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FROM Chadwick Lawrence

Directors Duties

The recent case of *Humphrey v Bennett (2023) EWCA Civ 1433* delved into the correct interpretation of section 175 and 177 Companies Act 2006 (CA). The case related to whether majority shareholders had breached their duties in relation to: avoiding a conflict of interest (section 175 CA) and declaring a proposed interest in a transaction (section 177 CA).

Background

A property development Company had 4 Shareholders: Mr and Mrs Humphrey (H), and Mr Bennet (B) and Ms Murphy (M). The Company acquired a plot of land with a view to develop it and obtained planning permission. H refused to invest additional capital, so B and M caused the Company to sell the property to another Company where B was the sole shareholder and B and M were directors. There was no increase in the sale price of the property and the fact that there was now property planning permission was not taken into account in the purchase price.

H brought a derivative claim (an action on behalf of the Company) against B and M alleging that they have personally exploited a business opportunity in which they were Shareholders and subsequently breached section 175 and 177 of CA.

Attempting to defend this claim, A and B stated that the minority Shareholders has be asked if they would like to Co-Fund the project, but declined therefore it was clear that the development would not be able to proceed. They also stated that they had declared any conflict of interest properly and they had been authorised, and or there was no requirement to make a declaration as all parties were aware of the conflict. There were no board minutes which authorised any conflict, nor has B and M made any formal declaration of interest in the sale of the property.

The High Court gave a summary judgement against B and M holding that the had breached their duties. B and M appealed the decision to the Court of Appeal where they held that the High Court had interpreted the legislation too strictly as they had not taken into account that the Company was small and often dealt with decisions informally. The Court of Appeal established that it is important to consider the factual context of the breach in establishing whether there has been a breach.

Conclusion

This case shows the importance of considering potential conflicts of interest early and dealing with them appropriately. Should there be any question as to whether there is a conflict of interest, it is best practice to declare this and seek approval from other directors.

It may also be important to check your Company's Articles of Association, as these may expressly state circumstances where a Director has to excuse themselves and or abstain from voting should they have a conflict.

For more information about how we can help you please contact:



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How can we help

The nature of some board decisions may require expert advice from a Solicitor. If you would like assistance in reviewing your Company's Articles of Association and advice on current and or potential conflicts of interest, contact us at newenquires-cocoo@chadlaw.co.uk for assistance.

For more information about how we can help you please contact:

 www.chadwicklawrence.co.uk

 8-16 Dock Street, Bridge End, Leeds LS10 1LX

 0800 015 0340

 link@chadlaw.co.uk