

## DIRECTORS' DUTIES TO DISCLOSE CONFLICTS OF INTEREST: FAIRFORD WATER SKI CLUB V COHOON & CRAIG COHOON WATERSPORTS [2021] EWCA CIV 143

10 Feb, 2021

On 9 February 2021, the Court of Appeal unanimously allowed Mr Cohoon and Craig Cohoon Watersports' **Watersports**) appeal against the decision of His Honour Judge Russen QC at first instance ([2020] EWHC 290 (Comm)).

In 2007, Fairford Water Ski Club (**the Club**) entered into a management agreement with a firm of which Mr Cohoon was a partner. The Club's Articles of Association incorporated regulation 84(1) of Part 1 of Table A in Schedule 1 to the Companies Act 1948 ('CA 1948'), which incorporated section 199 of the Companies Act 1948. By 2007, section 199 of the CA 1948 had been replaced by section 317 of the Companies Act 1985 ('CA 1985'). The management agreement came to an end in January 2017 when new directors were appointed and Craig resigned as chairman and director of the Club.

At first instance, HHJ Russen QC found that Mr Cohoon failed to declare the nature of his interest in the management agreement, as required by section 317 CA 1985. The consequence of his finding was that the Club was entitled to recover management fees paid during the six years prior to the issue of the proceedings.

The Court of Appeal reversed this decision on appeal, and held that Mr Cohoon had sufficiently declared the nature of his interest in the management agreement at a board meeting in January 2007. In its judgment, the Court considered (among other things) the meaning of the terms (a) 'nature of the director's interest', (b) 'proposed contract with the company', and (c) when 'the question of entering into the contract is first taken into consideration'.

On 'nature of the director's interest', the Court drew an interesting distinction between uncomplicated contracts involving the company and director, and contractual arrangements where a director's interest is not so clear and obvious. In the latter case, a fuller explanation of the nature of the director's interest might be necessary if one is to satisfy the requirements of section 317 CA 1985.

The court also noted the purpose of section 317 was to ensure disclosure of the director's interest, and that it was not concerned with whether entry into the contract was in the company's interest. There were other statutory and fiduciary duties on directors, and there was no need to invest section 317 with any requirement to do the work of other duties.

The judgment provides helpful guidance on the operation of section 317 CA 1985 as well as its successor, section 177 of the Companies Act 2006 ('CA 06'). The case will be of interest to practitioners who advise directors on the duties they owe to a company. The judgment also gave an indication of the potential application of section 1157 of the CA 2006 to claims of this nature.

Hugh Sims QC and Katie Gibb acted for Mr Cohoon and Watersports at first instance and on the appeal. Hugh and Katie were instructed by Harrison Clark Rickerbys.

Case digest drafted with the assistance of our pupil Charlotte Mallin-Martin.

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