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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
Cause No:250/92

BETWEEN	:	A. DEAN LARSEN	PLAINTIFF
	:	ERNEST L. FOSTER	FIRST DEFENDANT
	:	CAROLYN A. FOSTER	SECOND DEFENDANT
	:	FIRST CAYMAN BANK LIMITED	THIRD DEFENDANT

Mr. Alan Turner for the Plaintiffs

JUDGMENT

Schofield J.

The proceedings against the second defendant and third defendants have been dismissed. The matter is brought to trial against the first defendant (to whom I shall refer as "Foster") only. Foster is in prison in the United States of America and leave was granted to effect service outside the jurisdiction. He has taken no part in this action. Leave was granted that the first plaintiff's evidence be given by way of affidavit because such plaintiff, a resident of the United States, is suffering from an illness which renders him incapable of travelling to this jurisdiction. This affidavit and the documents referred to therein were the only evidence tendered.



trial.

This is my review of the evidence and my findings upon it.

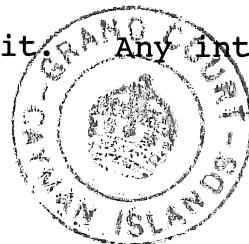
The first plaintiff is a Chiropractor who resides in Midwest City, Oklahoma, United States of America. He is the beneficial owner and a director of the second plaintiff ("A and D Investments"). On advice he set up Zodiac Investments Trust in these Islands and paid monies into a bank account with the First Cayman Bank Ltd in the name of the Trust. As of 22nd March 1988 there was US\$154,750.11 in that account.

Foster was introduced to the first plaintiff in 1987 or 1988. Foster advised the first plaintiff that he could provide services for people investing in the Cayman Islands through his management company, Business Services International Ltd. Foster was given signing authority on the account of Zodiac Investment Trust.

A and D investments was incorporated on the 8th March 1988. Foster was appointed a director of the company whose registered office was Foster's office. Shares were issued to Foster to keep the first plaintiff's interest in A and D Investments confidential. An account was opened at First Cayman Bank Ltd by Foster in the name of A and D Investments. Foster and his wife, the second defendant, were the signatories to the account.

Zodiac Investments' account was closed and the balance upon it was transferred to A and D Investments account. US\$150,000 was deducted from the account leaving a balance of US\$4684.51.

The first plaintiff made various credits to the account of A and D Investments. It was his intention to debit the account from time to time and invest the amounts in certificates of deposit. Any interest



earned on these certificates of deposit would be credited to the account of A and D Investments.

From 14th February 1989 to 28th June 1991 Foster debited various sums from the account and applied them for his own benefit or for the benefit of his own companies. None of these debits was authorized by the first plaintiff, or for that matter by his wife who was aware of the Cayman Islands investments.


In his affidavit the first plaintiff has listed the unauthorized debits which totalled US\$466,962.83. It is clear that Foster misapplied this amount fraudulently and in breach of trust. The plaintiffs are entitled to recover the amount.

I am further satisfied that the plaintiffs are entitled to recover from Foster the interest which they would have earned had the credits to the account of A and D Investments been properly invested in certificates of deposit in accordance with the first plaintiffs' instructions (see Halsbury's Laws of England, 4th Edition, Vol.32, para 109). The first plaintiff has calculated that interest and has set out the figures in his affidavit. He claims, including interest, a total of US\$508,753.72.

I am satisfied that the plaintiffs have proved their claim and I enter judgment for them, against the first defendant, in the sum of US\$508,753.72 together with interest at Court rates to run from 30th April, 1994, until payment in full. They are also entitled to their costs of the suit.

Dated this 29th day of April, 1994.




Schofield
Judge