

UPDATE

Mourant Ozannes successful in rare Guernsey just and equitable winding up

Update prepared by Gordon Dawes (Partner) and Iona Mitchell (Associate)

Mourant Ozannes was successful after a two-day trial in obtaining an order from the Royal Court in Guernsey that a company be wound up on the basis that it was just and equitable to do so. Such trials are very rare in Guernsey.

Background

The Applicants in the Court proceedings were investors and majority shareholders in an SPV set up to develop commercial and residential property. They became aware of various factors giving them cause for concern in the way in which the company was being managed.

Decision

After hearing the evidence, the Court (Lieutenant Bailiff Marshall QC sitting with Jurats, who are the finders of fact and have the function of an experienced civil jury drawn from a permanent panel) found that the shareholders had a justified lack of confidence in the management of the company by the directors.

This included findings that:

- The directors had improperly exercised their powers by issuing additional shares to their own family company, thus removing the Applicants' majority shareholding;
- The motivation behind the above share issue was not to raise capital but to protect the interests of the directors and their family;
- Company property was transferred to another company related to the directors without any explanation nor indeed even informing the shareholders; and
- The directors were in breach of their obligations under company law to provide accounts and financial information to the shareholders, despite repeated requests over a number of years.

Accordingly, the company was ordered to be liquidated and the share register was ordered to be rectified to restore the Applicants' majority shareholding.

This case is important because it was the first to establish a jurisdiction to make interim orders on a contested winding up. It was a rare example of a company being wound up on the just and equitable ground and the first case in which orders were made in respect of the share register at the same time.

Costs

- (a) In addition, Mourant Ozannes was successful in obtaining costs orders in favour of the Applicants not only against the other shareholder, who had resisted the winding up petition, but also against the two directors of the company personally.
- (b) These costs were granted on an indemnity basis (the highest award of costs ordered in Guernsey and other commonwealth jurisdictions). The Court found that the conduct of the other shareholder and directors took the facts "out of the norm" and also surmounted the standard of "unreasonable" conduct such that it was appropriate to order indemnity costs, albeit reduced to 90%. This was justified

by the way in which the affairs of the company were conducted by the directors, the conduct of the proceedings themselves (including reliance on affidavit evidence later admitted to be false), and their unjustified resistance to the winding up petition itself.

Implications

- (c) The case is a reminder of the Royal Court's wide oversight powers in relation to Guernsey companies. Should you wish to discuss shareholders' remedies or any other aspects of this briefing, please contact Gordon Dawes or Iona Mitchell.

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