

Derry and Others v Peek

(1889) 14 App Cas 337

Chapter 6

Relevant facts

Various statutes regulated the use of steam and other mechanical power by trams in England. The consent of the Board of Trade was required for the Plymouth, Devonport and District Tramways Co Ltd (PDDT) to use steam, rather than animal, power. Application for that consent had been made but not yet received when, in January 1883, the PDDT directors issued a prospectus stating that PDDT had the right to use steam or other mechanical power to run its trams.

On the basis of the prospectus, Sir Henry Peek purchased 400 shares in PDDT at a cost of £4,000. The Board of Trade subsequently refused consent for the use of steam power on a material portion of the tram line. PDDT was compulsorily wound up in May 1885.

Peek sued the 5 PDDT directors on the basis of the tort of deceit and claimed damages for fraudulent misrepresentation. He alleged the statement made by them in the prospectus was untrue, that the directors knew it was untrue and that they made the representations fraudulently. The directors argued that they should not be liable because they had honestly believed that getting the consents was a mere formality.

The trial judge dismissed Peek's claim on the basis that the directors had made the representation about PDDT's right to use steam or other mechanical power bona fide and without any intention to deceive. On appeal, the Court of Appeal decided that the directors were liable. The directors appealed to the House of Lords.

Legal issue

Had the directors made a fraudulent misrepresentation in stating in the prospectus that PDDT had the right to use steam or other mechanical power to run its trams?

Decision

On 1 July 1889, the House of Lords overturned the decision of the Court of Appeal and decided that the directors were not liable. Based on the findings of the trial judge, the Court accepted that the directors had believed that the statement in the prospectus about PDDT's right to use steam or other mechanical power was true and that they had not been careless as to whether what had been stated was true or false. The fact that there were mistaken in supposing the consent of the Board of Trade would follow as a matter of course was not sufficient to make the statement fraudulent although it was relevant to the issue of whether the belief had been genuinely held.

According to Lord Herschell:

I think the authorities establish the following propositions: First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false has obviously no such belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.

Significance

This decision is authority for the proposition that to sustain an action for fraudulent misrepresentation, fraud must be proved. Fraud will be proved when it is shown that the false representation is made knowingly; or without belief in its truth; or recklessly, careless whether it be true or false.