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General

**The Corporate Veil and Proceeds of Crime – Court of Appeal Ruling**

The corporate veil affords little or no protection to directors who use their companies as instruments of tax fraud. However, as a Court of Appeal ruling showed, that does not mean that the separation between corporate and individual personalities is necessarily irrelevant when it comes to recovering the proceeds of crime.

The case concerned a director who was convicted of three counts of fraudulently evading VAT and one of cheating the public revenue. He committed the offences in his role as a director and financial controller of three companies. Until the balloon went up, he treated the companies as his personal cash cow, extracting sums from them that greatly exceeded his entitlements as a director and shareholder.

When the frauds came to light the companies swiftly collapsed. After the Crown launched further proceedings under the Proceeds of Crime Act 2002, a settlement was reached whereby the man's benefit from crime was agreed at £6,673,082. The value of his available assets was agreed at £5,470,258. By consent, a confiscation order was made in the latter amount.

Upholding his appeal against that outcome, the Court expressed the clear view on the available evidence that, before the consent order was agreed, he had received mistaken advice that he could place no arguable reliance on the fact that he and the companies had separate legal personalities.

The companies, the Court noted, could neither be described as a sham nor merely a device to facilitate tax fraud. Whilst also defrauding the Revenue, they operated legitimate businesses and had a large number of real employees. Although the man controlled their finances, it was certainly arguable that the sums paid to, or withheld by, the companies as a consequence of the frauds were not a proper measure of the criminal benefit he received.

Although the confiscation order was made by consent, the Court found that the most exceptional circumstances existed which would render it unfair not to allow the man's appeal. The ruling meant that the amount of his criminal benefit, but not the amount of his available assets, would be reassessed at a further hearing. Whether that hearing would result in a reduction in the amount of the confiscation order remained to be seen.

**Partner Note**

*Miller v R [2022] EWCA Crim 1589*

Property

**Tenacious Hotel Owner Achieves 70 Per Cent Cut in Rateable Value**

Business owners who feel that their non-domestic rates bills are unfairly high should seek professional advice without delay. The point was powerfully made by the case of a determined hotel owner who successfully argued that the valuation of his premises for rating purposes should be reduced by more than 70 per cent.

The owner objected after the 15-bedroom hotel was entered into the 2017 rating list at a rateable value of £59,000. A local authority valuation officer took heed of his complaint and reduced that figure, first to £56,000, then to £54,000 and finally to £31,000. The owner, however, remained convinced that the premises had been overvalued and took his case before the Upper Tribunal (UT).

Upholding his challenge and reducing the premises' rateable value to £16,250, the UT employed a valuation method that was primarily based on the level of annual receipts that a reasonably efficient operator of the hotel could fairly be expected to maintain. The UT noted that the case demonstrated what could be achieved by a tenacious and persistent business owner.

We can advise you on any matters relating to commercial property rates. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Arma Hotels Ltd v Bunyan (Valuation Officer) [2023] UKUT 3 (LC)*

Tax

**Businessman Establishes a 'Reasonable Excuse' for Delaying VAT Payments**

Traders who choose to put tax at the bottom of their payment priorities are asking for trouble. However, in one case, a businessman persuaded a tax tribunal that he acted reasonably in delaying VAT payments so that he could pay his hard-pressed staff in the midst of the COVID-19 pandemic.

The man ran an interior renovations company that suffered particularly severe cashflow problems during the pandemic. Jobs, which involved members of staff spending lengthy periods inside customers' homes, took much longer to complete than usual and liability to pay VAT on invoices often arose before payment from customers was received. HM Revenue and Customs (HMRC), however, took a firm line and issued substantial surcharge and penalty demands against the company after a number of VAT payments were made late.

Challenging the demands before the First-tier Tribunal (FTT), the man pointed to the negative consequences of the pandemic on his business. He stated openly that he had, on occasions, made conscious choices to pay staff and suppliers before HMRC. He said that paying tax late had far less consequence than a member of his staff missing a mortgage payment or being unable to buy food.

Ruling on the matter, the FTT noted that it is a distinctly unattractive argument for a trader to assert that it is better to pay staff and suppliers first, in preference to HMRC, as this will keep the business going longer and provide a better overall result for the exchequer. The tax system does not permit taxpayers to take matters into their own hands by speculating with funds due to HMRC.

In upholding the company's appeal, however, the FTT found that the man managed the business with foresight and diligence amidst the unforeseeable, almost daily, changes in the law and government guidance that accompanied the pandemic. The trading difficulties were brought about by factors outside his control and outstanding VAT was paid as soon as cashflow allowed. In all the circumstances, delaying payment of VAT was a reasonable course to take.

Our expert lawyers have experience in handling all types of business tax issues. Contact **<<CONTACT DETAILS>>** for advice.

**Partner Note**

*Bicester Property Interiors Ltd v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 13 (TC)*

Company

**In Business With Your Life Partner? Don't Neglect the Legal Formalities**

When life partners are in business together, they all too frequently pay scant regard to the legal requirements involved in running a company. As a High Court ruling showed, however, such an informal approach can have serious and unforeseen consequences in the event of a relationship breakdown.

The case concerned a couple who had two children during their more than 20 years together. Starting out with nothing, they built up a substantial business dealing in stone and concrete products and building houses. They ran their various enterprises through a network of eight companies, but the dispute that followed the acrimonious end of their relationship focused on two of them.

Whilst their relationship subsisted, they were equal shareholders and joint directors of both companies and the main object of the business – which they ran as a quasi-partnership – was to provide for the family. They took little notice of the separate legal identities of their companies or of legal requirements in managing them. They were run without formal board meetings or resolutions and, at times, the assets and liabilities of one company would be dealt with as those of another.

After the woman launched proceedings, the Court noted that, unsurprisingly, the end of their personal relationship went hand in hand with the loss of business trust and confidence between them. The man began to focus on his own interests and certain corporate assets were misused. Her access to managerial information was restricted and some business decisions were taken without consulting her appropriately.

Upholding her claim under Section 944 of the Companies Act 2006, the Court found that the companies' business had in certain respects been conducted in a manner unfairly prejudicial to her interests as a shareholder. The man was ordered to buy out her shares in the companies for a total sum in excess of £850,000.

For advice on any aspect of company law, contact us.

**Partner Note**

*Davies v O'Keefe and Others [2023] EWHC 5 (Ch)*

Contract

**High Court Strikes a Delicate Balance in Public Contract Tendering Dispute**

In public contract tendering disputes, judges are often called upon to strike a delicate balance between commercial interests and the benefits of awarding important public service contracts promptly. A High Court ruling provided a classic illustration of how such countervailing factors are placed on the scales.

The case concerned a contract for the supply of equipment to vulnerable people to enable them to live independently in the community. The contract, which was the largest agreement of its kind in the UK and possibly in Europe, was put out to tender on behalf of a consortium of local authorities.

After a company that had for some years been the incumbent provider of the relevant equipment lost out to a trade rival in the procurement exercise, it launched proceedings, alleging numerous flaws in the tendering process. By operation of the Public Contracts Regulations 2015, the award of the contract was automatically suspended. The consortium, however, applied for the suspension to be lifted.

Ruling on the matter, the Court noted that it was, at this stage, impossible to reach any concluded view as to the strength or weakness of the company's claim. It was satisfied, by the narrowest of margins, that the company was at risk of sustaining irremediable harm, in the sense that it could not be adequately compensated by damages, if the contract were wrongfully awarded to its rival.

That risk was modest, however, and the impact on the company, save in terms of lost profits, had been markedly overstated. Although the loss of the contract would decrease the scale of its business and result in the loss of some specialist staff, it would remain a significant participant in what was a growing market.

If the suspension were maintained, the consortium would, pending judicial resolution of the dispute, be prevented from awarding the contract for more than a year. During that period, it would be unable to put in place what it viewed as an improved service. The lengthy delay in awarding the contract would also put the rival to considerable inconvenience and expense.

The company genuinely believed that the rival's tender was unrealistically priced and that it would not be able to perform the contract as well as the company would have done. The rival was, however, a substantial business with considerable experience in the field and there was no basis for finding that the new arrangements would break down. Overall, the Court found that the balance of convenience came down in favour of lifting the suspension.

Our expert lawyers can advise you on any contractual matter. Please contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Medequip Assistive Technology Ltd v The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea [2022] EWHC 3293 (TCC)*

Insolvency

**Administrators Appointed to Salvage Sanctioned Air Freight Company**

Tough sanctions imposed in response to Russia's invasion of Ukraine have left many Russian-owned companies in a state of zombie-like paralysis. However, as a High Court ruling showed, insolvency practitioners are working hard to ensure their orderly wind-down and fair treatment of their creditors and employees.

The case concerned an English-registered air freight company in which a Russian businessman held a majority shareholding. Both he and the company were subject to the full force of UK asset-freezing sanctions and the latter had been constrained to cease trading. Its aircraft leases had been terminated; its bankers had announced their intention to close its only operative account and its Civil Aviation Authority licence was in jeopardy.

Although the company had more than £13 million in the bank and was apparently balance sheet solvent, its difficulty in accessing those funds had resulted in about £2 million in unpaid debts. Its workforce of about 100 faced an uncertain future. With a view to salvaging the value of its assets and rescuing it as a going concern, its sole director applied to the Court for it to be placed into administration.

In granting the order sought, the Court noted that it was perfectly clear that, due to the sanctions, the company was cash flow insolvent in that it was unable to pay its debts as they fell due. It was reasonably likely that experienced and well-regarded administrators would be licensed by the Office of Financial Sanctions Implementations (OFSI) to deal with the company's funds.

The OFSI was likely to have confidence in independent administrators and, even if a sale of the company were not permitted, it was reasonably likely that they would be licensed to gather in and distribute its assets so as to satisfy its creditors and meet its obligations to its employees. They could at least ensure an orderly wind-down of its business in a manner that respected the sanctions in that no direct or indirect distributions would be made to the majority shareholder.

Expert guidance in relation to any matters surrounding insolvency is invaluable. Our specialist lawyers can advise.

**Partner Note**

*In the Matter of CargoLogicAir Ltd [2022] EWHC 3316 (Ch)*

Health and Safety

**Wind Turbine Technician Due Compensation for Severed Left Arm**

Even the most careful employees can suffer industrial accidents for which even the most safety-conscious employers can be held responsible. The High Court made that point in the case of a technician whose left arm was traumatically amputated whilst he worked on the inner machinery of an offshore wind turbine.

The technician, whose reputation for carefulness had earned him the nickname 'Mr Safety', was working within the housing of the turbine, which was on board ship and being prepared for installation. Unaware that the turbine's generator was under power and slowly moving, he put his arm through a hole in a brake disc to check a component. On completing the check, he realised that he could not withdraw his arm and he could only watch as the machinery severed his limb.

In finding the company that employed him at the time two-thirds liable for the accident, the Court found that technicians who had been working on the turbine earlier in the day had reactivated the power without replacing a chain and warning sign that would have alerted incoming personnel to the fact that the system was energised. That failure was the most potent cause of the accident.

The technician, who was working in the turbine's housing alone when he should not have been, was himself one-third responsible for his own misfortune. There was no one present to act as a second pair of eyes and, although the accident involved a certain amount of sheer bad luck, he had assumed without checking that the power was off and the system locked.

The Court expressed admiration for the courage and presence of mind he had shown following the accident and for his determination in coping with such a grave injury. The company was commended for its exemplary reaction in the immediate aftermath of the accident. Evidently attaching great importance to safety matters, it carried out a full investigation and swiftly implemented effective reforms to equipment and safety procedures.

The amount of the technician's compensation, which would be reduced by one third to reflect his own contributory negligence, would be assessed at a further hearing, if not agreed.

**Partner Note**

*Hoadley v Siemens Gamesa Renewable Energy Ltd and Another [2022] EWHC 3169 (Admlty)*

Employment

**Marital Discrimination – ET Failed to Ask the Right Question**

To treat employees unfavourably because they are married amounts, unsurprisingly, to unlawful discrimination. However, as one case showed, proving a causal link between such treatment and marital status can be highly demanding.

The case concerned a bookkeeper who was married to the principal shareholder of the company for which she worked. After their relationship ended in acrimonious divorce, she was dismissed by the company's managing director (MD). An Employment Tribunal (ET) subsequently upheld her complaint that the MD had discriminated against her because she was married.

In its decision, the ET found that the MD had sided with her husband in making false allegations against her and dismissing her on spurious grounds. She was wrongly accused of misusing the company's IT system and, at one point, a wholly baseless complaint was made against her to the police. She was stripped of her directorship and was not paid dividends that were due to her.

In upholding the MD's challenge to the ET's ruling, however, the Employment Appeal Tribunal (EAT) found that the ET had failed properly to address the issue of whether it was her marital status that was the cause of her unfavourable treatment, as opposed to the fact that she was married to the shareholder.

The question was not whether she was badly treated because she was married to a particular person. The ET had failed to construct an appropriate comparator or to ask itself whether a hypothetical person in a close relationship with the shareholder, but not married to him, would have been treated any differently.

The EAT reached its conclusion with a heavy heart. The ET's conclusion that she had been very badly treated by the MD, amongst others, could not be challenged. It had nevertheless failed to address its mind to the true issues in the case and its finding that the MD had subjected her to marital discrimination, contrary to Section 13(4) of the Equality Act 2010, could not stand.

Contact **<<CONTACT DETAILS>>** for advice on any employment law matters.

**Partner Note**

*Ellis v Bacon and Another [2022] EAT 188*

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