



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. 2015CD00135

BETWEEN	GLEN NORMAN DAY	1st CLAIMANT
	MARLENE DAY	2nd CLAIMANT
AND	LLOYD GOLDSON	DEFENDANT

Trust – Voluntary “Investment Club” – Olint- Whether money invested as instructed – Whether duty to account-Whether breach of trust.

Mr. A. Adedipe for Claimants

Mr. Heron Dale and Ms. Castile Dale for Defendant

Heard: 27 & th28th February 2019, 1st & 20th March 2019 and 31st May 2019

IN OPEN COURT

BATTS J.

[1] It sometimes happens that one of two innocent persons must suffer for the wrongful conduct of a third. This is one such occasion, made more regrettable, because the major actors are professional colleagues and (erstwhile) friends.

[2] Dr. Lloyd Goldson, the Defendant, considered himself an investment guru. This expertise apparently came about by experience over many years. He seems to have been fairly successful at it given the amount of money, US\$9 Million; he

had in one portfolio at the time problems emerged. In or about the year 2006, motivated by his own success, Dr Goldson formed an investment club. It was called "The Millionaire Gold Club." It consisted of a group of his friends and family members who met periodically, at his home, to "discuss investment opportunities" in "Cash Plus, Worldwide, Wealth Builders, Olint TCI" as well as other investment opportunities (See Paragraphs 3 and 4 of the 1st Claimant's Witness Statement).

- [3] The 1st and 2nd Claimants are husband and wife and also medical doctors. Dr. Goldson and the 2nd Claimant were medical students together and became very good friends. The Claimants accepted Dr. Goldson's invitation to join this friendly grouping. Attracted, no doubt by the reports of great returns, they happily did so. The investment bubble burst shortly after they joined the club. It is now well known that Olint was a Ponzi scheme. Its principal was eventually tried and convicted of fraud and related offences and sent to prison. The Claimants' have suffered loss. They seek recovery from Dr Goldson.
- [4] The Claimants, in their statement of case, do not allege that Dr Goldson gave bad or negligent or fraudulent advice. They do not allege that they were wrongly induced, by misrepresentation or otherwise, into joining or investing their money. The Claimants allege that there has been a breach of trust. They assert that they entrusted their money (US\$150,000) to Dr. Goldson, for the purpose of investing it in Olint, and that he, "*falsely represented to the Claimants that he had remitted their moneys to Olint for the credit of the account in the 1st Claimant's name but he in fact had not done so.*" They assert that, not having done so, he remains a trustee of their money or that he had "unjustly enriched" himself with their money. The remedy sought is restitutionary in nature.
- [5] The Claimants' case is supported by the viva voce evidence of Dr. Glen Norman Day (the 1st Claimant) and by documentation. His witness statement was allowed to stand as his evidence in chief. He stated that in or about September 2007, when he accepted Dr. Goldson's invitation, he was told that Olint was not

accepting new members. Dr. Goldson however told him that they, the first and second Claimants, could invest by using his membership. He offered to allow them to do this for “a 0.5% membership fee.” They gave him US\$150,000 and he gave them a receipt dated the 4th October, 2007 (exhibit 1, revised agreed bundle of documents).

- [6] The 1st Claimant said also that from time to time Dr. Goldson gave updates. In April 2008 they were given an unsigned statement (exhibit 4) which showed that US\$102,145.00 had been earned, on the initial investment, up to 31st March 2008. He stated further that the Claimants eventually opened their own account, number 51001925, and that they were given a membership number 5550001978. This was communicated to Dr. Goldson by the first Claimant. In April 2008 Dr Goldson advised them that he had wired the sum of US\$252,145.00 into that account. The 1st Claimant says (and I accept) that,

“I asked him for proof then that he had wired this sum to the account, and repeatedly thereafter, but he always failed to comply in spite of making promises to do so.” (Para 13 Witness Statement)

- [7] The Claimants did however, on the 25th April 2008, receive an email (exhibit 1 revised agreed bundle of documents) from an address “clubmembers@olinttci.com”, which stated that the funds were placed in the Claimants’ account by wire transfer. The first Claimant says that, in or about June 2008, he heard that Olint was in trouble. He says he again asked Dr. Goldson for proof of his investment but was not given any. Subsequently Olint, and its principal Mr. David Smith, became the subject of civil and criminal proceedings in the Turks and Caicos Islands, the United States and elsewhere.

- [8] The United States authorities eventually created a remission fund, consisting of forfeited money, in order to compensate persons who had invested in Overseas Locket International Corporation, Olint Corporation, Olint TCI Corporation Ltd. and/or TCI FX Traders. The Claimant applied to recover his money from the

remission fund. He was unsuccessful as, by letter dated 24th April 2015, the administrator of the Remission Fund declined his application. That letter is as follows: (Exhibit 2) :

“April 24, 2015

*Glen Norman Day
Marlene Day
PO BOX 182 Mandeville PO
Mandeville Manchester
Jamaica*

*Re: United States v. David Smith Remission
Fund Petition Number: DSMITH-102423-0*

Dear Petitioner:

We have processed your Petition for Remission (“Petition”) in accordance with the Department of Justice approved methodology for the Remission Fund.

Only persons who incurred a pecuniary loss because of securities fraud in connection with investment transactions in Overseas Locket International Corporation, OLINT Corporation, OLINT TCI Corporation, Ltd., TCI FX Traders, Ltd. and/or another related, eligible investment club or feeder fund may be eligible for Remission.

We have determined that you are not eligible to receive a distribution from the David Smith Remission Fund because your Petition did not set forth any information regarding investment transactions in Overseas Locket International Corporation, OLINT Corporation, OLINT TCI Corporation, Ltd., TCI FX Traders, Ltd. and/or another related, eligible investment club or feeder fund between February 3, 2005 through July 15, 2008, inclusive, may be eligible for Remission.

While your Petition included investment transactions which occurred during the relevant period, only investments in Overseas Locket International Corporation, OLINT Corporation, OLINT TCI Corporation, TCI FX Traders, Ltd. and/or another related, eligible investment club or feeder fund between February 3, 2005 through July 15, 2008, inclusive,

are eligible. The club(s) and/or funds(s) in which you invested were not affected by the fraud.

Based upon this determination, we will recommend that your claim be DISALLOWED.

If you believe our determination is incorrect, you may submit a Request for Reconsideration of the determination within 20 days of the date of this letter, by sending a statement in writing and setting forth the reason(s) that you believe the result is incorrect. Requests for Reconsideration must be submitted on or before May 14, 2015 and can be emailed to classact@gilardi.com or sent via mail to:

*United States v David Smith Remission Fund
Remissions Administrator
c/o Gilardi & Co. LLC
Attn: Request for Reconsideration
P.O. Box 990
Corte Madera, CA 94976-0990*

*Very truly yours,
Administration Center
(877) 281-4445*

- [9] It is on the strength of this letter, as well as the failure of Dr. Goldson to provide proof of investment, that the Claimant rests his assertion that there has been a breach of trust. There are however evidential difficulties. Documentary evidence supports the oral evidence of Dr. Goldson that, when given the US\$150,000.00 by the Claimants, he did not place it immediately into his Olint account. Dr. Goldson instead lodged the cheque to, what he called, his “service account” at Jamaica Money Market Brokers Limited (JMMB). Dr Goldson says he thereafter used the money in that account for various purposes so that by 11th October 2017 there was only US\$23,735.17 in the JMMB account (see exhibit 5).
- [10] On the 2nd November 2017 however, the total balance in the account was US \$352,105.68. On that date an amount, of US\$300,000, was wired to Olint in care of its HSBC Bank (Panama) SA (See exhibit 5). Dr Goldson says \$150,000 of that amount represented the Claimants’ investment. I accept Dr Goldson as a truthful witness, because of his impressive demeanour and also for reasons I will later

outline. Dr. Goldson explains by saying (in his witness statement and in cross-examination) that at all material times he had sufficient money elsewhere to cover for the amount given to him by the Claimants. He points to the fact that, in the statement he provided to them, interest was credited from the time he was to have made the investment. His reason, for not immediately remitting the money to Olint, was because he was expecting proceeds from a sale of shares and, for convenience, decided to pool both funds and make one remittance. In effect Dr. Golding was operating the way a banker does when handling pooled funds under his control. He did all this without informing the Claimants. It seems he regarded their requests, for proof that he had carried out their instructions, as an assault on his integrity. The 1st Claimant, when giving evidence, described Dr. Goldson as “intransigent” and I think the adjective is appropriate.

- [11] The documentary evidence also supports Dr. Goldson’s further assertion which is in part, admitted by the Claimant. This is that in December 2007 he informed the Claimants, and others, that he had withdrawn US\$500,000 from Olint and offered to pay them either their investment or some part of it. The Claimants’ declined to take any part of it. Dr. Goldson also says, and this too is admitted, that in or about April 2008 he invited the first Claimant to meet him at Olint’s Braemar Avenue address in order to complete the transfer, of the sums invested, into the Claimant’s newly opened account with Olint. They differ on the details, however, it is common ground that the Claimant did not at that time instruct Dr. Goldson to withdraw, or hand over, any part of their portfolio. The Claimants were content to allow it to remain in Olint. Indeed they were happy to receive communication from Olint confirming large earnings on their investment. This evidence is important because it demonstrates that, on their own admission, the Claimants had not one but two opportunities, afforded to them by Dr. Goldson, to withdraw their money or some part of it from Olint. It is also evidence of Dr. Goldson’s honesty and supportive of his assertion that he did in fact place the Claimants’ funds, or an equivalent amount on their behalf, in Olint. Why else would he be offering to pay the Claimants those funds along with interest? Finally on this point it is also clear that after April 2008, when they opened their

own Olint account, the Claimants made no effort to withdraw or otherwise ensure their investment was intact. They were content to allow the money to rest there and grow interest.

[12] It is also not disputed, that all parties were aware that ventures which offered high interest rates tend to be ventures with a high risk. The parties were of the view that Olint was a money trading (or foreign currency trading) operation and that its returns were real. They had seen others make a lot of money in it. Dr. Goldson admits that in January 2008 he had started to hear rumours and felt some unease. It was not however such as to persuade him to remove the approximately US\$9 million of capital and interests he had invested therein. This was the approximate amount in Olint, under his control, when the entire operation collapsed in August 2008. He now knows, he says, that it was a Ponzi scheme. He has recovered only US\$5,800.00 of the money he had invested in it.

[13] Dr Goldson called witnesses, being other investors Drs. Reginald Budham and Orville Morgan, on his behalf. Both witnesses lost money in Olint. Dr. Budham, had invested his money using Dr. Goldson's Olint account. Both gentlemen spoke to the integrity of Dr. Goldson. Dr. Goldson also called Detective Leighton Bucknor who gave evidence that investigations confirmed that the email address, from which the Claimants and Dr. Goldson received communications from Olint, was Olint's address.

[14] I do not believe that Dr. Goldson perpetrated a fraud on the Claimants. I do not think, nor is there evidence to support, that he created a false email account as a ruse or device to trick the Claimants into thinking that money, due to them, had been lodged to their Olint account. There seems to have been a misunderstanding, induced by a stubborn, self righteous, or "intransigent", attitude of Dr. Goldson. It is clear to me, and I accept, that Dr. Goldson used his own resources to make the investment he had been instructed to make. That is he transferred, from his account at JMMB to his account in Olint, US 150,000. He

later transferred, from his account in Olint to the Claimants' account in Olint, the amount of principal and interest to which they were entitled. This could not have been done prior to April 2008 because the Claimants had not yet opened their own Olint account.

[15] The Claimants' counsel submitted that in April it was not real money being transferred. That may be so. Indeed maybe there was no "real" account opened by the Claimants. Everyone by that stage were perhaps operating, unwittingly we now know, in what was the unreal world of Olint. That however cannot be the fault of Dr. Goldson. Indeed the Claimants' complaint is that Dr Goldson ought to have placed their money in that unreal world. I find that Dr Goldson did place US \$150,000 in Olint on their behalf. That money, along with the money of many others was lost. It may be that when Olint gave the Claimants' their own number no account was created. We do not, and may never, know. What we do know is the investment was lost. It was a risk they all accepted.

[16] In the circumstances therefore I find that there was no breach of trust by Dr. Goldson. He was asked to invest US\$150,000 on behalf of the Claimants into Olint. He did so. The Claimants' were on two occasions afforded the opportunity, by Dr Goldson, to take out the funds. They declined on both occasions to take the whole or any part of the money. They were all, Dr. Goldson included, victims of Olint's deception.

[17] I have not found it necessary to discuss the intriguing legal submissions and authorities placed before me by both counsel. In saying this, I mean not to be disrespectful or unappreciative of counsels' efforts. However, the matter falls to be resolved, I think, on my factual findings.

[18] There will therefore be judgment for the Defendant against the Claimants. Costs would normally follow the event .In this case however I have decided that it is appropriate for each party to bear their own costs. It seems to me that the Claimants' doubt, about whether the money found its way into Olint, was fuelled by both the response of the Remission Fund and Dr. Goldson's own reticence in

providing information. He ought, from the beginning, to have been more fulsome with his explanation as to how he would, or had, gone about investing. This litigation, or a good part of it, might have been avoided had he shared with the Claimants the statements from JMMB and other documentation. Much of that documentation was disclosed in dribs and drabs and even as the trial proceeded. I therefore will make no order for costs in this claim.

David Batts
Puisne Judge