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General

**Court of Appeal Ruling Reveals Vast Scale of Money Laundering Conspiracy**

A Court of Appeal ruling has provided an insight into the vast scale of excise frauds and money laundering operations conducted by organised crime gangs. The case exposed a criminal network through which an estimated £60 million in dirty cash passed during a period of less than four years.

After a member of a crime gang was convicted of conspiring to launder money and other offences, he was jailed for 13 years and four months. He was also disqualified from serving as a company director for 12 years and received a confiscation order, under the Proceeds of Crime Act 2002, totalling almost £700,000.

Ruling on his challenge to the confiscation order, the Court noted that, as joint head of the gang, he was a prime mover in the plot to launder profits generated by a lucrative fraud, which involved the sale of smuggled alcohol and cigarettes to cash and carry stores and other outlets without payment of excise duty. Huge sums in cash were moved through front companies and distributed around the country via a network of couriers.

The seizure by British Transport Police of more than £160,000 in cash at two major railway stations illustrated the scale of the enterprise. Data stored on a memory stick recorded over £30 million flowing through the network. The trial judge estimated that double that sum had passed through the conspirators' hands during the period of about 40 months covered by the indictment.

The offender was proved to have personally received more than £180,000, although the prosecution believed that was just the tip of the iceberg. Although his identified assets were worth not much more than £90,000, made up of cash, watches and other possessions, the confiscation order was based on the estimated value of his hidden assets.

The Court reduced the confiscation order by about £42,000 on the basis that the amount of four cheques that had been made out to HM Revenue and Customs should have been deducted from the calculation of his available assets. His appeal was otherwise dismissed.

**Partner Note**

*Rex v Briah [2022] EWCA Crim 1818*

Property

**Plan to Redevelop Debenhams Department Store Receives High Court Boost**

The nation's high streets are changing and moves are afoot to demolish many once thriving department stores and replace them with new homes. As a High Court ruling showed, however, such developments are often highly controversial.

A developer wished to knock down a former Debenhams store and construct 226 build-to-rent flats and commercial units in its place. The proposal, however, yielded 268 objection letters and planning permission was refused. The developer's bid for prior approval to demolish the building under the General Permitted Development Order (GPDO) was also rejected.

The local authority had by then resolved to extend a local conservation area so as to include the store. That decision had the effect of taking the building outside the scope of the relevant provisions of the GPDO so that it could not be demolished without express planning permission.

A planning officer's report, on which the decision was based, noted that the store was built in the 1950s by renowned Art Deco architect George Coles. It described the four-storey building as important and a landmark structure of high visual quality.

Development consultants acting for the developer submitted detailed representations in response to the conservation area's proposed extension. Amongst other things, they noted that Historic England had declined an invitation to list the store on the basis that it was comparable in quality to a very large number of other high street buildings erected in the inter- and post-war years.

However, due to an entirely accidental oversight, the representations were not taken into account before the decision was reached. The council attempted to put right the mistake by purporting to review the matter and producing a supplementary report that confirmed the conservation area's extension.

Ruling on the developer's challenge to the decision, the Court rejected arguments that the council was motivated by the improper purpose of preventing the building's demolition and redevelopment. The evidence showed no more than that the desire to save the building was 'an' impetus – rather than 'the' impetus – for extending the conservation area.

In overturning the decision, however, the Court noted that there was a clear need to provide councillors with a fair and balanced analysis of the building's architectural worth. Officers' reports to the council were misleading in that they omitted to mention the obviously material fact that Historic England had declined to list the store.

The Court also found that the council's purported review of the initial decision was not a legally satisfactory response to the fact that the representations were not considered when they should have been. There was more than a fanciful prospect of a different outcome were the decision to be taken wholly afresh.

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

**Partner Note**

*R on the Application of Future High Street Living (Staines) Ltd v Spelthorne Borough Council [2023] EWHC 688 (Admin)*

Tax

**Reclaiming VAT on Company Cars – It's Certainly Not Easy**

When companies purchase a vehicle, they can reclaim VAT on the transaction only if they can show that they have no intention of making it available for private use. As a case concerning the provision of a high-end Audi car to a director showed, that restrictive test represents a very high hurdle to overcome.

After buying the car, the company reclaimed input tax on the transaction. Following an inspection, HM Revenue and Customs (HMRC) took the view that it was not entitled to do so and assessed it for £9,052 in VAT. A careless inaccuracy penalty of £1,357 was also raised.

Challenging those bills, the company pointed to the director's categoric denial that he had ever used the car for anything other than business purposes. That assertion was supported by the car's low mileage. The director had another vehicle for his personal use and also had access to his spouse's car.

In dismissing the appeal against the assessment, however, the First-tier Tribunal (FTT) derived little assistance from the fact that the car was parked at the company's trading and registered office address. That address was apparently also the residential address of the director and his wife, the company's only employees.

The FTT observed that the car was, at least for part of the relevant period, insured for social and other non-business purposes. It was not satisfied that that arose from a clerical or administrative error on the part of the insurer. The director had stated that it would simply be impractical to put in place measures or arrangements that would prevent the car's personal use.

To succeed in the appeal, it was necessary for the company to establish not simply that there was no intention to use the car for private purposes but that it was not even available for such use. On the evidence, that rigorous test had not been satisfied. The appeal against the penalty was also dismissed, although HMRC consented to suspend its payment on terms agreed with the company.

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

**Partner Note**

*London Drylining Ltd v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 9 (TC)*

Commercial Litigation

**High Court Lifts Suspension on Award of Government Equipment Contract**

Public procurement processes must be conducted fairly and transparently but, at the same time, administrative paralysis that can arise from delays in awarding important contracts is certainly not in the public interest. A High Court ruling provided a textbook example of how judges go about addressing that dichotomy.

Following a tendering process, a company failed, by a very narrow margin, to win a three-year contract for the supply of equipment to a government department. In challenging that outcome, it asserted, amongst other things, that it had put in the most economically advantageous bid and that the contract was awarded to a trade rival because of a mathematical quirk in the department's pricing model.

When the company launched proceedings, the contract's award to the rival was automatically suspended by operation of the Public Contracts Regulations 2015. The company resisted the department's application to have that suspension lifted.

Ruling on the matter, the Court noted the department's plea that the challenge had been lodged too late. That argument was based on apparently formidable legal authority, but the matter was not so clear-cut as to enable a conclusion that the company had failed to raise a serious issue to be tried.

However, the Court found that, if the company succeeded in its claim, it could be adequately compensated by an award of damages. Its own financial losses arising from the failure to win the contract were relatively modest when measured against its turnover and, following a trial, it should be possible accurately to calculate the extent of such losses.

On the other hand, damages would not adequately compensate the department for difficulties arising from a delay of several months in awarding the contract. Such a hiatus would, amongst other things, place time-sensitive funding for the equipment in jeopardy and stall the realisation of important public benefits that the contract was intended to promote.

The Court acknowledged that there were public interest arguments pulling in both directions. However, in lifting the suspension, it found that such a course carried the least risk of injustice. The balance of convenience came down decisively in the department's favour. The department undertook to pay the company damages if it succeeded in establishing that breaches of the Regulations had occurred but for which it would have been awarded the contract.

Says **<<CONTACT DETAILS>>**, "Expert legal advice is essential in all litigation. Preparing the best possible evidential support is vital, as is compliance with the rules of litigation practice."

**Partner Note**

*Boxxe Ltd v The Secretary of State for Justice [2023] EWHC 533 (TCC)*

Company

**Minority Shareholder in Family Business Succeeds in 'Unfair Prejudice' Claim**

Minority shareholders may have limited managerial influence but they are very far from powerless and have rights that must be respected. The High Court made that point in coming to the aid of a man whose dividends were unjustifiably suspended after he was excluded from the management of his family business.

The man was a director of two family-owned companies in which he held a 25 per cent stake. After he had to take long-term sickness absence from the business, he contended that various steps were taken that unfairly prejudiced his position as a minority shareholder. He took action under Section 994 of the Companies Act 2006.

Ruling on the matter, the Court was not satisfied that he had been driven from the business by his fellow directors or that there had been a plot to remove him. He remained on friendly terms with other board members during the early part of his absence and plainly wished to leave the business voluntarily.

In upholding his claim, however, the Court noted that there was a change in attitude when he lodged a formal grievance against one of the companies. The matter was properly dealt with in good faith, but ill feeling grew from that point onwards and his fellow directors chose to deploy unfairly prejudicial tactics.

There were, amongst other things, unwarranted threats to suspend his dividends and seek recovery of alleged overpayments. His dividends from one of the companies were unjustifiably suspended whilst his fellow directors received commensurate salary increases. A process of cost-shifting was undertaken so as to suppress the profits of one of the companies.

His removal as a director of that company, whilst not in itself unfairly prejudicial, was part of a creeping process to exclude him from its management. It was not a proper use of the board's power to remove an inactive director but part and parcel of the interference with his rights as a shareholder.

Given those findings, the Court ruled that he was entitled to be bought out of his shareholdings at a fair market value. The sum due to him would be assessed at a further hearing, if not agreed. The Court expressed sadness that the dispute had led to such ill feeling between family members who formerly got on well together and cared for each other. It was to be hoped that the fractured relationships were not irreparable and that some level of trust would in future be restored.

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

**Partner Note**

*Simmonds v Wilson and Others [2023] EWHC 289 (Ch)*

Contract

**Disappointed Polar Cruise Couple Triumph in Breach of Contract Claim**

Almost everyone has returned from a holiday feeling deeply disappointed, but a right to compensation by no means necessarily follows. However, in one case, a couple whose £20,000 polar cruise fell sadly short of their expectations successfully took a stand on their legal rights.

The adventurous couple booked a cruise that should have taken them through the celebrated Northwest Passage. However, the route through the Canadian polar waterways, connecting the Atlantic and Pacific Oceans, proved impassable as sea ice closed in. A different route was taken, but the couple were bitterly disappointed to visit none of the places, and see none of the things, that they had most wanted to experience.

Seeking their money back, they launched proceedings against the travel firm through which they had booked the cruise. Following a nine-day trial, however, a judge rejected their claim and ordered them to pay the firm's £60,000 legal costs. Whilst accepting that a significant proportion of the services for which the couple had contracted had not been provided, he found that the firm was not at fault. The change of route was due to unusual and unforeseeable circumstances beyond the firm's control.

Allowing the couple's appeal against that outcome, the High Court found that the judge erred in law in his contractual analysis and his reading of the relevant part of the Package Travel, Package Holidays and Package Tours Regulations 1992. The Court found, crucially, that the detailed travel itinerary that the couple were given prior to the cruise formed a term of their contract with the firm.

In upholding the couple's breach of contract claim, the Court emphasised that it was not disturbing the judge's factual findings. There was no criticism of the attempts made by the firm and its agents to deliver the cruise in difficult circumstances. The question of what relief should be granted to the couple in the light of the Court's ruling would be considered at a further hearing, if not agreed.

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

**Partner Note**

*Sherman and Another v Reader Offers Ltd [2023] EWHC 524 (KB)*

Data Protection

**New UK Version of GDPR Progressing Through Parliament**

The Data Protection and Digital Information (No. 2) Bill has received its first reading in the House of Commons, with MPs set to undertake a second reading on Monday, 17 April.

The government intends this new UK version of the GDPR to 'reduce costs and burdens for British businesses and charities, remove barriers to international trade and cut the number of repetitive data collection pop-ups online'.

First introduced last summer, the Data Protection and Digital Information Bill was paused in September 2022, to enable further consultation with business leaders and data experts.

Further information regarding the updated Bill can be found at <https://www.gov.uk/government/news/british-businesses-to-save-billions-under-new-uk-version-of-gdpr>

Intellectual Property

**Seen One Television Drama? You've Seen Them All – Copyright Ruling**

All dramatic works draw on the common human condition and similarities between them, in terms of plotlines and the language used, are inevitable. The High Court made that point in rejecting a screenwriter's claim that her original works were copied by the broadcaster of a popular television series.

In asserting that the broadcaster had breached her confidentiality and infringed her copyright, the screenwriter claimed that a substantial part of her original works had been copied and used in two episodes of the series. She argued that the similarities were so striking that they could not be coincidental. The broadcaster denied her claim, insisting that it had never even had an opportunity to copy her works.

Ruling on the matter, the Court noted that all stories, including screenplays, derive their drama from certain basic themes which, according to one authority, are no more than seven in number. Dramatic tropes are limited by what drives the human condition and stories based on revenge, jealously or power are bound to share certain fundamental features with other similarly based stories. To succeed in her claim, the screenwriter had to show similarities that went beyond such tropes.

In entering summary judgment in the broadcaster's favour, the Court found that the alleged similarities between the screenwriter's works and the broadcast episodes were – in terms of storyline, detailed events on screen and use of language – incapable of giving rise to an arguable inference of copying.

For expert advice on any matters relating to intellectual property and copyright law, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Molavi v Gilbert and Others [2023] EWHC 646 (Ch)*

Employment

**Disciplined Production Line Manager Succeeds in Sex Discrimination Claim**

For businesses equipped with sophisticated human resources departments, it should be second nature to treat men and women equally. As an Employment Tribunal (ET) ruling showed, however, costly lapses into discrimination remain all too common.

A male production line manager was accused of bullying by a female colleague. Her complaint was immediately treated as a formal grievance and, following a period of suspension, he was issued with a final written warning. He ultimately resigned and launched ET proceedings, alleging that he was less favourably treated because of his sex.

In upholding his claim, the ET noted that he had also made a complaint against his colleague. It was not, however, treated as a formal grievance or taken seriously. Her grievance was dealt with more quickly and expeditiously than his complaint and she was neither suspended nor subjected to disciplinary proceedings.

On the contrary, she was stepped up to fill his leadership role during his suspension. Following his return to work, his conduct was monitored for six weeks, a step that he found humiliating. There was a range of procedural failings in the grievance and disciplinary procedure followed; there was no clear rationale given for the final written warning and he was unable to appeal against it.

Given those factual findings, the employer bore the burden of proving that there was no discrimination. In awarding the man £9,000 for injury to his feelings, the ET was not satisfied that it had discharged that burden or that the man's treatment was not motivated or influenced in a significant, more than trivial way by his sex.

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

**Partner Note**

*Swaciak v Rowse Honey Ltd [2023] UKET 2206654/2020*

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