

Held on trust or not held on trust – that is the question



This case serves as a useful reminder on the factors to be considered when trying to establish whether or not monies are being held on trust.

Here, ICC judge Agnello found that Festicket (“company”) did not hold monies on trust for ticketing agencies and promoters in relation to ticket sales it made as agent under its standard agreement.

The administrators of the company, who were appointed on 12 September 2022 were the applicants. The respondents to the application were promoters of festivals and concerts who had entered into agreements with the company to act as their ticket agent. Many of those respondents asserted that the sums held by the administrators were held on trust for them. Whilst a number of them asserted that an express trust existed in respect of the ticket sale proceeds under the particular agreement entered into, the vast majority of the respondents asserted that a trust in respect of the proceeds of the ticket sales arose from the terms of the company’s standard ticket agency agreement which the majority of them had entered into.

The salient points are as follows:

1. The issue at hand was whether a trust existed in relation to monies held by the company in connection with the ticket sales made by the company as an agent for the respondents under the company’s standard agreement.
2. As stated above, there were various respondents involved who were key promoters and who had engaged the company as their ticket agent.
3. The application encompassed all event promoters regardless of whether they claimed a proprietary interest in the funds held by the administrators.

4. The dispute revolved around the existence of a trust around the company's standard agreement with the respondents.
5. Arguments were made about express trust provisions, agency relationships, commercial terms and good faith clauses in the agreements.
6. Factors considered included the handling of proceeds, whether monies were held in separate accounts, retention clauses, VAT obligations and fiduciary relationships.

The judge concluded that there had been no trust created concerning the proceeds from ticket sales under the agreement.

The absence of

- specific provisions
- separate accounts
- restrictions on the use of funds

and a clause which allowed the receipts to be retained by the company for prolonged periods of time without any restrictions on where such sums should be kept, or on their use, led to the conclusion that no trust relationship existed. In addition, ICC judge Agnello said that the presence of good faith clauses did not alter her finding.

The case serves as a useful reminder that in order to establish whether monies are held on trust (and each case is fact specific), we need to look at –

1. The intention of the parties
2. The terms of any agreement between the parties
3. Approach the position more functionally and look at whether the trust relationship is appropriate to the commercial relationship in which the parties find themselves
4. Whether the money in question held separately/ was there segregation of the relevant funds?
5. Whether it was contemplated that the agent should use the money, property or proceeds of the property as part of their normal cashflow or was the use of the monies restricted.

These will need to be looked at together as one of these in isolation will not of itself be sufficient to demonstrate whether or not a trust existed.

How we can help

If you would like further advice or information on this topic, contact our [restructuring and insolvency team](#).



[Tania Clench](#)



Legal Director