

THIRD PARTY LIABILITY FOR 'KNOWING RECEIPT' AND
'KNOWING ASSISTANCE' POST-*GRIMALDI v CHAMELEON*
MINING NL (NO 2)

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Murdoch University 2012.

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Abstract

This paper examines the position of third party liability for ‘knowing receipt’ and ‘knowing assistance’ under *Barnes v Addy* in Australia following the decision of the Full Court of the Federal Court of Australia in *Grimaldi v Chameleon Mining NL (No 2)*. *Grimaldi* demonstrates that third party liability under *Barnes v Addy* is a primary, fault based liability concerned with the wrongdoing of the third party. There remains a technical distinction between the ‘two limbs’ of *Barnes v Addy* on the basis that a dishonest state of mind on the part of the breaching fiduciary or trustee is required to trigger liability for knowing assistance, but not for knowing receipt. Liability for both knowing receipt and knowing assistance is based on the third party’s level of knowledge relevant to the breach of trust or fiduciary duty. Knowledge falling within categories (i)-(iv) of the *Baden* scale, but not category (v) will trigger liability under both limbs. Corporate property misapplied in breach of fiduciary duty is treated as trust property for the purposes of third party liability under *Barnes v Addy* in Australia, despite recent comments of the High Court suggesting that this position may not yet be confirmed.

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