

## Duty of good faith implied into a commercial contract (Sheikh Tahnoon Bin Saeed Bin Shakhboot Al Nehayan v Kent)

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**Commercial analysis:** In *Sheikh Tahnoon Bin Saeed Bin Shakhboot Al Nehayan v Ioannis Kent*, Leggatt J held that Sheikh Tahnoon Bin Saeed Bin Shakhboot Al Nehayan (Sheikh Tahnoon) owed Ioannis Kent (Kent) an implied duty of good faith. This duty arose out of an oral contract between the parties whereby they entered into a joint venture as equal shareholders. Detailing what Leggatt J describes as a ‘story [...] all too familiar’, the case recounts the story of two friends entering into business together, the subsequent breakdown of their friendship, threats of personal violence, and the disintegration of a multi-million euro business. Importantly, in practice, the case serves as a warning to commercial entities that the English courts may imply a duty of good faith into certain commercial agreements. Written by Oliver E. Browne, partner at Latham & Watkins LLP, London.

Sheikh Tahnoon Bin Saeed Bin Shakhboot Al Nehayan v Kent [\[2018\] EWHC 333 \(Comm\)](#)

### What are the practical implications of this case?

The case provides an important lesson that the courts are able to imply a duty of good faith into ‘relational contracts’. Citing his own discussion in *Yam Seng Pte Ltd v International Trade Corp* [\[2013\] EWHC 111 \(QB\)](#), Leggatt J considered that relational contracts are those in which the parties agree to collaborate with each other, without necessarily detailing their collaboration in written form. He continues to outline that relational contracts involve an element of trust and confidence that is to be distinguished from the trust and confidence involved in fiduciary relationships; it is a trust that the other party will act with integrity and in the spirit of cooperation.

Leggatt J then considered a number of cases evidencing the growing recognition of the existence of an implied duty of good faith in relational contracts. For example, in *Bristol Groundschool Ltd v Intelligent Data Capture Ltd* [\[2014\] EWHC 2145 \(Ch\)](#) the court recognised a relational contract existed between the parties and considered that it contained an implied duty of good faith that was breached by engaging in conduct that ‘would be regarded as commercially unacceptable by reasonable and honest people’ (para. 196). This serves as a reminder to commercial entities that, in circumstances where there is a relational contract, the court will expect parties to act honestly and with integrity.

Practically speaking, the case raises questions as to the scope of the duty. Leggatt J himself notes that it is ‘perhaps impossible to attempt to spell out an exhaustive description’ (para. 175) of what the duty of good faith entails in each case. This presents parties engaging in commercial transactions with a challenge, particularly when it comes to seeking exit strategies from businesses and commercial ventures. To the extent that any commercial parties enter into a relational contract, they will need to be aware that there is no certainty as to what the scope of their duty of good faith might be.

### What was this case about?

The case concerned an oral agreement between Sheikh Tahnoon and Kent, whereby they entered into a joint venture and became equal shareholders in Kent’s luxury Greek hotel business, which later expanded to include an online travel business. Sheikh Tahnoon provided significant amounts of money to the business, which suffered from numerous cash-flow issues. Between December 2011

and April 2012, Sheikh Tahnoon paid a final amount of €6.5m in exchange for Sheikh Tahnoon's equity in the group increasing to 70%. From April 2012, Sheikh Tahnoon refused to invest any additional funds.

The companies were restructured in order for Kent to repay Sheikh Tahnoon, and the parties entered into an agreement that provided for the demerger of the business and contained certain undertakings and indemnities given by Kent, and a promissory note by which Kent agreed to pay Sheikh Tahnoon a sum of €5.4 m in annual instalments.

In the case before the court, Sheikh Tahnoon claimed the value of the promissory note, which remained unpaid, and further sums under the agreement. Kent defended the action, claiming that his consent to the agreement and the promissory note has been obtained by unfair means, including threats of physical violence and in breach of fiduciary duties and / or a contractual duty of good faith owed to him by Sheikh Tahnoon.

## **What did the court decide?**

Leggatt J considered Kent's claims that Sheikh Tahnoon owed Kent a fiduciary duty and a duty of good faith. Highlighting that Sheikh Tahnoon did not undertake to act for or on behalf of Kent in any way, he found that there was no fiduciary duty owed by Sheikh Tahnoon to Kent. However, as discussed above, Leggatt J was able to find evidence that an implied duty of good faith existed. He felt that their relationship was one in which they naturally and legitimately expected higher levels of cooperation and candour than ordinary commercial parties dealing with each other at arm's length. Their business was formed on the basis of a personal friendship and involved more mutual trust than was ordinary in commercial relationships.

Ultimately, the judgment found that Sheikh Tahnoon had breached a contractual duty of good faith owed to Kent as his co-venturer.

## **Case details**

- Court: Queen's Bench Division, Commercial Court
- Judge: Leggatt J
- Date of judgment: 22 February 2018

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