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Fang Ankong & anr v Green Elite Ltd (In Liquidation) [2025] UKPC 47

SEPTEMBER 2025

Court: Privy Council (from the Court of Appeal of the Eastern Caribbean Supreme Court (BVI))
Subject: Breach of fiduciary duty, payments for improper purpose, *Duomatic* principle
Judges: Lord Briggs, Lord Sales, Lord Hamblen, Lord Burrows, Lord Richards

Summary

In unanimously dismissing the appeal, the Board found that in determining whether payments had been made for an improper purpose, on the facts general purpose could not be separated from its implementation, and applied the Duomatic principle.

Green Elite's (GE) sole purpose was to effect an employee share benefit scheme (Scheme). GE's directors were F and three intended beneficiaries of the Scheme (Bs). GE sold its only assets. The proceeds were paid first to F's personal bank account. F then paid the same to Bs. No Board meeting approving the payments was held. GE claimed inter alia orders that the directors account to it for the sale proceeds on grounds of breach of fiduciary duty.

At first instance, it was found that GE's shareholders had agreed no more than GE would be set up as a vehicle for the Scheme, but that the decision on how to reward Bs would be taken later. No such agreement was reached, with critical parameters left undetermined.

Certain directors appealed to the Privy Council, with grounds including that:

1. there was no breach of fiduciary duty because payments by F were not made for an improper purpose as GE's general purpose was to provide the Scheme – F was simply exercising the general powers of management conferred by the articles on directors, and F had not acted dishonestly: and
2. if the payments were made for an improper purpose, there was valid assent by application of the *Duomatic* principle.

- Read the full Privy Council judgment here.

Fiduciary duties and improper purpose

It was an essential part of the agreement/understanding that implementation of the general purpose was to be agreed between the shareholders (which did not occur). This could not be treated separately from the general

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purpose, nor did the directors have authority to determine the implementation themselves.

Duomatic principle

In a matter which is *intra vires* a company and lawful, the shareholders can give their consent not only by a formal resolution passed at a general meeting but also by their unanimous consent given informally by the shareholders who would be entitled to vote on such a resolution. Not even an informal meeting is required. Further, the assent need not have the particular features of a binding contract. What matters is whether the shareholders intended to bind themselves legally *as if they had passed a formal resolution.*

However, there was no agreement by all shareholders entitled to vote, to the payment to F, and then to Bs. Therefore, there was no *Duomatic* approval.

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