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§ 203 Accountability for Profits in the Absence of a Breach of Trust

The trustee is accountable for any profit made by him through or arising out of the administration of the trust, although the profit does not result from a breach of trust.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of the rule. If the trustee enters into a transaction in connection with the administration of the trust for the purpose of acquiring a profit for himself in violation of his duty of loyalty to the beneficiary, he commits a breach of trust under the rule stated in § 170, and is liable under the rule stated in § 206. Even if he enters into the transaction without intending to make a profit for himself and commits no breach of trust in so doing, nevertheless he is not permitted to retain the profit. Thus, if the trustee receives a commission or bonus for acts done in connection with the administration of the trust, he is accountable therefor, even if he does not commit a breach of trust in receiving the commission or bonus.

b. Profit made through the use of trust property. If the trustee makes a profit out of the trust property, he is accountable for the profit although he commits no breach of trust in making the profit. Thus, if the trustee receives payment for the use of the trust property, he is accountable for the money received, as for example where the trustee of a farm receives payment from a third person for the privilege of hunting on the farm. If the trustee makes an authorized investment in securities which he sells at a profit, he is of course accountable for the profit.

c. Profit made through sale of trustee's individual property to the trust. If the trustee purchases for the trust property in which he has an individual interest but is not liable for breach of trust because he did not know and had no reason to know that he was purchasing property in which he had such an interest, he is nevertheless accountable for any profit which he makes. Thus, if a trust company as trustee instructs a broker to purchase certain bonds and the broker places the order with a bank which purchases the bonds from the trustee's commercial department, the trustee is accountable for any profit which it makes on the sale, although it had no knowledge or reason to know that it was purchasing the bonds from itself. The trustee in such a case, however, is not liable for interest at the legal rate or for any loss resulting from the purchase, as he would be if he had known that he was purchasing from himself. See § 206.

d. Profit made through use of trustee's individual property. Even if the profit is made by the use of the trustee's individual property and he does not commit a breach of trust in making the profit, he may be accountable for the profit. Thus, if the trustee with his own funds purchases an encumbrance upon the trust property for the purpose of protecting the trust property, he is accountable for any profit he makes thereby.

Illustration:

1. A devises Blackacre to B in trust. Blackacre is subject to a first mortgage for \$ 10,000 and a second mortgage for \$ 5000. In order to prevent a foreclosure of the second mortgage, B with his own money purchases the second mortgage for \$ 3000. On the foreclosure of the first mortgage Blackacre sells for \$ 16,000. B is entitled only to \$ 3000 and interest out of the proceeds of the sale. See § 170, Comment *j*.

e. Profit unconnected with administration of trust. If the trustee enters into a transaction not connected with the administration of the trust, he is not accountable for a profit which may result merely because the trust property is indirectly affected thereby.

Illustration:

2. A devises his family residence to B in trust to permit C, the widow of A, to reside therein during her lifetime and at her death to convey the property to D. By the terms of the trust B is not authorized to purchase land. During C's lifetime B learns that negotiations are pending for the sale of adjoining land for uses of an objectionable nature. To prevent this, B with his own funds purchases the adjoining land for \$ 10,000, and after holding it for five years he sells it for \$ 25,000. B is not accountable for the profit.

f. Cross reference. As to the liability of the trustee for profits made by him through a breach of trust, see § 205.

Cross Reference

ALR Annotations:

Liability for rent or rental value of property of trustee under implied or resulting trust. 36 A.L.R. 1331.

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