
Chapter 1

Agency or Fiduciary Based Causes of Action

1-1 AGENT BREACHING FIDUCIARY DUTY TO PRINCIPAL

Establishing a breach of the fiduciary duty owed by an agent to a principal is largely dependent upon the circumstances. Generally, it is necessary to first establish that an agent-principal relationship exists. *See Scott v. Purcell*, 490 Pa. 109, 415 A.2d 56 (1980) (citing Restatement (Second) of Agency § 1, cmt. b (1958)). Subsequently, to allege a breach, a party must show that the agent:

- 1) acted adversely towards the principal's interests;
- 2) acted in bad faith;
- 3) acted in any manner inconsistent with his agency to the principal in any part of the transaction; or
- 4) failed to disclose any interest which would naturally influence his conduct in dealing with the principal.

See Restatement (Second) of Agency §§ 379 through 396 (1958). *See also Basile v. H & R Block, Inc.*, 563 Pa. 359, 761 A.2d 1115 (2000).

Notes

The burden of establishing agency rests upon the party asserting it. *See Girard Tr. Bank v. Sweeney*, 426 Pa. 324, 231 A.2d 407 (1967). However, parties are not required to furnish direct evidence if it can be reasonably inferred from the circumstances of the case. *See Yezbak v. Croce*, 370 Pa. 263, 267-68, 88 A.2d 80, 82 (1952).

A fiduciary relationship can exist as a matter of law or it can exist based on certain facts and circumstances. *Delphine D. v. UHS Doylestown, LLC*, No. CV 23-2097, 2024 WL 710879, at *6 (E.D. Pa. Feb. 21, 2024).

Statute of Limitations

Under Pennsylvania law, a claim for breach of fiduciary duty is governed by a two-year limitations period. *See* 42 Pa.C.S.A. § 5524(7).

1-2 AGENT'S LIABILITY TO THIRD PARTIES

An agent for a principal is not personally liable on a contract between a principal and a third party unless the agent specifically agrees to assume liability. *Vernon D. Cox & Co., Inc. v. Giles*, 267 Pa. Super. 411, 406 A.2d 1107 (1979). *See also* Restatement (Second) of Agency §§ 4, 321, 322 (1958). However, if an agent consummates a contract without (1) disclosing the fact of agency; or (2) disclosing the identity of the principal, the agent is considered to have assumed personal liability. *See also* Restatement (Second) of Agency §§ 4, 321, 322 (1958).

Notes

Courts may hold an agent personally liable if the agent acted without the authority of the principal. *See Revere Press, Inc. v. Blumberg*, 431 Pa. 370, 246 A.2d 407 (1968). *See also Jennings v. Pittsburgh Mercantile Co.*, 414 Pa. 641, 202 A.2d 51 (1964); *Reading Co. v. Sobelman*, 144 Pa. Super. 270, 19 A.2d 754 (1941).

1-3 BAILMENTS

"A bailment is a delivery of [goods/chattels] for the accomplishment of some purpose upon a contract, express or implied, that after the purpose has been fulfilled, it shall be redelivered to the person who delivered it." *Buckley v. Exodus Transit & Storage Corp.*, 1999 Pa. Super. 344, 744 A.2d 298, 306 (1999).

A cause of action for breach of bailment agreement arises if:

- 1) the bailor can establish that goods were delivered to the bailee;

- 2) a demand for return of the bailed goods has been made; and
- 3) the bailee has failed to return the goods.

Buckley v. Exodus Transit & Storage Corp., 1999 Pa. Super. 344, 744 A.2d 298 (1999).

Notes

If a bailment exists, the bailee must adhere to the standard of care appropriate to the circumstances and may be liable for losses attributed to gross negligence. *Ferrick Excavating & Grading Co. v. Senger Trucking Co.*, 506 Pa. 181, 484 A.2d 744 (1984).

Statute of Limitations

The applicable statute of limitations for cases arising pursuant to bailment contracts is four years. *See* 42 Pa.C.S.A. § 5525.

1-4 BREACH OF FIDUCIARY DUTY

To establish a breach of fiduciary duty, a plaintiff must prove that:

- 1) a fiduciary relationship exists;
- 2) the fiduciary has committed misconduct; and
- 3) the misconduct caused them to suffer damages.

See Axcan Scandipharm, Inc. v. Reed Smith, LLP, No. 03827, 2007 Phila. Ct. Com. Pl. LEXIS 78 (C.P. Phila. Mar. 26, 2007).

The misconduct complained of varies depending on the circumstances of the matter, but typically includes:

- 1) situations of self-dealing or personal interest conflicts; and/or
- 2) the fiduciary injuring or acting contrary to the interests of the person to whom a duty of loyalty is owed.

See Seaboard Indus., Inc. v. Joachim, 45 Pa. D. & C.2d 780 (C.P. Phila. 1968); *see also Weissman v. A. Weissman, Inc.*, 374 Pa. 470, 97 A.2d 870 (1953).

Notes

“A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.” Restatement (Second) of Torts § 874, cmt. a (1979). The question of whether or not a confidential relationship exists between the parties is intensely fact-specific. *Wisniski v. Brown & Brown Ins. Co.*, 2006 Pa. Super. 216, 906 A.2d 571 (2006). It is also critical to ascertain whether the relationship between the persons “goes beyond mere reliance on superior skill, and into a relationship characterized by ‘overmastering influence’ on one side or ‘weakness, dependence, or trust, justifiably reposed’ on the other side.” See *eToll, Inc. v. Elias/Savion Adver. Inc.*, 2002 Pa. Super. 347, 811 A.2d 10, 23 (2002).

The duty of a fiduciary may also be breached by an intentional failure to disclose a material fact. *Smith v. Renault*, 387 Pa. Super. 299, 564 A.2d 188 (1989).

Breach of fiduciary duty claims are permitted to proceed where a minority shareholder sufficiently alleges oppressive conduct directed to her by the majority shareholder, such that those claims do not directly involve the company and are not protected by the business judgment rule. See *Cuttillo v. Cuttillo*, No. 5:21-CV-02787, 2022 WL 2240037 (E.D. Pa. June 22, 2022).

“To prevail on a claim of breach of fiduciary duty, a plaintiff must show the existence of a fiduciary relationship between the plaintiff and the defendant, that the defendant negligently or intentionally failed to act in good faith and solely for the plaintiff’s benefit, and that the plaintiff suffered an injury caused by the defendant’s breach of its fiduciary duty.” See *Marion v. Bryn Mawr Tr. Co.*, 288 A.3d 76, 88 (Pa. 2023).

Statute of Limitations

The statute of limitation for breach of fiduciary duty is two years. See 42 Pa.C.S.A. § 5524(7).

1-5 CHARITABLE ORGANIZATION LIABLE FOR WRONGDOING

In Pennsylvania, charitable organizations are subject to tort liability. The doctrine of immunity of charitable institutions

from liability in tort no longer exists in the Commonwealth of Pennsylvania.

See Restatement (Second) of Torts § 895E (1979); see also *Hoffman v. Misericordia Hosp. of Phila.*, 439 Pa. 501, 267 A.2d 867 (1970).

1-6 CO-SURETIES CONTRIBUTING ON DEBT DEFAULT

“A guarantor has a cause of action against a co-guarantor if the guarantor has paid more than his or her proportionate share of a common liability and is in equity and good conscience entitled to a contribution from his co-guarantors.”

See *Caspescha v. Plum*, 24 Pa. D. & C.3d 311 (C.P. Berks 1982).

1-7 ESCROW AGENT IMPROPERLY DISBURSING FUNDS

An escrow agent will be liable for conversion when:

- 1) there is an escrow agreement; and
- 2) there is delivery of the property/funds in a manner inconsistent with the terms of the agreement.

See *Samango v. Pileggi*, 363 Pa. Super. 423, 526 A.2d 417 (1987).

Notes

“The intention of the parties is paramount, and the court must adopt an interpretation which under all the circumstances ascribes the most reasonable, probable and natural intentions of the parties, considering the objects to be accomplished.” See *Village Beer & Beverage Co. v. Vernon D. Cox, Inc.*, 327 Pa. Super. 99, 107, 475 A.2d 117, 121 (1984).

Statute of Limitations

The applicable statute of limitations for contract cases in Pennsylvania is four years. See 42 Pa.C.S.A. § 5525.