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Official Receiver v Obaigbena

[2022] EWHC 1399 (Ch), [2022] All ER (D) 63 (Jul)

The Chancery Division dismissed the appeal of the appellant from a decision of the deputy insolvency and companies court which disqualified the appellant from being involved in the management of a limited company. The appellant argued that (i) the judge had applied the wrong legal test by failing to consider and decide whether the appellant had known or ought to had known that there was no reasonable prospect of creditors being paid or of the company avoiding insolvent liquidation; and (ii) that the judge erred in disqualifying the appellant for a period of 7 years. The court held, among other things, that the judge did not err in law by failing to apply a 'legal test'. The court had not considered that that legal test was required by s 6 of the Company Directors Disqualification Act 1986. Further, although a period of 7 years was at the upper limit of what could be a reasonable exercise of discretion by any judge on the facts of the case, the court was unable to conclude that it was so excessive as to be beyond the ambit of the discretion afforded to the judge

Catchwords

COMPANY – DIRECTOR – DISQUALIFICATION

Background

The appellant (O) was at all material times the sole director of Arise Networks Ltd (the company).

The respondent Official Receiver alleged that O had caused the company to trade to the detriment of creditors from 31 December 2014 onwards with no reasonable prospect of creditors being paid or of the company avoiding insolvent liquidation. The judge held that O had caused the company to continue to trade while insolvent, when there had been no reasonable prospect that the creditors would be paid. She found that O had genuinely believed that sufficient funds would one day come into the jurisdiction and would be available to pay the company's increasing liabilities but that that was not a reasonable belief in the circumstances. She also found that O's belief had been irrational and unjustified, and that his decision to continue to trade had been gambling with sums owing to the creditors, without regard for or compliance with proper standards.

In April 2021, the court held that O would be disqualified from being involved in the management of a limited company, pursuant to s 6 of the Company Directors Disqualification Act 1986 (CDDA 1986). It ordered that O could not be a director of a company, act as a receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless he had leave of the Court; and act as an insolvency practitioner for a period of seven years with effect from 29 April 2021.

O appealed to the Chancery Division.

Issues and decisions

(1) Whether the judge had applied the wrong legal test in that, whilst she had found that there was no reasonable prospect of creditors being paid or of the company avoiding insolvent liquidation, she had failed to go on and find that O ought to have so concluded.
The judge had not erred in law by failing to apply a 'legal test' of whether O ought to have concluded that there was no

reasonable prospect. That legal test was not required by CDDA 1986 s 6 or by the statement of the matters alleged to make O unfit contained in the Official Receiver's report (see [54] of the judgment).

The judge had asked the correct question and had been entitled to answer it as she had done, to the effect that the proven conduct had made O unfit to be concerned in the management of a company (see [56] of the judgment).

Bath Glass Ltd, Re [1988] BCLC 329, 4 BCC 130 considered

Synthetic Technology Ltd, Re [1993] BCC 549 considered

Secretary of State for Trade and Industry v Van Hengel [1995] 1 BCLC 545 considered

Secretary of State for Trade and Industry v Taylor [1997] 1 WLR 407 considered

Secretary of State for Trade and Industry v Creegan [2001] All ER (D) 393 (Nov), [2001] EWCA Civ 1742 considered

(2) Whether the judge had erred in disqualifying the appellant for a period of seven years. That allegedly had involved a failure correctly to apply the principles, had been grossly disproportionate, and had left out of account relevant mitigating factors, or had failed to state how those formed part of her assessment of a suitable period.

The judge had not erred in principle or made an error of law in imposing a period of disqualification of 7 years, which was towards the lower end of the relevant middle bracket. The judge had applied the relevant guidance appropriately and had directed herself that what was required was consideration of the guidelines in relation to the particular facts of the case. That was plainly correct (see [69] of the judgment).

Judgment date
18 May 2022

Judge
Fancourt J

Representation
Hugh Sims and Daisy Brown (instructed by Francis Wilks & Jones) for O.
Tiran Nersessian (instructed by Gowling WLG) for the respondent.

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