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CEA Conference

17th October 2024





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Whoever Pays The Piper Calls The Tune? Enforcing Directors' Fiduciary Duties In The Companies Acts

Clíona Kimber SC



Introduction

- Are cipher directors in breach of their fiduciary duties?
- If so, can the duties be enforced?

Cipher

- Cipher: “a person of no importance, especially one who does the bidding of others and seems to have no will of their own”



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Case Law

Re: Mitek Holdings Limited (2010) 3 IR 374

Fennelly J "In order to discharge his duties, he must, in the first instance, inform himself about the business and affairs of the company and about his own duties as a director. Circumstances will inform the nature and extent of these duties. Even non-executive directors of companies must be increasingly conscious in the times we live in that they cannot be mere ciphers or purveyors of votes at the whim of management".



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The Duties

- Section 224 – Duty to have regard to the interests of employees



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The Duties - Continued

Section 228 fiduciary duties:

(a) Act in good faith in the interest of the company

(b) Act honestly and responsibly

(c) Proper Purpose Act in accordance with the Constitution and lawfully

(d) Use of company property

(e) Exercise of independent judgment

(f) Avoid conflicts of interest

(g) Exercise of care, skill and diligence

(h) 'have regard' to the interests of its members



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Are mere ciphers in breach of fiduciary duties?

- **Percival v Wright (1902) 2 CH 421,**
- **Allied Irish Coal Supplies Limited v Powell Duffryn International Fuels limited (1998) 2 IR 519, 538**
- **Re Mitek Holdings Limited (2010) 3 IR 374**
- **Central Bank of Ecuador and others (Appellants) v Conticorp SA and others (Respondents) [2015] UKPC 11**
- **Powers v Greymountain [2022] IEHC 599**



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Employee Actions where duties engaged

- **Durnin -v- Horse's Mouth Limited Trading as Sports caller [2024] IEHC 532.**
- **Keating v Shannon Foynes Port Co [2022] IEHC 505**



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Member Actions

- **ClientEarth v Shell plc [2023] EWHC 1897 (Ch)**



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Enforcement

- Enforcement by employers and members
- Duty to ‘have regard’?
- Personal liability of directors to victims if civil wrong

**Lifestyle Equities C.V. and another v Ahmed [2024]
UKSC 17**



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