Barclays found guilty of misusing client's confidential information to seal the deal for itself

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Summary

The High Court recently found in favour of CF Partners (UK) LLP ("CF"), a former client of Barclays Bank plc ("Barclays"), in its claim against the bank for compensation arising from misuse of confidential information. In this high profile judgment the court held that Barclays had breached its equitable duty of confidence by using confidential information supplied by CF to exploit the same acquisition opportunity that CF had sought a loan from Barclays to finance.

Background

In 2008, CF, a company specialising in emissions trading and renewable energy, approached Barclays for a loan to finance its acquisition of Bryggpipan AB ("Bryggpipan"), formerly Tricorona AB, a Swedish carbon trading company.

In support of its loan application CF provided Barclays with confidential information which indicated that Bryggpipan was undervalued.

Following the collapse of negotiations between CF and Bryggpipan, Barclays acquired an 85% stake in Bryggpipan for £98m in 2010. In 2012, Barclays sold Bryggpipan for a substantial profit.

CF claimed compensation from Barclays for an alleged breach of an exclusivity agreement and misuse of confidential information. It argued that Barclays had exploited its purchasing opportunity by using information imparted by CF in confidence in support of its loan application. CF also claimed that Bryggpipan was jointly liable for Barclay's breaches.

Barclays denied the claims and in doing so relied upon a related confidentiality agreement as defining the period of confidentiality. Barclays maintained that even if it had received confidential information from CF, it had not misused this information because any such duty of confidentiality had expired by the time that it acquired Bryggpipan.

It was common ground that neither Barclays nor Bryggpipan owed CF a fiduciary duty and that equitable, not contractual, duties of confidence were at stake.

Decision

CF's claim for breach of exclusivity failed on the basis that this contractual duty had been discharged well before Barclays took steps to acquire Bryggpipan.

However the High Court held that an equitable duty of confidence existed between Barclays and CF as some of the information provided by CF was confidential in nature and Barclays knew or ought to have known that the information was to be regarded as confidential.

The Judge explained that it was not enough to show that Barclays had been influenced by the information; misuse had to be demonstrated. In this case the court found that misuse could be inferred by Barclays having used the information for a different purpose to that which it was provided.

Accordingly, the court found that Barclays had breached its duty of confidence and misused the information by using it to take advantage of the acquisition opportunity. The appropriate damages awarded to CF to be paid by Barclays would be the fees that CF would have reasonably demanded from the bank in exchange for permitting the use of the confidential information for some purpose other than completing CF's proposed acquisition. The Judge valued this at €10m.

In comparison, although the court found that Bryggpipan also owed an equitable duty of confidence to CF, there was no evidence indicating that Bryggpipan had misused the confidential information. The Judge added that even if there had been misuse, CF could not demonstrate any substantial enhancement to the value of its claims already established against the Bank; Bryggpipan had merely been a further participant.

Comment

This case is a useful reminder to practitioners that a duty of confidentiality can arise in the absence of a confidentiality agreement, and that even when one exists the expiry of a contractual duty of confidentiality does not preclude the duty of confidentiality existing in equity. There are no hard and fast rules that can guide a party in the length of time information may be regarded, at law, as confidential.

Conversely, and as this case highlighted, a duty of confidentiality arising from an exclusivity agreement would end on expiry of the effective term of the agreement because this is contractual in nature, not based on conscience and therefore without ground in equity.

Maria Wozniak, Solicitor
+44 (0)20 7894 6265
mwozniak@dacbeachcroft.com

Authors

Pippa Ellis
London - Walbrook
pellis@dacbeachcroft.com

Jonathan Brogden
London - Walbrook
jbrogden@dacbeachcroft.com

DAC BEACHCROFT