

IMPACT OF AGENT'S FIDUCIARY DUTIES FOR THE SUSTAINABLE AGENCY RELATIONSHIPS

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Abstract. In order to ensure the sustainability in agency relationships, the agent must act in accordance with the fiduciary duties, the breach of which presupposes the negative legal consequences on the side of the agent. The purpose of this article is to reveal the content of agent's fiduciary duties and the legal consequences of their breach in Lithuania from a comparative perspective. It is concluded that neither the legal regulation nor the case law in Lithuania discloses the content of the agent's fiduciary duties and the legal consequences of their breach. Therefore, more detailed legal provisions would help to ensure a balance of the rights of the subjects involved in agency relationships.

Keywords: agent, fiduciary duties, agency relationships, sustainability, civil liability.

JEL Classification: K12, K20.

Introduction

A possibility to participate in economic circulation through an agent is a precondition for the exercise of a person's right to freedom of economic activity and initiative (Smits, 2007). Thus, agency relationships are, in principle, regulated in each country's legal system.

Different subjects are involved in the complex agency relationships, i. e., principal, agent and third parties. In order to ensure the legitimate interests of all persons, it is important to have certain legal safeguards. One of the elements that helps to achieve sustainability in agency relationships is the fiduciary duties of the agent. Fiduciary duties arise in fiduciary relationships that are based on the highest level of trust.

Although, according to legal doctrine, fiduciary relations are one of the oldest institutions existing in private law (Didžiulis, 2014), in the context of Lithuanian civil law it is not entirely clear which duties are considered fiduciary and which subjects have them. Taking into consideration that Lithuanian laws do not directly regulate fiduciary duties, it is also not clear what the consequences of violating these duties may be. It should be noted that fiduciary duties will not arise if fiduciary relations are not

established and only when it becomes clear that such relations exist can the scope of fiduciary duties be analysed (Greičius, 2007). There is a growing case law recognising breaches of fiduciary duties, but not sufficiently detailing the fiduciary duties themselves. The case law does not explain what specific obligations are to be regarded as fiduciary and what the consequences of a breach of those obligations may be. The doctrine of foreign law also emphasizes that this institution of fiduciary relations is one of the most misleading, confusing, and least understood areas of modern law (Rotman, 2017). The doctrine of law equates fiduciary regulation with the term "disorder" (Worthington, 2013) and points out that fiduciary law is disorderly (Smith, 2002). Thus, the legal regulation of fiduciary relations is not properly presented, there is a lack of legal clarity and certainty.

It is noted that one of the cases when a fiduciary relationship occurs is between the principal and the agent. This article deals with the content of the fiduciary duties of an agent and the legal consequences of a breach of these duties, as well as the general aspects of the fiduciary relationship and the fiduciary duties arising therefrom. This research analyses both the fiduciary duties of agent in general and the lawyer as a special agent. Due

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to the limited scope, the authors chose the Republic of Lithuania as the primary jurisdiction in or the analysis, taking into account the solutions provided by foreign law in the subject matter. The research is based on the approach and principles of qualitative methodology. The main method of data collection used in the study is the method of document analysis, and depending on the legal nature of the study, the specific methods of legal interpretation (e.g., systemic, historical, teleological) are used as well.

1. The concept and content of fiduciary relations

Fiduciary relationship is primarily understood as a relationship of trust, on the basis of which, one of the theories of fiduciary relations – the theory of trust (Greičius, 2007) – is distinguished. The essence of the theory of trust is that fiduciary relationships arise once one person gives trust to another person (Greičius, 2007). However, the view that this theory is not sufficient because of its abstract nature is to be accepted, and therefore, it is usually combined with other existing theories of fiduciary relations (Greičius, 2007). Fiduciary relationships in civil law are considered to be a parasol of obligations (Carter, 2020). The legal doctrine emphasizes that the essence of the fiduciary relationship is that the fiduciaries must forget their interests and those of third parties and place the interests of the beneficiary in the first place (Rotman, 2017). Fiduciary relationships develop when there is some dependence on another person, in this case the beneficiary's dependence on the fiduciary, which makes the beneficiary particularly vulnerable (Rotman, 2017). The unifying element of all fiduciaries is the possibility of abuse the powers conferred on them to their own advantage or to the detriment of the beneficiary (Scholz, 2020). Beneficiary hopes that his interests will be taken care of, which also determines his potential vulnerability, as trust in another person creates the possibility of abuse and space in cases where the fiduciary does not comply with the basic rule to forget his own interests and those of third parties in fulfilling his obligations and puts his own interests above (Rotman, 2017). It is also important for the fiduciary relationship to have the beneficiary clearly express his confidence in transferring the care of his interests to another person, i.e., he has given the fiduciary legally proper consent to act on the beneficiary (Greičius, 2007). Even if there are no concrete instructions, the fiduciary must make choices on behalf of and in the best interests of the principal (Laby, 2020). The doctrine of foreign law states that there are four most common situations in which fiduciary relationships may occur: 1) when the beneficiary expresses confidence in the honesty of the fiduciary, thereby gaining influence and advantage over the beneficiary; 2) when the fiduciary assumes control for the beneficiary; 3) when the fiduciary has a duty to act exclusively in the best interests of the beneficiary, to advise him, etc.; 4) when there is

a relationship that has traditionally been and is per se considered to be fiduciary (Kessimian, 2004).

The doctrine of fiduciary relationships is applied mainly in the legal relationship between the manager and the company (Judgment of the Supreme Court of Lithuania of October 6, 2021, civil case no. e3K-3-243-943/2021). Lithuanian case law and theory also recognize that fiduciary relationships exist between an insurer and a policyholder (Judgment of the Supreme Court of Lithuania of 23 February 2010, civil case no. 3K-3-78/2010), a bank and a client (Judgment of the Supreme Court of Lithuania of 2021 January 7, civil case no. e3K-3-172-823/2021), a doctor and a patient (Judgment of the Supreme Court of Lithuania of 2010 July 30, civil case no. 3K-3-342/2010) and between trustees (Greičius, 2007). Fiduciary relationships also include legal relationships between an agent and a principal (Judgment of the Supreme Court of Lithuania of 21 January 2002, civil case no. 3K-3-353/2002) (including the lawyer and the client) (Judgment of the Supreme Court of Lithuania of 18 April 2019, civil case no. e3K-3-140-469/2019).

Thus, a fiduciary relationship is a relationship of trust in which a person expresses trust in another person and is allowed to act on behalf of another person. The essence of the fiduciary relationship is to ensure the best interests of the beneficiary by fiduciary forgetting his personal or third party interests. In a fiduciary relationship, there is a certain imbalance in the powers of the parties and a certain dependence of one person on the other. Fiduciary relationships are subject to higher standards of ethics and goodwill. Fiduciary relationships may arise on various grounds (contract, unilateral transaction, law, etc.), but the essential moment is that the fiduciary accepts certain obligations that are clearly known. Moreover, in fiduciary relationships, confidence in transferring the care of interests must be expressed directly.

2. The concept of fiduciary duties

Although the nature of fiduciary duties seek even Roman law, the concept of fiduciary duties has not yet been enshrined in Lithuanian legislation (Greičius, 2007). Lithuanian case law also does not detail the concept of fiduciary duties. The doctrine of foreign law states that a fiduciary duty should not be understood as a special duty per se, but as a duty existing in a special type of relationship (Velasco, 2013). It is important to understand that fiduciary duties can arise only in the context of a fiduciary relationship, but not every duty arising from a fiduciary relationship is a fiduciary duty (Greičius, 2007). Since in a fiduciary relationship, a broad freedom and power is given to the fiduciary to protect the beneficiary's interests, which makes the beneficiary easily vulnerable, this means that there must also be a certain safeguard mechanism to protect the beneficiary and encourage the fiduciary to pursue the best interests of the beneficiary (Velasco, 2013). This is where the fiduciary duties come into play, which exist in order to protect the beneficiary

from possible deviations of the fiduciary in the performance of the obligation to act exclusively for the benefit of and in the interests of the beneficiary (Velasco, 2013).

The doctrine of foreign law also notes that a fiduciary cannot act effectively for the benefit of the beneficiary without having broad power and freedom, but it is at the same time very difficult, if not impossible, to prevent the fiduciary from exercising the given freedom in order to satisfy his own interests (Frankel, 1983). If, on the other hand, the beneficiary would not grant such freedom by trying to protect himself, this would reduce the benefits which are sought, that the fiduciary can and must provide (Frankel, 1983). It is also noted that fiduciary duties are such duties which are imposed specifically on the fiduciaries, and which result in the requirement that the fiduciary powers should be exercised precisely in such a way to achieve the satisfaction and safeguarding of the interests of the beneficiary (Velasco, 2013). It is argued that all fiduciary duties are closely related to the interests of the beneficiary, which the fiduciary must ensure in the performance of such duties (Rotman, 2017), and the duty to act in loyalty to beneficiary's interests is a unique feature of fiduciary duties (Barker et al., 1989–1990).

Thus, fiduciary duties stem from a fiduciary relationship, that is to say, they can arise only in the case of fiduciary relationships, which means that in the absence of such a relationship there will also be no fiduciary duties. Therefore, these duties form the essence of the fiduciary relationship. Fiduciary duties are imposed exclusively on the fiduciary and constitute an effective mean of protecting the beneficiary against inappropriate acts of the fiduciary. In its essence, fiduciary duties seem to define a path on what principles the fiduciary must follow, but there are also certain imperatives that the fiduciary must follow. Failure to comply with those obligations has negative legal consequences for the fiduciary, inter alia, he may be subject to civil liability.

3. Content of the agent's fiduciary duties

As noted in the case law of the Supreme Court of Lithuania, civil rights subjects acquire civil rights and obligations not only by acting directly but also through agents. Relationships of two kinds arise on the basis of representation: an internal relationship – between the agent and the principal – and an external representation relationship – between the agent and the third parties with whom the agent enters into transactions or performs other legal acts on behalf of and in the interests of the principal. The internal relationship between the principal and the agent is regulated by the contract they have concluded, e.g., by entrustment, and the external representation relationship is given a power of attorney. It shows which transactions and other legal acts with a third party are entitled to perform on behalf of the trustee (Judgment of the Supreme Court of Lithuania of 20 November 2018, civil case no. 3K-3-437-469/2018).

The doctrine of foreign law states that a representation relationship is considered a fiduciary relationship, i.e., a special type of relationship (Dowrick, 1954). Lithuanian case law also emphasizes that the relationship of representation between an agent and a principal is based on the principle of mutual trust (fiduciary relationship), which implies, inter alia, that the parties must act in good faith towards each other and that the agent must be loyal to the principal by defending the interests of the principal, not acting against the principal, avoiding conflicts of interest, etc. The agent shall be empowered to enter into transactions binding the principal, so the agent cannot abuse the right and must act in such a way as to ensure the best interests of the principal (the authorized) (Judgment of the Court of Appeals of Lithuania of 8 December 2020, civil case no. e2A-878-516/2020). The duty of loyalty requires that the agent always acts in the best interests of the principal, even if it is contrary to the interests of the principal (Johnson, 2020). “These obligations of good faith and loyalty, which derive from the principle of trust, are also relevant as one of the criteria for assessing the legality of the agent and the conduct represented” (Judgment of the Supreme Court of Lithuania of 20 November 2018, civil case no. 3K-3-437-469/2018). In one of the cases of the Court of Cassation, it was noted that the defendant, acting as the agent of the bequeather, had to comply with the fiduciary duties which he was bound by (Judgment of the Supreme Court of Lithuania of 20 November 2018, civil case no. 3K-3-437-469/2018). This interpretation reveals that, however, the courts recognize fiduciary duties for agents in legal relationships. In that case, the court attempted to answer the question whether the agent who transferred funds from the bequeather's account to another person must be regarded as having exceeded his powers. It was established that the agent was authorized to act only with the banks and that the power of attorney did not establish the possibility of entering into transactions with persons or other parties other than the bank, so the court stated that the agent, acting as the agent of the bequeather, was bound by fiduciary duties, which necessarily meant that he had to ascertain whether his actions were in accordance with the will of the bequeather. However, the circumstances of the case indicated the opposite effect.

As can be seen from the case law cited above, Lithuanian courts consider representation relationships to be fiduciary and the agent is bound by fiduciary duties such as acting in good faith, loyalty and avoiding conflicts of interest. Despite the fact that the case law states specific fiduciary duties for the representative, their detailed content is not provided.

An example of representation relationship is the relationship between a lawyer and a client. Given that in many cases, the lawyer acts as an agent providing legal services to the client, so their relationship must also be regarded as fiduciary, and the lawyer bound by fiduciary duties.

A lawyer is a person who provides legal advice, suggests, prepares legal documents, defends, and represents clients in courts, and performs other legal acts (Law on the Bar of the Republic of Lithuania). The legal relationship between a lawyer as an entity providing legal services and a client as an entity to whom those services are provided is recognized in the case law as fiduciary. The case law emphasizes that a lawyer, as a professional in his field, is subject not only to general but also to special requirements. The case law of the Court of Cassation emphasizes that there is a fiduciary relationship between a lawyer and a client based on trust. The activities of a lawyer are subject not only to general standards of human conduct, but also to special requirements established by the laws regulating the activities of a lawyer and the rules of professional ethics (Judgment of the Supreme Court of Lithuania of 18 April 2019, civil case no. e3K-3-140-469/2019; Judgment of the Supreme Court of Lithuania of 1 March 2017, civil case no. 3K-3-64-378/2017). The case law also emphasizes the importance of loyalty and the avoidance of conflicts of interest: an agent acting in the interests of the principal is subject not only to certain duties but also to additional standards of loyalty, avoidance of conflicts of interest and other ethical conduct (Judgment of the Supreme Court of Lithuania of 18 April 2019, civil case no. e3K-3-140-469/2019). Although the courts, when analysing the fiduciary relationship between a lawyer and a client, do not name specific legal rules on the basis of which they conclude that a lawyer has fiduciary duties, there is no doubt as to the existence of these duties. The doctrine of foreign law also emphasizes that a lawyer has a fiduciary duty in the provision of legal services (Woolley, 2015). A lawyer inevitably makes discretionary decisions, so the discretion must be exercised for the benefit of the client, but by no means for the benefit of the lawyer (Luban, 2020). Without questioning the fact that a lawyer has a fiduciary duty, it is not entirely clear what specific content of that duty is. An analysis of the case law makes it possible to identify certain obligations of the lawyer involving fiduciary duties.

The courts state that a lawyer must perform his professional duties prudently: he must always act professionally, conscientiously and responsibly, and that he must perform his professional duties impeccably, in a timely, qualified, diligent and wise manner (Judgment of the Court of Appeals of Lithuania of 20 November 2017, civil case no. 2A-640-823/2017). Although performing wisely is distinguished, it is not said that such a duty of a lawyer is to be regarded as a fiduciary duty. In foreign doctrine, the duty of a lawyer to act wisely is equated with the duty to act diligently. It is argued that lawyers, in the pursuit of client's legitimate interests, have a duty of care, diligence, and precisely the level of diligence normally shown by other lawyers in the same or similar circumstances. If the client can prove that the lawyer did not exercise the care and diligence, that a reasonable lawyer would have used in similar circumstances, the client has the opportunity to claim damages (Nappier, 2014).

Although some authors consider the duty of care to be a lawyer's duty as a professional and do not regard it as a fiduciary duty, it is nevertheless stated that even legal authorities still consider the duty of care to be a fiduciary duty, which the lawyer must provide to his client (Nappier, 2014). Other foreign authors also briefly mention that duty of care is simply the usual rule of negligence (Easterbrook & Fischel, 1993).

Lithuanian courts, while analysing the duty to act wisely, noted that this is a mandatory part of a lawyer's activity, therefore we can assume that every person who has become a lawyer has to ensure such a duty. It is thought that this duty should be considered fiduciary, as it is subject to the same standards as, for example, the manager's fiduciary duty to act wisely: the lawyer is also assessed against the same standard of "bonus pater familias", i. y. as an average reasonably prudent and caring person. According to the doctrine of foreign law, it is necessary to assess how that diligence is ensured by the lawyer, i. y. other situations are analysed in which an attempt is made to find out what level of diligence is normally used by lawyers in similar circumstances. Lithuanian courts do not distinguish a lawyer's duty to act wisely as a fiduciary duty and instead, would seem to be more likely to consider it as a normal professional duty of a lawyer, but if the manager is subject to that duty as a fiduciary (Judgment of the Supreme Court of Lithuania of 6 September 2021, civil case no. e3K-3-215-378/2021) – it would seem that this duty should also be regarded as fiduciary in the legal relationship between a lawyer and a client.

A lawyer must also perform his or her duties in good faith, which is enshrined in Article 39(1) of the Law on the Bar of the Republic of Lithuania. The courts also refer to this duty as a necessary component of every lawyer's activity: the professional honour and integrity of a lawyer are traditional values, the observance of which is a lawyer's professional duty and a prerequisite for belonging to a law firm. The necessary professional knowledge of a lawyer (legal assistant) and the careful performance of professional duties are prerequisites for proper performance of the functions of a lawyer (legal assistant), therefore a lawyer (legal assistant) must constantly improve professional qualifications and seek to ensure proper quality of the services provided to the client; a lawyer (legal assistant) must always act professionally, diligently, professionally and perform his professional duties in an impeccable, timely, qualified, diligent and intelligent manner; a lawyer (legal assistant) must also fulfil other requirements and duties as a lawyer (legal assistant) in a timely, honest and diligent manner (Judgment of the Court of Appeals of Lithuania of 13 June 2019, civil case no. e2A-366-370/2019). In addition, the Court of Cassation notes that a lawyer must act fairly, civilly and perform his or her duties in good faith, comply with the requirements of the Lithuanian Code of Ethics for Lawyers (Judgment of the Court of Appeals of Lithuania of 2019 September 24, civil case no. e2-806-330/2019).

Just like a lawyer's duty to act wisely, a lawyer's duty to act in good faith is also not directly regarded as a fiduciary. The doctrine of foreign law states that a lawyer must be honest and must disclose all necessary information to the client in order to avoid any confusion on the part of the client. However, the duty to act in good faith should not be seen as a separate instrument and should only be seen as a part of a fiduciary duty of loyalty (Buhai, 2009). It is also stated that lawyers, being fiduciaries, must act honestly, professionally, diligently, do not depart from all the special rules applicable to their profession, be guided exclusively in the interests of the client, and respect the limits and duration of the mandate entrusted to them (Lefter & Duagi, 2017).

It should be noted that in the case law of Lithuania, this duty is not regarded as a separate fiduciary duty, but is linked to one of the duties of a lawyer as a professional. However, it is considered that this duty should be regarded as fiduciary, given that the duty of the agent to act in good faith is regarded as fiduciary. Since a lawyer acts as an agent in representing his client, the duty of good faith towards him should also be equated with a fiduciary duty. As with other fiduciary duties, it is apparent that the duty to act in good faith is not detailed and that there is a lack of disclosure of its content.

One of the basic principles of the activity of a lawyer, as enshrined in Article 5(5) of the Law on Bar of the Republic of Lithuania, is loyalty to the client. This principle is extensively detailed in Article 10 of the Lithuanian Code of Ethics for Lawyers (Regarding the promulgation of the Lithuanian Code of Ethics for Lawyers). Lawyers are obliged to be loyal to their clients. In one of the disputes heard by the Court of Cassation, an example was given that negotiating with the opposing party against the will of the client was a breach of the principle of loyalty. The Supreme Court of Lithuania stated that the principle of loyalty to the client obliges the lawyer to clearly agree with the client on the scope of the order, inform the client about the progress of the order, coordinate his actions with the client and take into account client's considerations and arguments, to inform the client immediately about material events of the execution of the order, so that the client can make the necessary decision in due time. If a client does not agree with a lawyer's position and arguments, the lawyer must explain to the client his right to refuse the services of a lawyer or refuse to provide legal services by warning the client before a reasonable period of time, but shall not acquire the right to act contrary to the client's position even if, in the opinion of the lawyer, it would be in client's best interests. Thus, the conduct of negotiations with the opposing party against the will of the client was rightly assessed by both the Bar Court of Honour and the Court of First Instance as a breach of the principle of loyalty (Judgment of the Court of Appeals of Lithuania of 20 November 2017, civil case no. 2A-640-823/2017). In another case, it was stated that the principle of loyalty to the client obliges a lawyer to provide services to the client in

such a way that it is in the best interests of the client, as well as to ensure the fairness, legality and ethics of the relationship between the lawyer and the client (Judgment of the Vilnius Regional Court of 24 January 2018, civil no. case 2-2401-560/2018).

According to the doctrine of foreign law, since the lawyer is usually entrusted with matters that the client himself has no interest in or is simply difficult to do, it is particularly important to ensure the diligence, competence and loyalty of a lawyer as a fiduciary (Buhai, 2009). It is also argued that the fiduciary duties of a lawyer can be divided into two parts: 1) the duties of competence and care and 2) loyalty duties and that the loyalty of a lawyer should be understood as putting the client's interests first, i.e. love everything he loves and avoid everything he avoids (Buhai, 2009). It is stated that loyalty means the accession of the fiduciary into the beneficiary's side, giving priority to him rather than someone else, and also the loyalty of a lawyer allows the client to be assured that the client's opinion will be taken into account properly and correctly (Wendel, 2020).

Thus, although foreign authors attribute the duty to act loyally to fiduciary duty, the Lithuanian courts do not state that the duty of a lawyer to act loyally is considered to be a fiduciary duty. It is thought that this duty must be regarded as fiduciary, given that the duty of an agent to act in good faith is held as a fiduciary duty. In addition, the lawyer is obliged to act exclusively for the benefit of his client.

Another particularly important principle of lawyer's activities is to avoid conflicts of interest, as provided in Article 5(5) of the Law on Bar Association of the Republic of Lithuania. This principle is also detailed in Article 11 of the Lithuanian Code of Ethics for Lawyers (Regarding the promulgation of the Lithuanian Code of Ethics for Lawyers). A lawyer must act in such a way that there is no conflict of interests between the lawyer's clients or the client and the lawyer. Several values are combined in lawyer's activity, namely the interest of a lawyer to engage in and receive income from this activity; the interest of the client for whom the lawyer must act; public interest, which is understood as a lawyer's commitment to act honestly (Judgment of the Supreme Court of Lithuania of 16 June 2021, civil case no. e3K-3-152-378/2021). These interests should not conflict with each other and should be compatible with each other in an orderly manner. It is very strange that the case law does not detail such a duty for the lawyer and does not indicate what should lie down under it. In the practice of the Supreme Court of Lithuania, it is laconically emphasised that lawyers must avoid conflicts of interest: lawyers must comply with professional ethics requirements in their activities (Judgment of the Supreme Court of Lithuania of 24 October 2007, civil case no. 3K-3-456/2007). Nor do the courts indicate that they treat such a duty as fiduciary.

For its part, the doctrine of foreign law states that the essence of the lawyer's duty to avoid a conflict of interest is that, in the event of a risk that representation by the

lawyer will have a negative impact on the client or consequences due to the lawyer's personal interests or the duty of a lawyer to represent another client, a former client or simply a third party, such representation is not possible and the exception is only if the consent of all the required persons is obtained (Rose, 2000). The doctrine of foreign law points to the importance of this duty, stressing that the need for lawyers to avoid conflicts of interest is the cornerstone of this profession (Kindregan, 1976). It is also stated that the most prominent conflicts of interest are those in which the lawyer's personal interests are intertwined with the interests of the client (Kindregan, 1976). A lawyer must ensure that the client's interests are placed first and foremost before the lawyer's own personal interests (Kindregan, 1976).

Thus, there is a tendency that the duty of a lawyer to avoid a conflict of interests, like his other professional duties, is not specifically distinguished by the courts as fiduciary duties. There is no doubt that this duty should also be regarded as a fiduciary duty, irrespective of whether it is distinguished as a result of the duty of loyalty or as a separate fiduciary duty. There may also be a parallel with a general representation relationship that, if, in their context, an agent has an obligation to avoid a conflict of interest and that duty is regarded as fiduciary, the corresponding duty of the lawyer should also be understood as a fiduciary duty.

In conclusion, it should be noted that Lithuanian courts, although pointing out that duties of a lawyer – to act reasonably, honestly, be loyal and avoid conflicts of interest are components of lawyer's activities, but are not considering it as fiduciary. According to the authors of this article, the fiduciary nature of these duties as essential elements of a lawyer's activity should be emphasized. In the absence of legal certainty at the level of legislation and of specific case law on the classification of such duties as fiduciary duties, at least for the time being, the content of lawyer's fiduciary duties in Lithuania is not fully clear and understandable.

4. Legal consequences of a breach of the agent's fiduciary obligations

Lithuanian material law does not directly regulate violations of agent's fiduciary duties, i.e. there is no indication as to how violations of agent's fiduciary duties may occur in particular. We can only understand possible cases of infringement by analysing the relevant case law. Since in the context of representation relationship, an agent carries out transactions on behalf of the principal, main situations in which there is a breach of the agent's fiduciary duties are cases in which the agent enters into a transaction without such a right or exceeding the rights conferred on him as an agent (Judgment of the Supreme Court of Lithuania of 20 November 2018, civil case no. 3K-3-437-469/2018). Another case in which a violation of fiduciary duties can be established is when an agent does not comply with the prohibition on dealing with

himself on behalf of the principal, as well as with the person whose agent he is at the time, with his parents, children, other close relatives and spouse or otherwise in a situation of conflict of interest. An agent will also be considered to be in a breach of fiduciary duties when acting in bad faith or acting outside principal's interests.

One of the main legal consequences that an agent, who has infringed fiduciary obligations, may have is the nullity of the transactions entered into by him. In one of the civil proceedings examined by the Supreme Court of Lithuania, the question of legal consequences of an agent's breach of fiduciary duties has been investigated (Judgment of the Supreme Court of Lithuania of 20 November 2018, civil case no. 3K-3-437-469/2018). In this case, the dispute between the parties arose because the defendant, acting as the agent of the bequeather (the applicant), transferred funds from bequeather's account to another defendant, thereby exceeding his powers as an agent. The power of attorney was granted only for the operation of certain banks, but no further rights were granted to the agent. The defendant was not given a separate power to transfer funds to another person. The Court stated that the agent was bound by fiduciary duties, inter alia, an obligation to ensure conduct which was consistent with the principal's will, but did not do so. The Court of Cassation also explained that transactions concluded by an over-executive agent are rebuttable, their nullity is governed by Article 1.92 of the Civil Code, which provides that if the agent's powers are limited by law or contract and the agent exceeds those limits, such a transaction may be declared invalid under the principal's action if the principal did not confirm the transaction. It follows that the possibility of approving that transaction, which the agent was not entitled to enter into, is a right of the principal on which he may rely if he considers that the transaction at issue is acceptable to him. If the transaction is declared invalid, the obligatory remedy for violated rights established in Article 6.145 of the Civil Code shall be applied – restitution. The essence of its application in the context of the invalidity of transactions is that the parties who have acquired assets under a declared invalid transaction must return them to each other, thus restoring the status quo ante (former situation). Such a purpose of restitution determines the conditions of its application. The court first must determine whether and to what extent the property was transferred under the disputed transaction (Judgment of the Supreme Court of Lithuania of 20 November 2018, civil case no. 3K-3-437-469/2018).

As stated above, Article 1.92(1) of the Civil Code states that, where the powers of the agent are limited by contracts or laws and the agent exceeds such limits, transactions may be declared void under the principal's action. In the context of this legal norm, it is important whether the transaction entered into by an over-executive agent was subsequently confirmed by the principal himself. If such a transaction in excess of the powers was nevertheless subsequently approved by the principal,

then the principal may no longer contest such a transaction, claiming that the transaction was concluded in the interests of whom.

Article 2.134(1) of the Civil Code prohibits the agent from entering into transactions with himself on behalf of the principal, as well as with the person whose agent he is at the time, with his parents, children, other close relatives and spouse. In the case law, such action is recognised as a conflict of interest and, in application of the abovementioned provision of the Civil Code, such a transaction may be declared invalid by the principal's claim. Article 2.135(1) of the Civil Code also prohibits the agent from violating the rights granted by entering into a transaction contrary to the interests of the principal. Such a transaction may also be declared invalid, but in the present case the interests of the third party are protected, since such a challenge is possible only if the third party knew or ought to have known of the conflict of interests.

Cases where agents act improperly by entering into transactions that are beneficial to themselves or transactions, which give rise to a conflict of interest, thereby trying to benefit themselves and not act on the principal's interests, are common. In such cases, the principals are protected against the violation of the fiduciary duties of the agents through the Institution of Invalidity of Transactions.

Another legal consequence which may arise for an agent who has breached fiduciary duties is a compensation for damage. This remedy is limited to cases where restitution is not possible or sufficient. This is also highlighted in the case law. In a previously analysed case of the Supreme Court of Lithuania (Judgment of the Supreme Court of Lithuania of 20 November 2018, civil case no. 3K-3-437-469/2018), the principal requested the recovery of funds through civil liability rather than as a consequence of the nullity of transactions, i.e. restitution. The lower courts granted such a request, and the Court of Cassation ruled that the courts hearing the case had failed to fulfil their obligation to classify the relationship of the legal relationship. The circumstances of the factual basis of the action shall be classified in accordance with the legal norms regulating the legal consequences of the transaction concluded after the agent was granted the powers by the principal. The obligation of restitution binds the plaintiff to the defendant who received the funds, but not to the defendant, so that the action was unreasonably upheld. The civil liability of an agent who has exceeded his powers would be possible in light of its terms and conditions, but there is no factual or legal basis in the present case. Compensation for damages from the point of view of reversal of the transaction constitutes a subsidiary remedy which could be used in the event that restitution would be impossible or insufficient to protect the rights violated.

Thus, in cases where it is not possible to return everything that has been obtained in kind under the disputed transaction, or this is not enough to protect the violated

rights, compensation from the agent is possible. This is also confirmed by Article 2.136(3) of the Civil Code, which states that if an agent has entered into a transaction while not entitled to enter into such a transaction or has exceeded the rights granted to him without the principal's approval of the transaction, he is obliged to compensate the third party, but only if the third party was unaware of such circumstances.

In conclusion, the legal consequences of a breach of agent's fiduciary obligations are as follows: 1) invalidation of transactions, 2) damages. If an agent concludes the transaction in excess of his powers or does not have such a right at all, a principal acquires the right to claim back everything that has been transferred on the basis of restitution or at least to receive some compensation through the institute of civil liability.

Conclusions

Fiduciary relationships are legal relationships based on exclusive trust between the fiduciary and the beneficiary. In the context of that relationship, the beneficiary is dependent on the fiduciary, as the governor of a greater power, and therefore the fiduciary is obliged to act exclusively in the interests of the beneficiary.

Fiduciary duties are at the heart of a fiduciary relationship. These duties, which fall exclusively on the fiduciary, are intended to ensure a balance of interests between the subjects of that legal relationship and to protect them against possible unlawful conduct on the part of the fiduciary. It is the fiduciary's duty, by its very nature, to be an effective means of ensuring the sustainability of the relationship between the beneficiary and the fiduciary.

Although Lithuanian legal acts generally do not directly impose fiduciary duties on any entity, these duties are named in the case law of Lithuanian courts. One such entity to which a fiduciary duty is recognized is an agent. The agent, as a fiduciary, has the following fiduciary duties towards the principal: to act honestly, to be loyal, and to avoid conflicts of interest.

Although in Lithuanian case law the relationship between a lawyer and a client is considered fiduciary, it is not considered that a lawyer has fiduciary duties towards his client. Since the relationship between a lawyer and a client falls within the scope of representation, it is considered that the lawyer has the same fiduciary duties as any other agent, i. y. act honestly, be loyal and avoid conflicts of interest.

It is held that an agent shall be deemed to be in breach of his fiduciary duties when he enters into a transaction without having such a right or in excess of the powers conferred on him, and when he fails to comply with the prohibition on entering into transactions with certain entities or otherwise acts in a conflict of interest. An agent in breach of his fiduciary duties may be liable for damages, or the transactions he has entered into may be declared void.

It can be concluded that both the content of the agent's fiduciary duties and the consequences of his violation of these duties are not clearly and properly regulated in the Lithuanian legal system. In the absence of sufficient legal regulation, there is a great deal of uncertainty as to what specific fiduciary duties an agent has and what appropriate actions presuppose a breach of fiduciary duties. More detailed regulation of fiduciary duties in the context of representation would help to ensure a more sustainable balance of interests between the parties to this relationship.

Disclosure statement

Authors declare that they do not have any competing financial, professional, or personal interests from other parties.

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