Lexis®Nexis Case Summaries

Re a company

[2021] EWHC 1760 (Ch), [2021] All ER (D) 32 (July)

Company – Compulsory winding up. The applicant company's application for an order restraining the respondent company from presenting a winding-up petition against it succeeded. The respondent sought the recovery of sums allegedly due for consultancy services. The Chancery Division held that the matter was plainly unsuitable for disposal by way of winding-up proceedings.

Catchwords

Company – Compulsory winding up – Petition

Background

The applicant was a Swiss-registered company with a London branch. In February 2019, the London branch was registered as a UK establishment (the UK establishment). MG was authorised to represent the applicant as a permanent representative of the applicant in respect of the UK establishment. The respondent company carried on business in the provision of risk, governance, compliance, HR and associated services. GD was a director of the respondent.

The applicant issued a statutory demand, in which it sought payment of the sum of £79,264.92, pursuant to a written agreement of October 2019, purportedly signed by MG on behalf of the applicant (the agreement). The agreement provided for a fixed retainer fee of £21,000 (plus VAT) to be paid by the applicant to the respondent on a monthly basis in return for consultancy services. The sum of £79,264.92 was said to comprise the total of three invoices issued pursuant to the agreement.

MG maintained that he had not signed the agreement and had not agreed to a fixed retainer fee. His case was that the signature on the agreement was an electronic signature of his, which had been used on the agreement without his authority. His evidence was that the first time he had seen the agreement was in October 2020. The applicant accepted that the respondent had carried out work for it in the past, but maintained that any such work fell to be charged for on a 'time spent' basis rather than on a 'fixed retainer fee' basis.

The applicant applied for an order restraining the presentation of a winding-up petition against it.

Issues and decisions

Whether the respondent should be restrained from presenting the winding-up petition.

On the evidence, the applicant had raised a seriously arguable case that: (i) no contractually binding oral agreement, providing for the payment of a fixed monthly retainer fee, had been reached between the parties in August/September

2019; (ii) the agreement had not been approved by the applicant orally, in writing, or by conduct; (iii) the purported signature of MG on the agreement was a forgery, in that it was his electronic signature but had been appended to the agreement without his knowledge or approval; and (iv) the respondent, acting by GD, had knowingly relied on a false document (see [43] of the judgment).

Save for GD's witness statement and the agreement itself, there was no evidence that the applicant had ever had sight of the agreement in its final form at any time prior to October 2020. Viewed in context, the mere payment by the applicant of invoices rendered by the respondent over the period October 2019 to August 2020 was equivocal (see [61], [62] of the judgment).

It was material to note that each of the invoices over the period October 2019 to August 2020 was not for £21,000 plus VAT. Applying the test of the 'honest, sensible business person', an honest sensible business person could not reasonably have concluded from payment of invoices couched in such terms and in such sums that a fixed monthly consultancy fee of £21,000 had been agreed (see [64] of the judgment).

Further, it was accepted by GD that no invoices had been sent to or paid by the applicant in respect of the months of March, April and June 2020. That was clearly inconsistent with the applicant being liable to pay the respondent a monthly fixed retainer fee under the terms of the agreement, regardless of the amount of work done in any given month (see [65] of the judgment).

Overall, the matter was plainly unsuitable for disposal by way of winding up proceedings. An order would be made restraining the respondent from presenting a winding up petition against the applicant (see [71], [72] of the judgment).

Reveille Independent LLC v Anotech International (UK) Ltd [2016] All ER (D) 42 (May) [2016] EWCA Civ 443 distinguished

Judgment date

1 July 2021

Judge

ICC Judge Barber

Representation

Jonathan Trussler (instructed by Northern Fides Ltd) for the applicant.

Oberan Kwok (instructed by Cripps Pemberton Greenish LLP) for the respondent.