

11:35: Conflicted out: fiduciary loyalty and the independence imperative



Dan McCourt
Fritz KC
(Chair)



Amy Proferes



Toby Graham
(Farrer & Co)



Andrew Peedom
(Collas Crill)



Conflicted out: fiduciary loyalty and the independence imperative

Dan McCourt Fritz KC, Serle Court

Toby Graham, Farrer & Co

Andrew Peedom, Collas Crill

Amy Proferes, Serle Court



serle court

Conflicts in context

- ❑ Focus on fiduciaries:
 - ❑ Trustees
 - ❑ Company directors
- ❑ 'No conflict' rule
- ❑ 'No profit' rule
- ❑ Monetary and non-monetary interests
- ❑ Avoidance strategies





Maturing business opportunities: a cross-jurisdictional overview

*Recovery Partners GP v
Rukhadze*

[2023] EWCA Civ 305





Maturing business opportunities: a cross-jurisdictional overview

- ❑ *St John's Trust Company v Medlands (Re Brockman Trust)* [2021] CA (Bda) 20 Civ
- ❑ *Kuwait Ports Authority v Port Link (Re the Port Fund)* CICA (Civil) Appeal Nos. 002 & 003 of 2022
- ❑ *X Trust and Y Trust*



Consequences of conflicts

- Equitable compensation
- Account of profits
- Decision rendered void/voidable
- Derivative claims

Ask permission, or beg forgiveness: companies

- ❑ Authorisation or ratification by shareholders
- ❑ Need for fully informed consent (eg *Instant Access Properties Limited v Rosser* [2018] EWHC 756)
- ❑ Nature of shareholder discretion: *Re Compound Photonics Group Ltd* [2022] EWCA Civ 1371
- ❑ Non-ratifiable breaches? *Re Greyhound Electromechanical Limited* [2021] JRC 249
- ❑ Importance of solvency





Ask permission, or beg forgiveness: trustees



- Before: Seek guidance from the court
- After: Seek court's approval
- Irreconcilable conflicts?