

## Employment Law London

### Banking sector

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#### Case watch

22 February 2011

Constructive dismissal and repudiatory breach of employment contract

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**Tullett Prebon Plc & Others V BGC Brokers & Others**

**Court of Appeal**

#### Facts

Tullett Prebon (T) and BGC Brokers (B) were competing inter-dealer brokers. The chief operating officer of T had joined B as managing director and put into action a plan to recruit T's brokers. He persuaded 13 to sign "forward contracts" with B, under which they agreed to join B at future dates. B provided them with indemnities in anticipation of litigation by T. B also agreed to make substantial signing-on payments to the brokers. Ten brokers (10Rs) then resigned from T and claimed that they had been constructively dismissed. Three brokers (3Ss) changed their minds and stayed with T.

The issues were:

- Whether 10Rs had been constructively dismissed.
- Whether T had induced 3Ss to breach their forward contracts with B.

#### Held:

B failed to show that T's conduct in seeking to persuade 3Ss to renege on the forward contracts with B amounted to a repudiatory breach of the duty of trust and confidence in their employment contracts with T. The question whether or not there had been a repudiatory breach of the duty of trust and confidence was a question of fact. The legal test was whether, looking at all the circumstances objectively, the contract breaker had clearly shown an intention to abandon and altogether refuse to perform the contract.

As for the issue of repudiatory breach, it was necessary carry out an objective assessment of the true intention of T's hierarchy. It was found that that intention was not to attack, but to strengthen, the relationship. That was a permissible and correct finding, reached after a careful consideration of all the circumstances which had to be taken into account.

It was found that the forward contracts were subject to obligations of trust and confidence, even though 3Ss were not in B's employment. The forward contracts were effectively contracts of employment, as was plain from their express terms. The situation was one in which there was an overarching obligation implied by law as an incident of the contract, as with a contract of employment in the strict sense,

It was clear that B was intent on bringing about a mass early departure of brokers from T, whether or not lawful grounds existed. As a matter of fact and law, it was concluded that B had committed repudiatory breaches of the forward contracts. As a result of which 3Ss committed no breach when terminating their contracts.