Whose money is it anyway' - A whistle stop tour of proprietary trusts in fraud

By Markus Esly | April 6, 2021

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Introduction

It is often said that ‘fraud unravels all’. English law certainly allows a party who is induced to enter into a contract by a fraudulent misrepresentation to rescind the agreement and claim damages for the loss suffered as a result of the fraud. Where a contract is rescinded, the innocent party has a further remedy, in addition to a claim for damages. As a matter of principle, the innocent party is entitled to bring a proprietary trust claim to recover payments made or assets transferred under the fraudulent agreement. It should be noted that fraudsters tend not to keep their ill-gotten gains within easy reach of their victims. Monies may be transferred to other companies under their apparent control. The innocent party may seek to bring a personal claim against such third parties, on the basis that they committed an equitable wrong such as ‘knowing receipt’ or ‘dishonest assistance’. But it is also open to a victim of fraud to bring a proprietary trust claim against third parties who have received monies or assets from the fraudster. This article considers that remedy.

The decision in *Vale v Steinmetz*

In *Vale SA v Steinmetz* [2020] EWHC 3501, the Commercial Court looked at a proprietary trust claim against third parties, arising out of a sale of valuable mining rights that had been acquired by bribery.

The claimants were companies in the Brazilian Vale mining group, the world’s second largest mining concern. They had secured an LCIA arbitration award setting aside a share purchase and joint venture agreement on the basis of fraudulent misrepresentation. The arbitrators found that Vale had been misled into acquiring the mining rights by assurances that the relevant licenses had been obtained legitimately.

Read the full article here.

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