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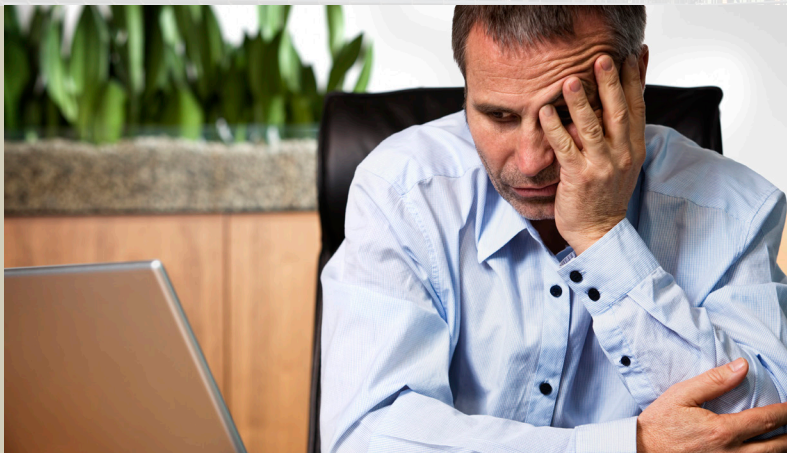
SPRING 2022

TOUGH NEW POWERS AGAINST DIRECTORS AVOIDING LIABILITIES



The government is introducing new powers to clamp down on directors who dissolve companies to avoid paying their liabilities. Rogue directors may be required to pay compensation to creditors.

The new legislation extends the Insolvency Service's powers to investigate and disqualify company directors who abuse the company dissolution process.

The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act will also help tackle directors dissolving companies to avoid repaying Government backed loans put in place to support businesses during the Coronavirus pandemic.

Business Secretary Kwasi Kwarteng said: "These new powers will curb those rogue directors who seek to avoid paying back their debts, including government loans provided to support businesses and save jobs."

The Insolvency Service already has powers to investigate directors of companies that enter a form of insolvency, including administration and liquidation.

It may also be instructed to investigate live companies where there is evidence of wrongdoing.

This Act extends those investigatory powers to directors of dissolved companies and if misconduct is found, directors can face sanctions including being disqualified as a company director for up to 15 years or, in the most serious of cases, prosecution.

The Business Secretary will also be able to apply to the court for an order to require a former director of a dissolved company, who has been disqualified, to pay compensation to creditors who have lost out due to their fraudulent behaviour.

Please contact us for more information about the issues raised in this article or any aspect of company law.

CONTRACTOR AWARDED £39K AS ADJUDICATOR DECISION UPHELD

A building firm has been awarded £39,000 after an adjudicator's decision in a contract dispute was upheld by the Technology & Construction Court.

The case involved BraveJoin Co Ltd and Prosperity Moseley Street Ltd.

Prosperity had engaged BraveJoin to undertake some steel and cladding work on a site.

In November 2020, BraveJoin sent invoices to an intermediary who acted for Prosperity and others in the same group of companies.

The intermediary responded that the invoices would be paid in December 2020 and attached a payment notice, which related to three of the six invoices.

On 29 January, the intermediary sent two pay less notices in respect of two of the invoices on the basis that Prosperity was not happy with the work done.

Contract Law

Prosperity failed to pay. It stated that the specific entity that BraveJoin had contracted with had not been identified, as at one point it had asked for clarification as to who should pay the invoices.

BraveJoin referred the dispute to adjudication. Prosperity maintained that the adjudicator had no jurisdiction as no dispute had crystallised.

The adjudicator found that as BraveJoin had submitted invoices, that had given rise to a dispute. He held that Prosperity had treated five of the invoices as valid and was therefore obliged to pay the sums that were due in them.

Prosperity submitted that there was no dispute as BraveJoin had initiated the claim against the wrong company in the group and so no dispute had crystallised.

The court ordered that the adjudicator's payment award should be enforced.

It held that there clearly was a dispute between the two parties.

BraveJoin had sent invoices to the intermediary. The terms of the invoices referred to Prosperity, and the intermediary responded with pay less notices issued on behalf of Prosperity.

Please contact us for more information about contract law.

CINEMA LIABLE FOR RENT DESPITE COVID CLOSURES

A cinema has been told that it cannot defend a claim for payment of rent arrears and service charges on the basis that it was required by law to close during the Covid pandemic.

The case involved London Trocadero (2015) LLP and Picturehouse Cinemas Ltd.

Under the lease with the landlord, Trocadero, Picturehouse covenanted not to use the premises other than as a cinema. However, the landlord expressly gave no warranty that the premises could lawfully be used for that purpose.

As a result of Covid-19, regulations were imposed between March 2020 and July 2021 which either prevented cinemas opening or rendered the opening of the tenant's cinema uneconomic.

No rent or service charges had been paid since June 2020 and the landlord claimed arrears of £2.9 million.

The High Court found in favour of Trocadero. It dismissed Picturehouse's argument that terms should be implied into the leases to the effect that payment of rent and service charges should be suspended during any period for which use of the premises as a cinema was illegal and/or during which attendance was not at the anticipated levels.

Such terms were neither so obvious that they went without saying nor necessary to give the leases business efficacy.

The tenants were required to pay rent even though the premises could not be used for the intended purposes because of unforeseen events.

That did not deprive the leases of business efficacy or mean they lacked commercial coherence.

Without the implied terms, the risk was shouldered by the tenants, but there was no commercial reason why the landlord should necessarily bear the loss.

Where the risk should lie was a matter for negotiation between the parties.

Please contact us for more information about the issues raised in this article or any aspect of commercial property law.

DIRECTORS DIDN'T BREACH DUTIES WHEN WITHDRAWING £1.2M

Two directors did not breach their legal duties when they paid themselves a total of £1.2m from their failing company.

That was the decision of the High Court in a case involving Brookmann Home Ltd (In Liquidation). The company had been formed as a vehicle to purchase a textile business.

Most of the purchase price was raised from money advanced to the textile company under a factoring agreement. The directors used a bank account in Brookmann's name for the textile company's business transactions. They also became directors of the textile business.

Between May 2011 and January 2013 over £1.2 million was paid to them from the bank account. They contended that the payments were remuneration for services to the textile business. The payments included £150,000 for services in connection with acquiring the business and payments for management services.

Brookmann was compulsorily wound up on a creditor's petition in August 2013. The textile business went into administration in November 2013.

The liquidator submitted that the payments to the directors were not authorised by Brookman's articles, were made when Brookmann was insolvent and were in breach of their duty to have proper regard to the interests of its creditors.

The High Court dismissed the claim. It held that the bank account from which the payments had been made had been entirely funded from money paid to or for the benefit of the textile company.

That money was to be treated as an asset of the company, not of Brookmann.

Please contact us for advice about company law.

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