The Fiduciary Duty—*Et tu, Brute?*

By Gerard V. Mantese

Historical Context

Et tu, Brute? These famous words invoke one of the most important and inveterate concepts in the law: the repose of trust, from which arises the fiduciary duty. So exalted is this concept that a betrayal of another's trust can leave the betrayer forever shunned. Just ask Brutus, or Judas, or Benedict Arnold, whose names are eternally associated with disloyalty and deceit.

The fiduciary duty's roots go back to the beginning of law itself, including in the Code of Hammurabi and its penalties for breach of trust.[1] The duty is both ancient and biblical: Ancient Rome's Twelve Tables declared "*patronus si clienti fraudem fecerit, sacer esto*" ("if a patron defrauds his client, let him be outlawed"), and the Book of Genesis posits mankind as having the original fiduciary duty as stewards of the earth.[2]

The modern fiduciary duty began to take form in the Middle Ages, where creative landowners used ancient fiduciary concepts to get around feudal restrictions on devises.[3] These early "uses" transitioned to equitable trusts and the courts of chancery, which eventually recognized an explicit fiduciary duty. One of the earliest references to the duty came in the 1717 case of *Bishop of Winchester v Knight*, in which Lord Chancellor Cowper declared that a "tenant is a sort of a fiduciary to the lord, and it is a breach of the trust which the law reposes in the tenant, for him to take away the property of the lord."[4]

Defining the fiduciary duty

A fiduciary duty is a heightened sense of responsibility that one person has to another in certain situations. Absent this position of trust, the morals of the marketplace apply. It is hard to compete with Justice Cardozo's description of fiduciary duty, which emphasizes scrupulous integrity:

> Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to ***something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.*** As to this there has developed a tradition that is unbending and inveterate.[5] (Emphasis added.)

Deriving from the Latin verb *fidere* (to trust), the fiduciary duty also activates the notions of action and energy in the service of another. Black's Law Dictionary defines a fiduciary duty as: "A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary…to the beneficiary[;] a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person…."[6]

A good description from Michigan caselaw provides: "A fiduciary duty is a duty to act for someone else's benefit, *while subordinating one's personal interests to that of the other person*."[7] (Emphasis in original.)

The test for fiduciary status in Michigan

A fiduciary duty "arises from the reposing of faith, confidence, and trust, and the reliance of one upon the judgment and advice of another."[8] One's placement of such trust and confidence must be reasonable.[9] Michigan courts recognize four situations that commonly result in a fiduciary duty:

> (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.[10]

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Deriving from the Latin verb *fidere* (to trust), the fiduciary duty activates the notion of action and energy in the service of another.

A fiduciary duty may arise in many situations under the particular facts at issue. In the business world, some relationships leave no doubt as to a fiduciary duty, such as an officer or director to the shareholders and the corporation.[11] Michigan courts also recognize a fiduciary duty owed by controlling shareholders to noncontrolling shareholders in closely held corporations.[12] When a nontraditional fiduciary relationship is alleged, the facts establishing the repose of trust in another must be pled, and "the existence of a confidential relationship is a question of fact"[13] while the question of whether a fiduciary duty exists on such facts is a question of law for the court.[14]

What is demanded of a fiduciary—parsing the duty

In Michigan, "[a] fiduciary…owes his principal a duty of good faith, loyalty, and fair dealing."[15] In other words, "a person in a fiduciary relation to another is under a duty to act for the benefit of the other with regard to matters within the scope of the relation"[16] while "subordinating one's personal interests to that of the other person."[17] Taken together, the fiduciary duty has four basic components: the duty of loyalty, the duty of honesty and good faith, the duty of full disclosure, and the duty of due care.

The duty of loyalty

A violation of the duty of loyalty occurs when the fiduciary acts for its own benefit to the detriment of its principal. For example, in *Menhennick Family Trust*,[18] a brother who co-owned a closely held family business obtained proxies from his incompetent mother, used his newfound majority voting power to institute a single-person board, and issued and purchased additional shares in the company. The Marquette Circuit Court declared the proxies void because of the mother's incompetence and held that the brother violated his fiduciary duties to the companies and his sibling shareholders.

The duty of honesty and good faith

A fiduciary also has a duty to act honestly and in good faith. *Thomas v Satfield* involved two companies associated with the real estate and operations of a bowling alley.[19] The president and director of the bowling alley was also a shareholder and director of the real estate company. The bowling alley discovered that the negotiated rental rate on the bowling alley was premised on data that was incorrect or which the real estate company misrepresented in negotiations, resulting in large profits for the real estate company. Because of the common directors, the defendant owed plaintiff a fiduciary duty to act in good faith, which the Michigan Supreme Court held it breached when it was not honest with the plaintiff bowling alley about the amount of profits the real estate company would earn from the deal.

The duty of full disclosure

Michigan's rule requiring disclosure by a fiduciary traces back to two 1936 cases.[20] Together, they require that a fiduciary must fully disclose any "secret knowledge, intents and purposes"[21] as well as "all the material facts and circumstances"[22] that relate to the fiduciary relationship. Mere silence is enough to violate this duty.[23] For example, in *Schmude Oil Co*,[24] joint partners in an oil drilling venture did not reveal to another partner that they had obtained additional drilling acreage and thereby reduced his interest in the venture from 25 percent to 9 percent. The Court of Appeals found that this nondisclosure violated the joint partners' fiduciary duties to their fellow partner. Additionally, *Thomas v Satfield* holds that it is not an excuse that a fiduciary did not have information at the time of the transaction in question. If the fiduciary obtained pertinent information later, he must disclose it.[25]

The duty of due care

With respect to statutory fiduciary duties, Michigan statutes often refer to the duty of due care in terms of an ordinarily prudent person.[26] Under the Michigan Supreme Court's "prudent person" rule, a fiduciary must act as would a prudent person dealing with another's property, and must use any special skills or expertise when appropriate.[27] To be "prudent" means to act "with care, diligence, integrity, fidelity and sound business judgment."

In *Castle v Shoham*,[28] the Michigan Court of Appeals applied this standard to a breach of fiduciary duty claim. Before the Court were claims of LLC member oppression under MCL 450.4515 and breach of fiduciary duty. The managing member, a corporation, had engaged in acts of self-dealing. The Court held that the self-dealing was not only oppressive, but also a breach of the duty of due care. Because of the LLC's poor financial condition, the managing member had not acted prudently when it caused the LLC to pay unreasonably high management fees to the managing member.

Examples of nontraditional fiduciary relationships

While some fiduciary relationships are more explicitly set forth in statute or years of caselaw (such as with directors and officers), others are dependent on the facts and circumstances of the situation. Examples of these include the following:

1. **Bank/Depositor:**
   Smith v Saginaw Sav & Loan Ass'n[29]
   Smith, who was ill, entrusted the defendant bank with monitoring the progress of construction on a home 250 miles away, and with making payments to the builder for work completed. Smith sued the bank for breach of fiduciary duty after the bank

made payments to the builder without the work being done. The Court held that Smith had placed his trust and confidence in the bank with respect to the home construction, and that the bank had violated that trust when it paid the builder. The bank had further breached its fiduciary duties by not disclosing to Smith its knowledge of the builder's pending bankruptcy, which further disrupted construction.

2. Daughter/Mother:
***Shaeffer v Burghardt*[30]**

Here, the decedent mother had only a fourth-grade education and was completely reliant on others to handle her finances. After her husband passed, her daughter assumed the responsibility of handling her mother's checkbook to pay her monthly bills and expenses. Over the years before the mother passed, the daughter took funds from her bank account without permission. The Court found a breach of fiduciary duty because the mother had trusted and relied on her daughter to handle her funds. The Court noted that a fiduciary "relationship and the duties involved are not limited to those imposed by law but may be moral, social, domestic, or merely personal."

3. Longtime Friends:
***Williams v Griffin*[31]**

The parties were longtime friends. Williams became infirm, and Griffin "assumed the role of bill collector, real estate salesman, and business advisor" to Williams. In an action resulting from several questionable financial transactions stemming from the parties' new arrangement, the Court held that because of Williams's infirmity and complete reliance on Griffin in all his business matters, Griffin was Williams's fiduciary.

Conclusion

A fiduciary duty may arise when one justifiably reposes trust and confidence in another. Some relationships are settled as imposing fiduciary duties, such as directors or officers and shareholders. In other contexts, the finding of a duty depends on the facts and circumstances at issue. The fiduciary duty demands scrupulous loyalty, honesty, disclosure, and due care. ■

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Mr. Mantese would like to thank Brian Markham, a third-year law student at Wayne State University Law School and future associate at Mantese Honigman, PC, for his excellent assistance on this article.

ENDNOTES

1. Law number 265 provides: "If a herdsman, to whose care cattle or sheep have been entrusted, be guilty of fraud and make false returns of the natural increase, or sell them for money, then shall he be convicted and pay the owner ten times the loss."
2. *Genesis* 1:26–28, 2:15.
3. Seipp, *Trust and Fiduciary Duty in the Early Common Law*, 91 BU L Rev 1011, 1014 (2011), available at <http://www.bu.edu/law/journals-archive/bulr/documents/seipp.pdf> [https://perma.cc/3HJ4-DKZU] (accessed August 11, 2020).
4. *Bishop of Winchester v Knight*, 24 Eng Rep 447 (1717).
5. *Meinhard v Salmon*, 249 NY 458, 464; 164 NE 545 (1928).
6. *Black's Law Dictionary* (11th ed).
7. *Wallad v Access BIDCO, Inc*, 236 Mich App 303, 307; 600 NW2d 664 (1999).
8. *Prentis Family Foundation v Karmanos Cancer Institute*, 266 Mich App 39, 43; 698 NW2d 900 (2005).
9. *Id.* at 44.
10. *Calhoun Co v Blue Cross Blue Shield Michigan*, 297 Mich App 1, 20; 824 NW2d 202 (2012).
11. *Thomas v Satfield Co*, 363 Mich 111, 118; 108 NW2d 907 (1961).
12. *Veeser v Robinson Hotel Co*, 275 Mich 133, 138; 266 NW 54 (1936).
13. *Taylor v Klahm*, 40 Mich App 255, 264; 198 NW2d 715 (1972).
14. *Prentis*, 266 Mich App at 39, 43.
15. *Id.* at 49.
16. *Highfield Beach at Lake Michigan v Sanderson*, opinion of the Court of Appeals, issued March 24, 2020 (Nos. 343968 and 345177), at 11, n 13.
17. *Wallad v Access BIDCO, Inc*, 236 Mich App 303, 307; 600 NW2d 664 (1999).
18. *Menhennick Family Trust by Menhennick v Menhennick*, 326 Mich App 504, 507, 512; 927 NW2d 741 (2018). The Court of Appeals affirmed the circuit court's ruling without addressing or disturbing its holding regarding the breach of fiduciary duties.
19. *Thomas v Satfield Co*, 363 Mich 111, 118; 927 NW2d 741 (1961).
20. *Barrett v Breault*, 275 Mich 482; 267 NW 544 (1936) and *Horvath v Langel*, 276 Mich 381; 267 NW 865 (1936).
21. *Barrett*, 275 Mich at 488.
22. *Horvath*, 276 Mich at 385.
23. *Burton Twp of Genesee County v Speck*, 378 Mich 213, 224; 144 NW2d 347 (1966).
24. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574; 458 NW2d 659 (1990).
25. *Thomas*, 363 Mich at 122–123.
26. See, e.g., MCL 450.4404(1) ("A manager shall discharge the duties of manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances…").
27. *In re Messer Trust*, 457 Mich 371, 380; 579 NW2d 73 (1998).
28. *Castle v Shoham*, unpublished per curiam opinion of the Court of Appeals, issued August 7, 2018 (Docket No. 337969), at 11.
29. *Smith v Saginaw Savings & Loan Ass'n*, 94 Mich App 263, 266, 275; 288 NW2d 613 (1979).
30. *Shaeffer v Burghardt*, unpublished per curiam opinion of the Court of Appeals, issued May 15, 2007 (Docket No. 267717), at 1, 7.
31. *Williams v Griffin*, 35 Mich App 179, 181, 184; 192 NW2d 283 (1971).

SBM MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals in January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of July 1, 2020 is 1.699 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

(1) 13 percent a year, compounded annually; or

(2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.