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Trustees escape liability for investment losses

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In the England and Wales case of ***Daniel and another v Tee and others [2016] EWHC 1538 (Ch)*** the High Court ruled that three solicitors, acting as professional trustees of a £3 million will trust, were not liable for losses suffered by the trust fund as a result of its exposure to technology sector equities when the 'dot.com' stock market bubble burst in 2001.

Two beneficiaries of the trust alleged breach of duty by the trustees in failing to act prudently when investing trust funds, and in the alternative, they alleged breach of duty by the trustees in delegating all investment responsibility to an investment manager and thereby breaching their duty of skill and care.

As regards the first claim, the approach of the Court was to analyse each of the decisions made by the trustees during the period 2000 to 2002 (the management of the fund was moved from 2002 onwards), taking into account the circumstances in which each decision was made, with a view to determining whether there had been a breach of trust and, if so, what loss, if any, had resulted from that breach. In determining whether there had been a breach, the Court would ask itself whether the investment decision concerned was one which no trustee, complying with the duty to act prudently, could reasonably have made in the circumstances. The Court found that the trustees had acted in breach of duty by failing to implement a suitable investment strategy for the trust and to conduct periodic reviews. The trustees had decided to have a portfolio comprising 80 to 85% equity investments, and the Court held this was too high risk for the trust and a decision that no trustee, complying with the duty to act prudently, could have reasonably made. However, whilst the Court found some breaches of duty in the early stages of the relevant period, the beneficiaries failed to prove that they had suffered loss as a result of those breaches (they had claimed losses of nearly £1.5m).

The Court also found in favour of the trustees on the alternative claim (delegation of duty) on the ground that they had acted in a way that they thought was in the best interests of the trust and to discharge their duties. It noted that the trustees did not implement every investment suggestion made by the investment manager and that the percentage of the total value of the assets which was held in equities never actually reached the headline figure of 80%). The Court accepted that the trustees had acted honestly and reasonably in their reliance on investment advice.

Whilst it will usually be correct for a trustee to seek investment advice, the Court reiterated the importance of establishing an appropriate investment strategy for the trust before seeking such advice, and for this strategy to be regularly reviewed.

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