

Insider Fraud & Bank Liability: The Overlooked Route to Recovery

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What is Insider Fraud ?

- **Insiders may be Employees, Agents, Contractors, Directors or Business Partners.**
- **In this context they are usually authorised to signatories on the Company Bank Account.**
- **Employees who defraud businesses can be criminally and civilly liable for losses sustained.**
- **In limited circumstance the bank may also be civilly liable to the Company for the losses it has sustained.**
- **Irrespective of authorised signatories, banks owe a duty of care -the Quincecare Duty' to corporate bank account holders.**

Where Banks Fall Short



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- **This does not apply to individuals.**
- **The Quincecare Duty**
- “The authority conferred on an agent by a customer of a bank to sign cheques or give other payment instructions on behalf of the customer does not include authority to act dishonestly in pursuit of the agent’s own interests and in fraud of the customer. An agent acting in this way will therefore lack actual authority to give the instruction on behalf of the customer. The agent will still in general have apparent authority to do so by virtue of the customer’s representation to the bank that the agent is authorised to give payment instructions on its behalf.
- But not if there are circumstances suggestive of dishonesty apparent to the bank which would cause a reasonable banker before executing an instruction to make inquiries to verify the agent’s authority.
- In such circumstances the bank’s duty to exercise reasonable skill and care in and about executing the customer’s instructions requires the bank to make inquiries to ascertain whether the instruction given is one actually authorised by the customer. If the bank executes the payment instruction without making such inquiries, the bank will therefore be acting in breach of duty.
- Furthermore, the instruction will not bind the customer, as the dishonest agent will lack apparent as well as actual authority to give it on behalf of the customer.”

Essential Elements



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- **Notice**
- **What would a reasonable banker do?**
- **Examples**
- **Inquiries by the bank**

Missed Opportunities

- **Pre-Action Disclosure**
- **Ombudsman/Bank's internal complaints service**
- **Contributory Negligence – does not defeat the claim**

Beyond Misfeasance

- **The Quincecare Duty bites against dishonest directors, even where there is a sole shareholder and a director - Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd**
- **Claims can be run in tandem**
- **The insider is not good for the money**
- **The insider cannot be traced**

Practical Learnings

- **Requires a review of the facts and circumstances leading to and following the fraud**
- **Consider alternative routes to recovery**
- **Funding**



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