



# Auditors “Duty of Care”

Manoj Abichandani | SMSF Specialist (UNSW)

# Our Speaker Today

## **Manoj Abichandani**

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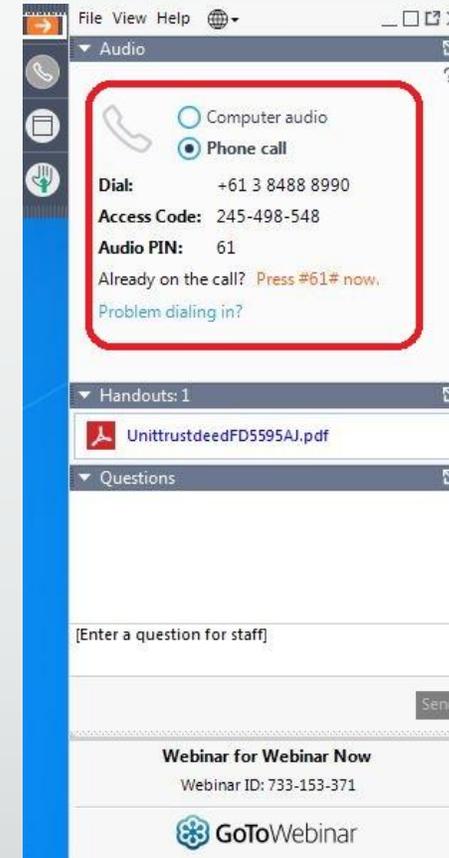
# How much an SMSF Auditor must audit

1. Engagement Letter – What are you auditing
2. Audit of un-related entities where SMSF invests (Custodians & Investment Managers)
3. Cam & Bear Pty Ltd v Mc Goldrick - highlights SMSF audit risk
4. How can an SMSF auditor protect himself

# House Keeping - Audio

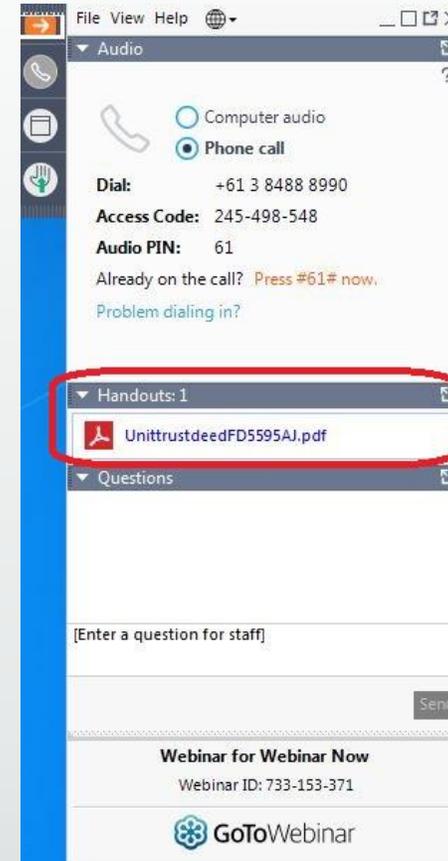
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# House Keeping – Hand Out

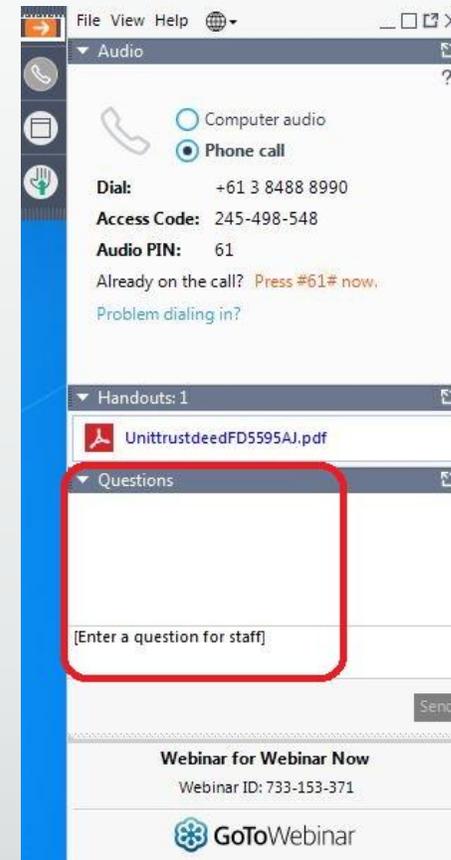
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From the Panel



# House Keeping – Questions on this Presentation

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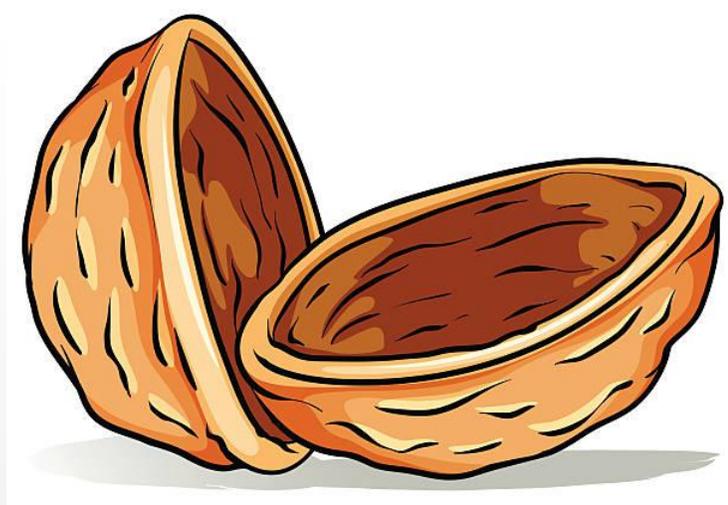
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# Auditor's Risk – In Nut shell



- This case is more about “Trust” and “Friendship” - as one friend was looking after the SMSF assets of another friend – Dr Bear got scammed by a “friend”
- importance in **causing the damage** than the low-level negligence
- Limitations of Audit – Engagement Letter
- Audit of un-related entities such as Unit Trusts / Companies / Custodians & Financial Managers – **where SMSF invests**
- Trustee Representation Letter – **Can this document remove responsibility of the Auditor?**
- Investment described as “Cash in xxx” in the balance sheet of the SMSF
  - not recoverable!

**Round 1** : Court decided in favor of the Auditor as “what was the likely hood of the trustee taking any preventive action – had the auditor warned them”

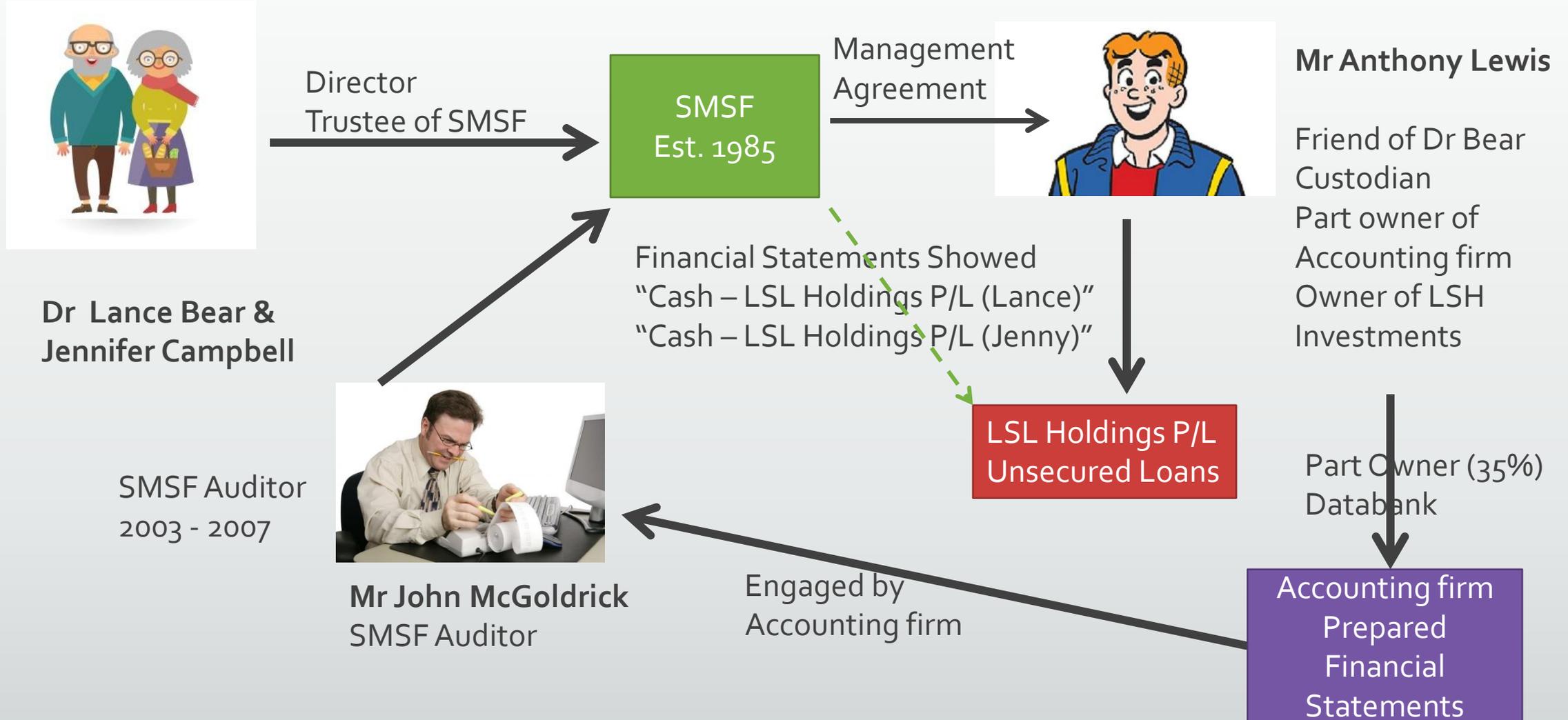
**Round 2**: On appeal three judges found the auditor negligent

# A case of negligence....

## Auditors Duties

- Review of SMSF's financial statements
- Obtaining evidence of assets
- Valuation of investments
- Appropriate reporting
  - Management Letter
  - Qualification of Audit Report

# Cam & Bear Pty Ltd v McGoldrick [2018] NSWCA 110



# Facts of the case

- Investments were managed by a custodian who partly owned the accounting firm
- The Cash stated in the balance sheet was an investment “cash LSLH” in the balance sheet
- Cash was in fact a “loan to LSL” a related entity of the custodian
- LSLH did not have any bank account – their liabilities were greater than assets

# Case Details .... Round 1

Judge found **Mr McGoldrick** owed the corporate trustee a duty of care to qualify the financial statements

**Mr McGoldrick** should have made proper enquiries of the financial condition of Mr Lewis' investment company which held the monies in unsecured loans

**Had Mr McGoldrick** made proper enquiries, he would have been alerted to the risks involved, requiring him to inform Dr Bear

**Mr McGoldrick** was held to have made false and misleading statements in relation to the Fund's accounts in **breach of his duty of care**.

**Dismissed the claim:** Mr McGoldrick's breaches **were not causative** of the loss suffered by the corporate trustee

# Case Details ...**Round 2 - Appeal**

Mr McGoldrick's failed in his duty to qualify his audit certificate and identify any potential risks

- Trustees contended that their fund was invested in “cash and shares”
- **Trustees continued contributions which would otherwise not have been made** – had they been informed by the auditor that the investments are made in “un secured products”
- Trustees **relied on the audited accounts**

Mr McGoldrick was liable for and caused the majority of the Fund's loss.  
Liability was reduced to 90%

# Conclusion...

**Auditor owes a duty of care** to ensure that accounts are correctly described in the financial reports

High standard of care of auditors providing services to SMSF trustees, particularly when such trustees **lack financial sophistication**

Auditor did not make significant investigation

Auditor was held liable as he was negligent – did not communicate

Auditor as he did not report to trustees

- Investments in Crypto currencies

# Scope of Auditors duty..

Whether a breach of that duty **caused the loss claimed**

- Trustees did not understand the investment
- Balance sheet stated “Cash” – resulting in significant material misstatement
- Audit report – Part A – Financial audit – failed to report material misstatement
- Material Misstatement
  - “Valuation of asset error” as the asset was not recoverable

# Accountants & Administrators....

Liability of Accountant – **appointing not so competent auditors**

Investments in unlisted investments or loans to unrelated parties

- Valuation Issue
- Substantiation
- Disclaimer at the bottom of financial statements – **Accounts compilation**
- Accounts prepared on the basis of information provided
  - Bank Data Feeds
  - Crypto currencies
  - Loans to unrelated parties

# Crux of this case – Negligence in failing to identify and report doubts as to recoverability of assets

*Mr McGoldrick: Mr Lewis led him to believe that Dr Bear and Ms Campbell were "happy with the Fund's financial reports describing the monies in the LSL Holdings account that way". Mr McGoldrick said that he had a conversation to similar effect with Mr McIver of Databank. As noted earlier, Mr McGoldrick did not have any direct communications with Dr Bear (or Ms Campbell).*

## Signing off audit report on un-signed financial statements

- Had the financial statements presented to the auditor already signed by the trustees of the fund, the onus of classification of all assets would have moved to the trustee of the fund
- **Is reporting everything as non-recoverable the answer** as on balance date
  - Valuation of assets as on Audit Sign date – Subsequent events
    - **Value of shares and other assets – after audit**
    - **During GFC time** – Many SMSF's lost more than 50% of assets – does this case give these trustees reason to recover from the fund auditors?

## Going forward: **How can auditors protect themselves ?**

Communication is the key

- Engagement Letter
- Trustee Representation Letter
- Management Letter

Introduce yourself to the trustee

- Phone Call
- Confirmation that Management Letter has been sighted by the trustees

# Relevant Auditing Standard

**ASA 210** Agreeing the Terms of Audit Engagements

**ASA 315** *Identifying and Assessing Risks of Material Misstatement*

**ASA 230** *Audit Documentation*

**ASA 240** *The Auditor's Responsibilities Relating to Fraud in an Audit of a Financial Report*

**ASA 450** *Evaluation of Misstatements Identified during the Audit*

**ASA 505** *External Confirmations*

**ASA 560** *Subsequent Events*

**ASA 700** *Forming an Opinion and Reporting on a Financial Report*

**ASA 701** *Communicating Key Audit Matters in the Independent Auditor's Report*

# Questions Time

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