. The main point in this case that the £20 was secret profit and set by the defendants while acting as the plaintiff's agent and the judge mentioned that. If the agent has any profit from an other party, he must account for this to his principal, as Dalley says, ' the agent must account for all profit received in the performance of the principal's business'.^[13]But it is clear that Mr Berry did not put the secret profit for Jack's account. The common law requires that an agent should not make any profit or acquire any benefit in the course and in the matter of his agency without the knowledge and consent of his principal.^[14]Another point for the Court of Appeal to dismiss the Imageview's appeal was a conflict of interests. The agent should not put himself in a position where his duties conflict with his own interests, or the interests of another principal.^[15]It means the agent should not let his personal interests conflict with his principal's interests,^[16]if they let it happen they will lose any remuneration legitimately obtained on top of any secret profit. ' An agent must refrain from acting for someone with conflicting interests'.^[17]In this case Imageview was liable because it is

obvious that Imageview had a conflict of interests and acted in breach of fiduciary duty. Mr Berry could not avoid himself from a conflict of interest and obtained more benefits for himself and less for Jack. Mr Berry had two masters from both parties (Jack and Dundee United club) because he obtained 10 percent from Jack from his monthly salary and also had a secret profit from Dundee United. Mr Jacob LJ underlined the generality of the principles and said ' I would say the same about the world of football and other sports agents. Like any other agent he or she cannot serve two masters. Nor, without full disclosure, can his or her interest ever be allowed to conflict with that of his or her conflict'.^[18]This is supported by the case of Fullwood v Hurley,^[19]in this case the agent obtained double commission from both parties. The Court of Appeal held that the agent cannot have double commission, he can only receive double commission where there has been full disclosure because the agent's interest might conflict. ' The fundamental principle in all these is that one contracting party shall not be allowed to put the agent of the other in a position which gives him an interest against his duty. The result of the agent's principal is the same whatever the motive which induced the other principal to promise the commission. The former is deprived of the service of an agent free from the bias of an influence conflicting with his duty, for which he had contracted and to which he was entitled'.^[20]However, if the agent fully disclosed such interests to the principal and obtains the principal's consent before placing himself in a position, there will be no breach of fiduciary duty,^[21]but still may act for the principal. According to the term of the contract between Mr Berry and Jack, Mr Berry agreed to act for Jack in his best interests but then

he breached the contract because he did not tell Jack about the work permit. In *Kepple v Wheller* the estate agent breached a contract because he agreed to show his principal all the offers but he did not do it.^[22] The judge found that the Imageview was liable for a breach of fiduciary and the Court of Appeal agreed with the judge. The agent should work carefully in order to avoid placing themselves in situations if they have a real possibility of conflict of interests. Jack paid 10% when he started to play in the UK club but stopped to pay more when he learned about the undisclosed side deal by Imageview. In this case the remedy was available, the judge held that Jack was not liable for the unpaid commission and he did not need to pay any more agency fees. In the case of *Salford Corporation v Lever*,^[23] it was held that the principal could refuse to pay any commission. Furthermore, he could recover all the payments he had already paid. The Court of Appeal upheld the lower court's decision. Imageview breached his fiduciary duty because Mr Berry signed on behalf of Jack but he omitted to inform Jack and also he did not account for Jack. In *Keppel v Wheeler*,^[24] the judge held that the agents were liable in breach of fiduciary duty because the principal had two offers but the agents did not tell the principal about the tenant's offer which was greater than the others. In Imageview's case the judge held that Jack would not be required to pay any more commission, because Imageview had a clear conflict of interests and acted in breach of his duty. The lower court and the Court of Appeal agreed that Imageview's right to remuneration was lost, because Mr Berry acted in bad faith in the secret profit. The Court of Appeal relied on a good point which was 'good faith' or 'act honestly' for the Imageview's remuneration and held that Imageview breached of

fiduciary duty in good faith to his principal, because Mr Berry must act on behalf of Jack not for himself and also he must show good faith for his principal.[25]The law has ever required a high measure of good faith from an agent.[26]If Mr Berry acted honestly to his principal, he would keep his remuneration. There are many cases related to Imageview's case when the parties acted in breach of their duty but they had good faith and they kept their rights or remuneration. For instance, in *Hippisley v Knee Brothers*,[27]' Hippisley employed Knee Brothers to sell goods. It was agreed that Hippisley would pay for Knee Brothers' expenses. Knee Brothers sold goods and earned commission. In the event Knee Brothers incurred printing expenses, and they claimed the full price of this despite receiving themselves a discount. This was a custom of the trade (not known to Hippisley) and Knee Brothers were acting honestly. The judge held that Knee Brothers were in breach of their duty and should account for the discount as a profit. However, as Knee Brothers acted honestly they were entitled to keep their commission'.[28]Conversely, in *Stupples v Stupples & Co (High Wycombe) Ltd*,[29]the judge held that the agent acted in breach of his fiduciary duty of loyalty and in good faith to his principal because the agent wanted to obtain a secret profit from a client and by encouraging the client to cease instructing the principal. Furthermore, Mr Berry had lost his right to remuneration by breaching his fiduciary duty because the agent acted in bad faith. In Imageview's case, the court held that Jack was entitled to recover the whole of the secret profit received by Mr Berry for the work permit and the Court of Appeal upheld this point. Mr Berry argued that did not nothing wrong during acting for the player. The court successfully found that the real

value of the work done was £750 but Mr Berry received £3000 for it. In the first instance, the court allowed Mr Berry to keep the value of the work to secure the work permit, but then Underhill J disallowed Mr Berry to keep it. Mr Berry was liable to return the £3000 to Jack as a secret profit because Mr Berry breached the fiduciary duty. The high court relied on the Snell's equity 7 - 127 31st edn ' a fiduciary is bound to account for any profit that he or she has received in breach of fiduciary duty'.[30]In Salford Corporation v Lever[31]the judge held that the principal was entitled to recover the whole of the secret profit from the agent, because the principal accepted to pay one shilling per ton if the agent successfully confirmed his tender for the supplier of coal but the agent breached a contract because he obtained a bribe from another party. Moreover, in Boston Deep Sea Fishing & Ice Co v Ansell,[32]the agent received a secret commission from another party and the Court of Appeal held that the agent breached his duty and he must account for the secret commission for the principal's account.

Conclusion

This coursework has evaluated and demonstrated the legal implications of the Court of Appeal's decision in the case of Imageview management Ltd v Jack. It is obvious that the decision was based on the concept of responsibility. This coursework has focused on the Court of Appeal's decision and the legal reasons behind the decision. There is no doubt that the agent acted in breach of his fiduciary duty. Many reasons affected the Court of Appeal's decisions. In the first place, the agent entered into an undisclosed side deal with the third party. This coursework has analysed this point and showed some relevant cases which related to this case, an undisclosed side

deal was the reason for the Court of Appeal to dismiss Imageview's claim. An agent must make full disclosure to his principal and obtain his best interest. Secondly, the Court of Appeal relied on the secret profit in these decisions, because it is one of the agent's duties. This paper has illustrated the secret profit which was made by Mr Berry. He must refrain from obtaining this profit. There is a clear temptation for an agent to make a secret side deal for his own benefit or for his own account. Furthermore, conflict of interest one of the other legal reasons to dismiss Imageview's claim for an unpaid agency fee, because the agent must be watching carefully and always ready to notice anything dangerous or illegal in order to refrain placing themselves in real situations of conflict of interest. Moreover, this work has focused on the Court of Appeal's decision about the agent's commission as well as the amount of the secret profit. It was held that Jack did not need to pay any agency fee. Moreover, Imageview's right to remuneration was forfeited and also Jack was entitled to recover the whole of the secret profit. The secret profit was £3000 and was made by Mr Berry for obtaining the work permit for Jack.