



# Back to Basics: Alleging Fraud

Ella Vacani

# Fraud?



# Fraud =

- Deliberate act of deception =
- Allegation of dishonesty =
- Two stage test:
  1. What was the alleged wrongdoer's actual state of mind?
  2. Would ordinary decent people recognise that what they then did was honest or dishonest?

# Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67

*“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence...going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”*

# Careful what you write...

- *BM UK Ltd v LzLabs GmbH* [2023] EWHC 3015 (TCC): “*the claimant must set out clearly and with precision the case that it proposes to make to justify each of the claims of procurement and conspiracy, each of which requires proof of deliberate wrong-doing and dishonesty. The pleadings must be clear and specific. The claimant must identify the facts and matters upon which it relies to establish knowledge, deliberate wrongdoing and dishonesty. The claimant must identify that on the basis of the facts pleaded, an inference of dishonesty is more likely than innocence or negligence*”
- Things you have to focus on when alleging fraud are: particularity, materiality, and coherence.

# No special standard of proof...

- There is no special standard for fraud.
- But the inherent improbability of serious wrongdoing is part of the evidential assessment.
- The more serious the allegation, the more cogent the evidence must be to satisfy the civil standard.

# Elements of deceit

- Actionable representation
- Falsity
- Knowledge or recklessness
- Intention to induce
- Reliance (NB *Credit Suisse Life (Bermuda) Ltd v Ivanishvili* [2025] UKPC 53)
- Loss

# Practical Tips

- Start with the documents.
- Be explicit about the inferential chain.
- Avoid over-pleading. (But do think of back up positions to protect your client's interests.)
- Guard your credibility.
- Remember that fraud often carries particular costs consequences.
- In the lead up to trial, keep the dishonesty element front and centre of your preparation.



# GOOD FAITH

William Ryder

- “... *the concept of a duty to carry on negotiations in good faith is inherently repugnant to the adversarial position of the parties when involved in negotiations.*”

- *Walford v Miles* [1992] 2 A.C. 128, per Lord Ackner

- *“The governing principle is applicable to all contracts and dealings. Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain, from his ignorance of that fact, and his believing the contrary. But either party may be innocently silent, as to grounds open to both, to exercise their judgment upon.”*

- *Carter v Boehm (1766) 3 Burr. 1905, 1910, per Lord Mansfield CJ*

# Playing fair?

- *“English law has, characteristically, committed itself to no such overriding principle but has developed piecemeal solutions in response to demonstrated problems of unfairness.”*
- *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989]  
Q.B. 433, 439, per Lord Bingham

# The classics

- Insurance contracts – uberrima fides
- Partnerships
- Fiduciaries
- Estopple?

# Braganza v BP Shipping Ltd [2015] UKSC 17

- Mr Renford Braganza, Chief Engineer on a BP oil tanker, disappeared.
- No-one knows for certain what happened to him, but BP formed the opinion that he most likely committed suicide.

## Clause 7.6.3

*“For the avoidance of doubt compensation for death, accidental injury or illness shall not be payable if, **in the opinion of the Company or its insurers**, the death, accidental injury or illness resulted from amongst other things, the Officer's **wilful act, default or misconduct** whether at sea or ashore ....”*

# Implied terms

- *Wednesbury* unreasonableness
- Process - considerations properly to be taken into account and ones not to be taken into account
- Outcome - the result not being “so outrageous that no reasonable decision-maker could have reached it”

# Relational contracts

- *“I doubt that English law has reached the stage, however, where it is ready to recognise a requirement of good faith as a duty implied by law, even as a default rule, into all commercial contracts. Nevertheless, there seems to me to be no difficulty, following the established methodology of English law for the implication of terms in fact, in implying such a duty in any ordinary commercial contract based on the presumed intention of the parties.”*
- *Yam Seng Pte Ltd v International Trade Corp Ltd* [2013] EWHC 111 (QB) – Leggatt J

# *Bates v Post Office Ltd* [2019] EWHC 606 (QB)

- A non-exhaustive test.
- Only the first is determinative.

- There must be no specific express terms in the contract that prevents a duty of good faith being implied into the contract.
- The contract will be a long-term one, with the mutual intention of the parties being that there will be a long-term relationship.
- The parties must intend that their respective roles be performed with integrity, and with fidelity to their bargain.

- The parties will be committed to collaborating with one another in the performance of the contract.
- The spirits and objectives of their venture may not be capable of being expressed exhaustively in a written contract.
- They will each repose trust and confidence in one another, but of a different kind to that involved in fiduciary relationships.

- The contract in question will involve a high degree of communication, cooperation and predictable performance based on mutual trust and confidence, and expectations of loyalty.
- There may be a degree of significant investment by one party (or both) in the venture. This significant investment may be, in some cases, more accurately described as substantial financial commitment.
- Exclusivity of the relationship may also be present.

Any Questions?

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