Ripped Off Customers of Fine Wine Company Win Six-Figure Sum

Following a landmark High Court ruling, dishonest company directors can expect not only to be disqualified but also to be held directly liable to compensate creditors for their losses. In the first case of its kind, the Court ordered the former boss of an insolvent fine wine company to pay a six-figure sum to its ripped off customers.

The company bought and sold wine for high net worth individuals and stored their holdings in climate-controlled warehouses. After it entered creditors' voluntary liquidation, with an estimated deficiency of almost £1.7 million, it emerged that large quantities of wine had been sold without accounting to customers for the proceeds. Others had paid for wine that the company had never in fact acquired.

After the Secretary of State for Business, Energy and Industrial Strategy launched proceedings – which were uncontested – the company's sole director was disqualified from holding any further directorship for 15 years. The Secretary of State also, for the first time, invoked the compensation order regime introduced by Sections 15A and 15B of the Company Directors Disqualification Act 1986.

Ordering the director to pay £559,484 in compensation, the Court noted that he was alleged to have diverted that sum from the company for his own benefit at a time when the business was clearly in trouble and had very little prospect of meeting its debts. He was said to be solely responsible for, and the sole beneficiary of, misconduct of the most serious sort.

The director was alleged to have benefited himself at the direct expense of 28 of the company's former customers. However, under the standard insolvency regime, they would be required to stand in line and would enjoy no priority over the company's other creditors. The Court found that that would be an unfair outcome and ruled that more than £460,000 of the compensation should be paid directly to them. The balance of any sum recovered from the director would be distributed pro rata to the general body of the company's creditors.

If you have suffered losses because of misrepresentation, contact us.

Fraudster Warning From HMRC as Self-Assessment Deadline Looms

HM Revenue and Customs (HMRC) are warning self-assessment customers to be on alert for potential scams, as the 31 January tax return deadline approaches.

HMRC's dedicated Customer Protection team is tasked with identifying and shutting down scams but the tax authority wants customers to recognise the tell-tale signs themselves to avoid becoming victims.

Nearly 900,000 reports about suspicious HMRC contact, including phone calls, texts or emails, were made to HMRC over the last year. Of these, more than 100,000 were phone scams, while over 620,000 were about bogus tax rebates.

The most common techniques fraudsters use, according to HMRC, include phoning taxpayers to offer a fake tax refund, or pretending to be HMRC by texting or emailing a link which takes customers to a false page, where their bank details and money will be stolen. Scammers sometimes threaten victims with arrest or imprisonment if a phoney tax bill is not paid immediately.

HMRC are urging customers not to give out private information, reply to text messages, download attachments or click on links in texts or emails they are not expecting. They also ask that suspicious activity be reported immediately.

Details of suspicious calls or emails claiming to be from HMRC should be forwarded to phishing@hmrc.gov.uk and texts to 60599.

High Court Upholds £34 Million Worldwide Asset Freezing Order

Worldwide freezing orders (WFOs) have real teeth and that is why those who apply for them are under a strict obligation to present judges with a true and unvarnished picture of underlying facts and arguments. The High Court emphasised that point in finding that an overseas property developer had met that demanding test.

The developer was engaged in a dispute with a UK-resident businessman in respect of certain high-value property dealings in Dubai. Extensive litigation in Dubai led to mixed results, but the developer ultimately obtained a substantial money judgment against the businessman. On the basis that the businessman's assets in Dubai were insufficient to satisfy that judgment, the developer took enforcement action against him in England. Following a hearing, at which the businessman was not represented, the developer was granted a WFO, freezing his assets up to a value of £34 million.

In applying to discharge the WFO, the businessman argued that the developer had dishonestly misrepresented the facts of the case and the opposing arguments to the judge who granted it. He submitted, amongst other things, that his defence that the Dubai judgment should not be recognised and enforced in England, having been obtained by fraud, had not been properly aired before the judge.

In rejecting his arguments, however, the Court acquitted the developer and its legal team of the serious charge of dishonesty. They had made full and frank disclosure to the judge and had fairly presented arguments in favour of, and against, the grant of the WFO. They had made specific reference to the businessman's potential fraud defence, as was reflected in the judge's ruling.

The businessman's plea that there was no danger of him dissipating his assets, or of the Dubai judgment remaining unsatisfied, also fell on fallow ground. The developer having established a good arguable case against him, the WFO continued to be necessary and there were solid grounds for maintaining it.

Expert legal advice is essential in all litigation. Preparing the best possible evidential support is vital, as is compliance with the rules of litigation practice.

Scaffolding Triggers Commercial Tenant's 'Peaceful Enjoyment' Complaint

Included in almost every commercial lease is a covenant which confers on the tenant a right to peacefully enjoy the premises. One such provision came under close High Court analysis in the case of a dentist whose practice was encased in scaffolding whilst building works went on around it.

The dentist's 20-year lease on part of an office block contained a peaceful enjoyment covenant in fairly standard form. After his landlord decided to convert the block into a 134-bedroom hotel, scaffolding and a hoarding were erected around his practice, remaining in place for almost two years.

After completion of the works, the dentist launched proceedings against the landlord, seeking over £450,000 in damages for alleged wrongful interference with his peaceful enjoyment of the premises. He claimed that his practice's profitability had gone down as the scaffolding went up and that, whilst his premises resembled a building site, they had become an attraction for rough sleepers.

In ruling on his claim, a judge noted that the dentist's rent had been waived whilst the works were ongoing. He found that the landlord had, by the design of the scaffolding and the avoidance of noisy works at certain times of day, taken reasonable steps to minimise the disturbance. The dentist's loss of profit claim was also rejected.

He was awarded £77,984 in compensation, mainly to cover the costs of repairing damage to his premises arising from the works. However, that was wiped out by an award of £79,279 to the landlord in respect of arrears of rent and service charges. The dentist was ordered to pay 80 per cent of the legal costs of the proceedings.

Challenging that outcome, the dentist submitted that the waiver of his rent whilst the works were in progress was irrelevant to the question of whether the peaceful enjoyment covenant had been breached. However, in dismissing the appeal, the Court found that that argument, even if successful, would not lead to any increase in the dentist's damages. Other grounds of appeal were also rejected on the basis that the judge's factual findings were open to him on the evidence.

For advice on commercial leases or any aspect of commercial property law, contact us.

Finance Company Behind Direct Marketing Email Campaign Fined £60,000

Unsolicited direct marketing emails, sent without informed consent, are viewed as a modern scourge by millions and those who engage in such campaigns can expect severe punishment. In one case, a finance company which broke the rules when promoting pre-paid funeral plans received a substantial fine.

The company made use of third-party marketing firms – described as affiliates – who sent out more than four million emails on its behalf. Email addresses were harvested from websites which compiled lists of such addresses by offering services and opportunities, such as competitions, to internet users.

Following an investigation, the Information Commissioner found that the company had seriously contravened the Privacy and Electronic Communications (EC Directive)

Regulations 2003 in arranging for the emails to be sent without the appropriate consent of recipients. The company was fined £90,000.

In ruling on the company's appeal against that decision, the First-tier Tribunal (FTT) noted that it did not itself obtain email addresses or hold or utilise data lists for direct marketing purposes. However, it had clearly instigated the email campaign in that, had it not been for its contractual relationship with the affiliates, the emails would never have been sent.

If consent had been given at all by recipients, it was not freely given, specific and informed. The contents of the emails had the potential to cause distress, in particular to those who were seriously ill or recently bereaved. Some of the emails appeared to have been gathered from a gambling website and the offers of finance may well have been made to those with existing financial problems or addictions.

The company was, however, relatively small and it was apparently a first offence. It had also discontinued the type of business activity that led to the contravention. The fine was in those circumstances reduced to £60,000.

Please contact us for advice on any data protection matter.

Luxury Car Maker Defeated in David v Goliath Trade Mark Dispute

Trade marks are a powerful means of protecting your unique brand, even against much larger or more prestigious potential competitors. In one case, a small clothing company which sold its wares under the name 'Bentley' scored a High Court win over household name car manufacturers Bentley Motors.

'Bentley' marks had been used in connection with a clothing company – reflecting the surname of its founder – since 1962. The current proprietor of the marks, and their exclusive licensee, launched proceedings against Bentley Motors after it began to sell clothing and headgear bearing 'Bentley' labels.

Bentley Motors argued that the appearance of the word on its clothing products was accompanied by its well-known motif, featuring a capital letter B with wings, thus doing away with any risk of confusion. The Court, however, found that an average consumer would perceive the motif and the word 'Bentley' as two distinct signs used simultaneously, with the latter being afforded greater prominence.

It mattered neither that the clothing company was a modest enterprise that had made no large-scale use of its marks, nor that its reputation was dwarfed by that of Bentley Motors. There was a real likelihood of consumer confusion between the clothing company's marks and Bentley Motors' labels.

Bentley Motors, the Court found, had engaged in a policy of 'grandmother's footsteps' in relation to the clothing company,

gradually increasing the use of 'Bentley' labelling on its clothing products in a way that steadily encroached on the latter's goodwill. It could not therefore be said to have made honest concurrent use of the word in connection with its clothing range.

The finding of infringement meant that Bentley Motors was entitled to continue to sell jackets, silk ties, caps and scarves, as it had done for many years, but no other types of clothing or headgear. It was entitled to advertise those goods by means of literature bearing the 'Bentley' name, but not to use that word on the goods themselves or other material attached to the goods.

If your business interests are threatened by another organisation using a name similar to yours, contact us for advice on what measures you can take.

The Truth Will Out! Judge Rules £12 Million Loan Contracts Worthless

Judges are familiar with attempts to hoodwink them, but the great advantage of the litigation process is that, in the vast majority of cases, the truth will out. In a case on point, the High Court dismissed a £12 million claim after ruling a series of purported loan contracts not worth the paper they were written on.

A British Virgin Islands-registered company launched proceedings to enforce what it alleged were 17 loan contracts it had entered into with a Russian businessman in order to fund his purchase of a UK property portfolio. His defence was that the supposed contracts had been fraudulently created and that the claim against him was driven by a former business associate as a form of corporate raid.

In dismissing the company's claim, the Court noted that, without any satisfactory explanation, it had failed to comply with judicial orders requiring production of originals of the documents in dispute. The testimony of a man who claimed to be the company's beneficial owner was unsatisfactory and the Court declined to accept the truth of what he said without independent corroboration.

The company's own handwriting expert testified that there was strong evidence that the businessman's signature on five of the contracts had been forged. The evidence that a computer had been used to transpose his signature onto the other contracts was even stronger. The Court was entirely unpersuaded that the businessman had signed any of the contracts or that he had entered into them at all.

For advice on any contractual matter, please contact us.

Paying Subcontractors Directly is a Risky Business

When an employer's relationship with the contractor it employs becomes strained, all sorts of issues can arise. For example, if the contractor is in difficulties, it may delay making payments to subcontractors, which can in turn lead to them being unwilling to work, or slowing down their efforts, with subsequent impact on the building project.

In such an event, the employer may decide to pay a subcontractor directly in order to keep things moving. The employer will then wish to have those payments refunded from (or taken into account as deductions from stage payments to) the contractor.

The potential for disagreements arising from such circumstances is all too obvious and a recent case involving the construction of a superyacht illustrates the kind of issues that can arise.

The main contractor disagreed with payments claimed by some subcontractors. The subcontractors threatened to down tools and the employer reacted by taking matters into its own hands and paying the subcontractors directly. It then sought to recover the sums paid from the contractor.

At issue was whether a clause in the contract that allowed the employer to reserve the right to make payments directly to subcontractors was sufficient for the employer to recover those payments from the contractor. In a complicated ruling, although the High Court ruled that it was not, it did decide that a claim against the contractor would succeed because the contractor had been in breach of its contractual responsibility to manage the construction project and the employer had made the payments to ensure its completion.

Get in touch with us if you would like advice on any of the issues raised in this bulletin or on any other commercial law matter.

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