



## Alerts

### Non-Fiduciary Held Liable for Aiding and Abetting Breach of Fiduciary Duty

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*Lawyers for the Profession®*

*American Master Lease LLC v. Idanta Partners, Ltd. et al.*, 225 Cal.App.4th 1451, 171 Cal.Rptr.3d 548, 14 Cal. Daily Op. Serv. 4979, 2014 Daily Journal D. A.R. 5739, 2014 WL 1761583 (May 27, 2014)

In 1998, Founder created Plaintiff as an investment vehicle for individuals seeking to avoid active management of their real estate holdings. The vehicle would allow investors to sell to a larger entity and buy interests in that entity as tenants in common. Founder served as the managing member of Plaintiff; he and his family were the major owners. Three other individuals owned the remaining interests and, in January 2000, these minority owners agreed, as the Operating Group, to provide the operational management of Plaintiff.

In 2003, after the original investment partner lost its financing, the Operating Group identified defendant venture capital firm as a suitable replacement. Founder, concerned about protecting Plaintiff's business method, opposed the proposed venture with Defendant and, through an amendment, restricted the Operating Group's ability to make deals without the approval of the Plaintiff's majority owners.

In early 2004, two members of the Operating Group formed a new company and arranged to be employed by it. Defendant and its managing partner became the majority owners of the new company. The Operating Group granted new company a nonexclusive license to use Plaintiff's business method. Founder, citing non-compete provisions in the operating agreement, objected to the Operating Group's actions and asserted that the group's members did not have the authority to grant licenses on behalf of Plaintiff. Founder communicated his position to Defendant.

In late 2004, Founder's attorney advised Defendant that the actions of the Operating Group's members were in breach of their fiduciary duties owed to Plaintiff and that any compensation received by the Operating Group belonged to Plaintiff. Soon thereafter, the company formed by the Operating Group, New Company, cancelled the license agreement with Plaintiff and proceeded to engage in real estate transactions without Plaintiff, the first of which closed in November 2004. Defendant and its managing partner provided financing for these transactions in the amount of \$2.5 million plus a commitment for another \$25 million. Over time, New Company paid Defendant and its managing partner millions of dollars in interest on total loans of approximately \$74 million.

#### Attorneys

Peter L. Isola

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After Founder commenced arbitration and obtained an award against members of the Operating Group, those parties settled their disputes. Under the settlement, Founder received entitlement to a percentage of New Company's shares based on his majority interest in Plaintiff. Meanwhile, Plaintiff filed a separate action in California state court against Defendant and its partners.

### **Question Before the Court and How the Court Ruled**

*In the absence of a fiduciary relationship with the plaintiff, may a defendant be sued for aiding and abetting a breach of fiduciary duty?*

Yes. Under California law, there are two different theories pursuant to which a person may be liable for aiding and abetting a breach of fiduciary duty. One theory requires that the aider and abettor owe a fiduciary duty to the victim and requires only that the aider and abettor provide substantial assistance to the person breaching his or her fiduciary duty. On this theory, California law treats aiding and abetting a breach of fiduciary duty similar to the separate tort of conspiracy to breach a fiduciary duty (i.e., liability is imposed for concerted action that violates the aider and abettor's fiduciary duty). The second theory arises when the aider and abettor commits an independent tort and requires the aider and abettor make "a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act."

The Court found that Plaintiff proceeded on the second theory of aiding and abetting liability. Plaintiff pleaded and proved that: defendants had actual knowledge of the fiduciary duties owed by members of the Operating Group to Plaintiff; defendants provided these fiduciaries with substantial assistance in breaching their duties; and defendants' conduct resulted in unjust enrichment. The Court rejected defendants' argument that the claims were barred by the statute of limitations. While the Court agreed with Plaintiff that the restitutionary remedies of unjust enrichment and disgorgement were proper, it instructed the trial court to limit the amount of available restitution to the net profit attributable to the underlying wrong.

### **What the Court's Decision Means for Business People and Professionals**

In any potential business transaction, individuals, as well as officers, directors, partners and other persons acting for or on behalf of an entity, need to be aware of the potential for liability. This principle applies even where such persons themselves do not have a fiduciary relationship with any individual, partnership, LLC, or corporation involved in the transaction. The Court's holding is consistent with California's common law approach to potential liability for aiding and abetting a tort. Liability may be imposed on one who aids and abets the commission of an intentional tort if the person knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act.

However, the decision does not undermine the agent's immunity rule under California law. As a general matter, the rule bars claims for aiding and abetting or conspiracy against employees and other agents, including attorneys, who act solely as their principal's agent and do not personally share the duty alleged to have been violated. See, e.g., *Doctors' Co. v. Superior Court*, 49 Cal. 3d 39, 44, 260 Cal.Rptr. 183, 775 P.2d 508 (1989); *Janken v. GM Hughes Elecs.*, 46 Cal. App. 4th 55, 78, 53 Cal.Rptr.2d 741 (1996); and *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.*, 131 Cal.App.4th 802, 835, 32 Cal.Rptr.3d 325 (2005).

For more information, please contact: [Peter L. Isola](#).

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