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### **Diversion of Assets and Business: When Your Directors Are Secretly Bleeding You Dry**

*Taz Logistics Sdn Bhd v Taz Metals Sdn Bhd & Ors*,<sup>[1]</sup> a recently reported Court of Appeal decision, serves as a warning to directors not to close an eye or facilitate breaches of fiduciary duties by other directors.

The fourth and fifth defendants were directors of the plaintiff, a stevedoring company. The fourth and fifth defendants were also the plaintiff's shareholders. The fifth defendant, a "trusted friend", was in complete charge of the plaintiff.

The plaintiff, which was initially profitable, "was 'systematically' destroyed deliberately by the defendants" acting in concert to divert assets, employees, business and operations of the plaintiff to the first defendant, Taz Metals Sdn Bhd (**Taz Metals**). Taz Metals, a RM2 company, is owned by the second and third defendants. The second and third defendants are the fourth defendant's husband and son.

The fourth and fifth defendants resigned as soon as the relevant assets, employees, business and operations were diverted to Taz Metals.

The Court of Appeal, in reversing the High Court's decision, found "clear instances of breaches of fiduciary duty". Nallini Pathmanathan JCA (as she then was) found breaches of the non-conflict and non-profit rules under s 132 of the Companies Act 1965 (now s 218 of the Companies Act 2016) and common law.

On the non-profit rule, her Ladyship said it was:

*"... not incumbent upon Taz Logistics to establish that the fourth or fifth defendant acted fraudulently or with a lack of bona fides, or even that the plaintiff suffered irreparable loss and damage."*

In doing so, her Ladyship referred to *Regal (Hastings) Ltd v Gulliver & Ors*,<sup>[2]</sup> where Lord Russell said:

*"... The liability arises from the mere fact of a profit having, in*

*the stated circumstances, been made. The profiteer, however honest and well-intentioned, cannot escape the risk of being called upon to account.”*

The fourth defendant, who took little part in managing the plaintiff, left everything to the fifth defendant. By doing so, she was held to have breached her fiduciary duty by simply approving all steps taken by the fifth defendant to transfer the plaintiff’s business to Taz Metals. It was further held that her failure to disclose that her husband and son had started up and ran a competing business was one of the “*clear instances of a transgression of the no conflict rule*”.

The grounds of judgment can be found [here](#).

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[\[1\]](#)

[2019] 3 MLJ 510 (CA)

[\[2\]](#)

[1942] 1 All ER 378 (HL)