

Insights

GET READY FOR A NEW LANDSCAPE FOR MARKET MANIPULATION AND MONEY LAUNDERING CLAIMS

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SUMMARY

Recent cases will dramatically impact the way claims concerning alleged market manipulation and alleged breaches of anti-money laundering legislation can be made.

In 2020, we successfully defended claims where litigants were seeking the right to bring private law rights of action for breach of regulatory regimes. In one case, the Court determined for the first time that there was no private law right of action for alleged breaches of the Market Abuse Regulation. In the other, the Court determined for the first time that there was no private law right of action for breach of the Anti-Money Laundering Regulations.

Market manipulation

In the case involving market abuse, the claimant, Burford Capital Limited was seeking disclosure from London Stock Exchange of the identities of market participants engaged in trading, when Burford alleged it was the subject of market manipulation leading to a £1.7 billion reduction in the value of its share capital. The Court determined that Burford did not have a good arguable case that it was the victim of spoofing and layering, and was therefore unable to obtain a Norwich Pharmacal injunction.

Where corporates consider themselves the victims of market manipulation, if the FCA did not agree that market manipulation had taken place, as Burford alleged in its case, the Court considered that the remedy would be to challenge the FCA directly through judicial review of any determination by the FCA that market abuse had not taken place.

Furthermore, claims in deceit or claims for fraudulent representations where allegedly manipulative trading could be interpreted as providing false representations to the market, were not claims which Burford itself could bring given any loss would be suffered by shareholders as opposed to the company itself. Similarly, the company could not bring claims in conspiracy to defraud because such claims would be liable to be struck out on the basis that any conspirators would be aiming,

through any conspiracy, to have shareholders dispose of their shares when the price had been manipulated, as opposed to seeking to damage the company itself.

In light of this case, it is likely that we will see any civil claims for market abuse being run as shareholder class actions going forward.

Anti-money laundering

Separately, in relation to claims concerning money laundering where it is alleged a bank failed to comply with anti-money laundering legislation, it is unlikely that we will see claimants being able to assert claims on the basis of alleged breaches of anti-money legislation given we successfully struck out such claims on behalf of a financial institution. The Court agreed that it is for the FCA to determine the sanction for any alleged breaches of anti-money laundering legislation, as opposed to a private litigant to seek to enforce rights based on breaches of the anti-money laundering regime.

Andrew Tuson wrote about this in our Emerging Themes in Financial Regulation 2021 publication.

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MEET THE TEAM



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