



Directors Duties

A guide by PCB Solicitors

A recent High Court case concerned a claim against the director of a private company. The director (who was the majority shareholder) was concerned about the financial position of the company and took advice from business advisors who advised that the business was insolvent, and as to options, which included the sale of company assets.

A professional valuation of assets (mainly stock) was obtained following which there was a sale of the assets to an associated company. The payment of the price was on deferred terms and no money was paid immediately on sale. The company went into liquidation a couple of days after the sale, and a liquidator (who was a member of a firm associated with the business advisors) was then appointed.

Some instalments were paid over the following few months, but when the associated company subsequently went into liquidation, about one-third of the price (approx. £20,000.00) remained outstanding. The liquidator sued the director for this shortfall, alleging that he had breached his duties to act in good faith in the interests of the company and its creditors, and his duty to exercise reasonable care, skill and diligence.

The court rejected the claim, holding that the director had in fact acted honestly and reasonably in entering into the transaction. The judge said: “the fact that he was relying on advice is to my mind an important factor in determining if he was in breach of his duty to exercise reasonable care”.

The moral of the story, for directors of companies which are getting into financial difficulties, is that it may be crucial to be able to demonstrate that they have taken proper professional advice and have acted in accordance with such advice. Understandably, it may be tempting, when money is short, to skimp on getting advice, but be warned – a modest saving now may bring a huge bill later!

Hedger v Adams [2015] EWHC 2540 (Ch)



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