



Update

Commercial Dispute Resolution

07 December 2011

Judgment in *City of Sydney v Streetscape Projects (Australia)* and *Moses Obeid*

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Holding Redlich recently acted for the City of Sydney in recent NSW Supreme Court Proceedings.

In the *City of Sydney v Streetscape Projects (Aust) Pty Limited & Moses Obeid* [2011] NSWSC 1214, the Court held that Streetscape owed the City a fiduciary duty to act in the interests of the City in respect of Streetscape's use of intellectual property and confidential information licensed to it by the City in relation to a product known as the "Smartpole".

The "Smartpole" pole was developed by the City to integrate lighting, road and traffic signage in one unified street pole system for the Sydney 2000 Olympics. The Smartpole intellectual property was licensed to Streetscape for use only within Australia, New Zealand and Spain.

The fiduciary duty arose because of the circumstances in which the City's intellectual property and confidential information was given to Streetscape. As part of its obligations under the licence, Streetscape acknowledged the intellectual property in the "Smartpole" pole belonged to the City and that certain information in relation to the "Smartpole" pole was confidential, and agreed to protect it and not to use the intellectual property outside the terms of the licence.

The Court found that Streetscape breached the terms of the licence by manufacturing and selling "Smartpole" poles outside the licensed areas, in Singapore and throughout the Middle East.

Importantly, the Court found that Streetscape's sole director, Moses Obeid, owed a fiduciary duty to the City over and above the contractual obligations owed by Streetscape.

The Court held that Streetscape was obliged to act for the City in all respects concerning its use and disclosure of the confidential information and was not, without the authority and consent of the City, permitted to obtain a benefit for itself, or to assist third parties to obtain a benefit for themselves or to be in a position of conflict of interest. Accordingly, by providing the confidential information to a third party and permitting that third party to use the confidential information, Streetscape and Moses Obeid had both breached the fiduciary duties they owed to the City.

The Court recognised that contractual and fiduciary duties may co-exist between the same parties and in many situations the existence of a basic contractual relationship provided a foundation for a fiduciary relationship.

The Court considered that a key circumstance relevant to the existence of a fiduciary duty included the terms of the agreement between the parties itself, reflecting the dependence by the City upon Streetscape using the confidential information which the City had provided to it in conformity with the limited purposes for which it was provided. In this respect the City was unable to supervise or control the manner in which the information was used by Streetscape, so to as ensure that it was only used for the purposes for which it had been provided.

What this means for you

The effect of the Court's findings in this case means that:

1. If a party (including a sole director) is provided with confidential information in some circumstances they will owe a fiduciary duty not to use the information for an improper purpose or to gain a benefit for a third party.
2. Contractual and fiduciary duties may co-exist and the existence of a contractual relationship may provide a foundation for a fiduciary duty.
3. The existence of such a duty will depend on the facts but the inability of the owner of the confidential information to supervise or control the manner in which the confidential information will be used may be a factor in determining whether such a duty exists.

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