

ACCOUNTANT UPDATE

SMSF AUDITORS FOUND LIABLE FOR FAILED INVESTMENTS

Two recent cases involving SMSF auditors highlight the potential liability of auditors in undertaking audits of SMSF'S and the need for auditors to obtain evidence to support the opinions expressed.

In *Cam & Bear Pty Ltd v McGoldrick* [2018] NSWCA 110, the NSW Court of Appeal found the SMSF Auditor negligent for failing to provide adequate warnings to the SMSF Trustee as to the recoverability of assets which were described as "cash". The Court considered that these assets were actually unsecured loans to a company related to the SMSF's investment advisor and that the auditor had an obligation to investigate the recoverability of the "cash". The auditor was also required to provide a qualified opinion given that he was a "very experienced accountant and auditor who was engaged for the purpose of protecting the Fund and its trustee against financial risks".

Similarly, in *Ryan Wealth Holdings Pty Ltd v Baumgartner* [2018] NSWSC 1502, the Court held that the SMSF auditor failed to detect and report to the Trustee irregularities which had existed over a number of years. The irregularities concerned a number of unsecured loans which were entered into by the plaintiff. It was alleged that the auditor knew, or ought to have known, that the investments were high risk and that pension from the SMSF was the beneficiaries' sole source of income. The Court ordered damages payable to the plaintiff in the amount of \$2.26 million which included a 10% apportionment to the plaintiff for contributory negligence.

The above cases highlight that the higher standard of care the courts have held applies when auditing SMSF's where the trustee is unsophisticated in financial affairs.

For legal advice or assistance in relation to this issue, contact Callun or Shane using the contact details below.

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