

Defendants Owed No Fiduciary Duty, But Still Liable re: California Corporations

Article By:

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In ***Am. Master Lease Llc v. Idanta***, 2014 Cal. App. LEXIS 402 (Cal. Ct. App. 2014), the Second District Court of Appeal resolved the following four questions:

Can a defendant be liable for aiding and abetting breach of fiduciary duty without owing the plaintiff a fiduciary duty?

Answer: Yes

What is the statute of limitations for aiding and abetting a breach of fiduciary duty?

Answer: Three or four years, depending on whether the breach is fraudulent or non-fraudulent.

Is the restitutionary remedy of disgorgement available for aiding and abetting breach of fiduciary duty?

Answer: Yes

What is the measure of restitution for aiding and abetting a breach of fiduciary duty?

Answer: The net profit attributable to the wrong.

While these answers are clearly stated by the Court of Appeal, I am confused about one aspect of the holding. The Court of Appeal found that the **fiduciary duties** involved in the aiding and abetting claim were “imposed by law on them as members and managers” of a limited liability company. In support, the Court cited Corporations Code Section 17704.09. However, the LLC was formed, the breaches occurred, and the trial was completed well before Section 17704.09 took effect on January 1, 2014. In a footnote, the Court acknowledges the effective date of the statute but does not explain why it should be applied retroactively. The Court also doesn’t address Section 17713.04(b) which

provides:

Except as otherwise specified in this title, this title applies only to the acts or transactions by a limited liability company or by the members or managers of the limited liability company occurring, or contracts entered into by the limited liability company or by the members or managers of the limited liability company, on or after January 1, 2014. The prior law [*i.e.*, the Beverly-Killea Limited Liability Company Act] governs all acts or transactions by a limited liability company or by the members or managers of the limited liability company occurring, or contracts entered into by the limited liability company or by the members or managers of the limited liability company, prior to that date.

In prior posts, I've railed against the transition provisions of the California Revised Uniform Limited Liability Company Act, but I didn't expect that they would be ignored entirely.

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