

Court of Appeal Judgment

Justice Finlay Geoghegan delivered the main judgment for the Court of Appeal, in which she set out the well established principles of interpretation of contracts and applied them to the shareholders' agreement.

She considered whether the shareholders' agreement contained an implied term which restricted Breccia from calling in Benray's loan. She found that it did not. The judge stated that "*the reasoning of the trial judge as to why it was necessary to imply the restrictive term to give business efficacy to the Agreement cannot, in my view, be upheld...*". In the judge's view, there was nothing in the shareholders' agreement which could be interpreted as limiting a shareholder's right to recover outstanding loan monies, pursuant to another shareholder's loan which had been validly assigned to it.

The judge considered whether the shareholder's agreement should be construed to impose duties of good faith and fair dealing on the shareholders, and, if so, whether that would have the effect of preventing Breccia from calling in Benray's loan and / or appointing a receiver to sell the shares.

The judge stated that Irish contract law does not recognise a general principle of good faith and fair dealing, although there are certain, limited, categories of contractual relationships which imply a duty of good faith, such as partnerships and in relation to insurance contracts.

In the High Court, the trial judge had found that the relationship between the shareholders was not purely commercial and that the shareholders' agreement constituted a "*relational contract*". On that basis, he held that it was appropriate to follow what he described as "*the ground breaking judgment ... in Yam Seng Pte Limited v International Trade Corporation*"¹, in which the English High Court held that a duty of good faith and fair dealing could be implied into 'relational contracts' and he implied a duty of good faith and fair dealing into the shareholders' agreement.

Ms Justice Finlay Geoghegan disagreed with the trial judge. In her view, the shareholders' agreement was commercial in nature and it expressly included a "*no partnership*" clause. The judge held that the shareholders' agreement was not the type of contract to which any general duty of good faith applies in accordance with established Irish authority. Additionally, even if Yam Seng were to be followed in this jurisdiction – which the judge stated she was not deciding – the conditions necessary to imply

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terms into a commercial contract did not exist in this case so there was no basis for implying a duty of good faith and fair dealing into the shareholders' agreement.

Mr Justice Hogan delivered a short judgment in which he noted that "*Irish courts have not yet recognised*" a general principle of good faith in commercial contracts, although he left open the possibility of incremental developments in the area. He agreed with Ms Justice Finlay Geoghegan's, finding that it was not appropriate, or necessary, to imply a term of good faith into the shareholders' agreement.