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COMPANY DIRECTORS - THE DANGERS OF INFORMALITY

By Nicholas Woolf, Director and Principal of Nicholas Woolf & Co

Many companies, especially family and smaller companies, run their business on an informal basis and fail to comply with or document properly that they have complied with essential elements of company law. It is a false economy. It can easily result in years of litigation and even loss of a good business.

This is amply illustrated in the recent case of Fairford Water Ski Club Limited, Respondent v 1) Craig Ronald Cohoon and 2) Craig Watersports (a firm) Appellants. The issue before the Court of Appeal was a director failing to properly declare his interest in contracts.

The basic facts

The Company owned a lake and surrounding land in Fairford, Gloucestershire. It ran a members' club centred on water skiing in the lake. Since 2007, Craig was chairman and director of the Company. Craig was also a partner with his son in a separate business Craig Watersports running a water ski school and operating a shop selling water ski equipment from the Old Rangoon Pub on the lake. The club also ran its administration from the Old Rangoon pub. This position remained until 2017 when the management of the club changed, Craig resigned and was sued for £1.55 million for numerous breaches of directors' duties but significantly for failing to declare a conflict of interest. There was a particular issue as to whether a management fee paid by the Company to Craig Watersports over a ten-year period amounting to £350,000 for managing the site had been properly declared in accordance with the Companies Acts. The Company sought to recover that £350,000 from Craig.

1. It was common ground that all the directors and shareholders knew of Craig's management fee and interest in Craig Watersports.
2. There had been no allegations of breaches of other duties in this regard.
3. It was acknowledged Craig had acted reasonably and honestly throughout.

In the High Court the hearing that lasted seven days and the Judge found for the Company. Craig appealed the declaration of interests issue and the matter went to the Court of Appeal where it was heard over two days. Eventually Craig succeeded.

What is to be learned from this case?

1. The law regarding disclosure of directors' interests is to be found in each company's Articles of Association and, depending on when the disclosure should have been made, either under the 1948, 1985 or 2006 Companies Acts. The provisions will vary in respect of each company are of a technical nature but must be adhered to.
2. Directors' duties as set out in sections 171-177 Companies Act 2006 must be taken seriously, complied with and properly documented.

3. If a director is alleged to be holding sums of money in trust and has breached that trust then the Limitation Act does not apply, and claims can go back beyond six years. It was for ten years in this case.
4. That attitudes of parties may change particularly if there is a change in directors or control of a company.
5. That it is less expensive in the for the company administration to be formal and run properly than to be tripped up at some time in the future.

If you are a director of a company what could you do now with a view to checking your own position and avoiding possible claims in the future?

1. Be aware that breaches of company law by directors may lead to personal liability and criminal sanctions.
2. Run an audit of transactions that have been carried out over the relevant period.
3. Compare the transactions against the company books and records and the law.
4. If the company's books and records are inadequate have the company's books and records corrected so far as is permitted by law.
5. Arrange, if possible, for the appropriate company resolutions to be passed ratifying transactions that have not been adequately documented in the company's records and ratifying directors' conduct.

For practical reasons some or all of the above may not always be possible and professional advice should be sought in any event.

Assistance

If you require help, assistance or wish to discuss any of the issues in this article please contact Nicholas Woolf info@nicholaswoolf.com or +44 (0)7242 6018

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