

Re System Building Services Group Ltd (in liquidation); Hunt (as liquidator of System Building Services Group Ltd) and another v Michie and another

[\[2020\] EWHC 54 \(Ch\)](#), [\[2020\] 2 All ER \(Comm\) 565](#), [\[2020\] 1 BCLC 205](#), [\[2020\] All ER \(D\) 91 \(Jan\)](#)

Court: ChD

Judgment Date: 21/01/2020

Catchwords & Digest

COMPANY - ADMINISTRATION – COMPANY DIRECTOR

Background

The first respondent (M), was a director of a company which traded in 'passive fire protection' (the company). The company was placed in administration and GS was appointed as the administrator and later as liquidator, following a Creditors Voluntary Liquidation. The first applicant (H) later took over the proceedings from GS.

H and the company made four applications, for: (i) a declaration that M had held a house (the property) on trust for the company, together with consequential relief; (ii) a declaration that M, by causing or allowing the company to make payments totalling £19,000 to another company (CB Solutions) days after the company had entered administration, had been in breach of his duties as a director, together with consequential relief pursuant to [IA 1986 s 212](#); (iii) an order that M should pay the applicants the sum of £169,537, alternatively £100,135.51, on the grounds of want of consideration, unjust enrichment and/or monies had and received; and (iv) a declaration that M was indebted to the company in the sum of £137,674.59 as at 12 July 2012, and an order that M repay such sum with interest.

Issues and decisions

(1) Whether, whilst M had remained a director of the company, he had purchased the property at what he had known to be a substantial undervalue from the company, acting by GS, for his own benefit and without regard to the interests of the creditors as a whole. The applicants maintained that, in so acting, M had acted in breach of duties owed by him to the company as its director under [s 171](#) to [s 175](#) CA 2006, including, in particular, his fiduciary duty to act in the best interests of the company's creditors as a whole from the time at which the company had been insolvent.

On the evidence, the sale price of the property had been anomalous. The property had been a straightforward, freehold, residential property which could readily have been marketed by conventional means and sold for market value. Further, at all material times, M had been aware that the property had not been placed on the open market for sale (see [99], [105], [106] of the judgment).

At all material times, M had known that the property had been worth significantly more than the price that he had paid for it. It was clear from his actions that he had known that he had been getting the property at a significant undervalue. It had plainly not been in the interests of the creditors as a whole for M to purchase the property off-market at significantly below market value (see [110], [113] of the judgment).

In procuring and agreeing to an off-market sale of the property to himself at what he had known to be a significant undervalue, at a time when he had known the company to have been insolvent, M had acted entirely out of self-interest and had failed to have regard to the interests of the creditors as a whole (see [117] of the judgment).

The court had to ask itself whether an intelligent and honest man in the position of a director of the company could, in the circumstances, have reasonably believed that the transaction had been for the benefit of the creditors as a whole. The answer was plainly 'no'. M had acted in breach of his fiduciary duty under [s 172\(3\)](#) of the Companies Act 2006 ([CA 2006](#)) to consider and act in the interests of the creditors as a whole. The first application was made out (see [118], [120] of the judgment).

(2) Whether M had caused or allowed three payments to CB Solutions in breach of his duties as a director of the company under [CA 2006 s 171](#), [172](#) and [174](#) and had therefore been guilty of misfeasance under [IA 1986 s 212](#). The three payments were of £5000, £6000 and £8000, and were made on 17 July 2012 and 19 July 2012.

On the balance of probabilities, following the company's entry into administration, M had either caused or knowingly allowed the payments (see [162] of the judgment).

In doing so, M had: (i) failed to give proper consideration to the interests of the creditors as a whole, in particular their entitlement to share rateably in the company's assets on a pari passu basis, contrary to [CA 2006 s172](#); (2) failed to exercise reasonable care, skill and diligence, contrary to [CA 2006 s174](#) CA; and (iii) accordingly was guilty of misfeasance under [IA 1986 s 212](#) (see [163] of the judgment).

(3) Whether the second respondent company (SBSL) had failed to give consideration for five payments made to it by the company in 2012 and 2013, so that it had been unjustly enriched. The applicants contended that, first, no consideration had been given for the five payments. Alternatively, they contended that the first two payments made to SBSL, of £17,644.80 and £46,490.71, had represented 'cash at bank' or 'in hand'; that was to say, sums 'excluded' under the terms of the WIP agreement, which should be repaid. On the evidence, SBSL had purchased the debts and work in progress of the company for the sum of £30,000 plus VAT, pursuant to a written agreement (the WIP agreement). The consideration payable under the terms of the WIP agreement (£30,000 plus VAT) had been duly paid by or on behalf of SBSL (see [176] of the judgment).

On the evidence, the payments of £17,644.80 and £46,490.71 had represented the company's 'cash at bank' and had been excluded from the WIP agreement. There had therefore been no basis for those payments being made to SBSL and they had plainly been paid in error. No consideration had been provided by SBSL for those sums and SBSL had been unjustly enriched by the same (see [202] of the judgment).

(4) Whether the applicants were entitled to declaratory relief as to the sum due and an order for repayment of the same, in relation to payments made by the company to M over the period 22 July 2010 to 10 July 2012, prior to the company's entry into administration which, the applicants maintained, remained unaccounted for. While the burden lay upon M to account for the payments of £137,674.59 in issue, the court ought to be slow to draw adverse inferences from the absence of company books and records which could otherwise explain or justify any of the payments in question. However, any failure on the part of M to produce documents forming part of his own personal accounting records, fell for separate consideration. It remained open to the court to draw adverse inferences from the absence of documents explaining given payments where such documents formed (or ought to have formed) part of M's own personal accounting records and no adequate explanation had been given for the failure to produce the same (see [219], [220] of the judgment).

The case against M had been proved in part. Overall, the total sum for which M had failed to account in respect of payments made by the company to him over the relevant period was £77,503.28. From that figure, a further sum of £11,990 (representing the balance due to M as per the accounts for the year ending 31 March 2010) fell to be deducted, bringing the total due to be repaid down to £65,513.28. Whilst no dishonesty had been alleged or found proven in respect of M's withdrawal of those sums, on the evidence, his conduct in withdrawing such sums had not been reasonable and he ought not fairly to be excused (see [247], [249] of the judgment).

Cases referring to this case

Annotations: All Cases **Court:** ALL COURTS

Sort by: Judgment Date (Latest First)

Treatment	Case Name	Citations	Court	Date	
Applied	Re ASA Resource Group plc (in administration) (No. 02167843) Dearing v Skelton and another (joint administrators of ASA Resource Group plc)	[2020] EWHC 1370 (Ch) , [2020] All ER (D) 05 (Jun)	ChD	29/05/2020	CaseSearch Entry

Cases considered by this case

Annotations: All Cases **Court:** ALL COURTS

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Treatment	Case Name	Citations	Court	Date	
Considered	BTI 2014 LLC v Sequana and others; Sequana v Bat Industries plc and others	[2019] EWCA Civ 112 , [2019] 2 All ER 784 , [2019] 2 All ER (Comm) 13 , [2019] 1 BCLC 347 , [2019] Bus LR 2178 , [2019] BPIR 562 , [2019] All ER (D) 36 (Feb)	CACivD	06/02/2019	CaseSearch Entry
Considered	Williams v Central Bank of Nigeria	[2014] UKSC 10 , [2014] AC 1189 , [2014] 2 All ER 489 , [2014] 2 WLR 355 , 16 ITEL R 740 , (2014) Times, 04 March, [2014] WTLR 873 , [2014] All ER (D) 172 (Feb)	SC	19/02/2014	CaseSearch Entry
Considered	FHR European Ventures LLP v Mankarious	[2013] EWCA Civ 17 , [2014] Ch 1 , [2013] 3 All ER 29 , [2013] 3 WLR 466 , [2013] 2 All ER (Comm) 257 , [2013] 2 BCLC 1 , [2013] 1 Lloyd's Rep 416 , 15 ITEL R 902 , [2013] 2 EGLR 169 , [2013] NLJR 139 , [2013] 1 P & CR D57 , [2013] All ER (D) 219 (Jan)	CACivD	29/01/2013	CaseSearch Entry
Considered	Maidment v Attwood; Tobian Properties Ltd, Re	[2012] EWCA Civ 998 , [2013] 2 BCLC 567 , [2013] Bus LR 753 , [2012] All ER (D) 203 (Jul) , CSRC vol 36 iss 12/1	CACivD	19/07/2012	CaseSearch Entry
Considered	GHLM Trading Ltd v Maroo	[2012] EWHC 61 (Ch) , [2012] 2 BCLC 369 , [2012] 07 LS Gaz R 18 , [2012] NLJR 213 , [2012] All ER (D) 172 (Jan)	ChD	23/01/2012	CaseSearch Entry
Considered	Mumtaz Properties Ltd, Re; Wetton (as liq of Mumtaz Properties Ltd) v Ahmed	[2011] EWCA Civ 610 , [2012] 2 BCLC 109 , [2011] NLJR 779 , [2011] All ER (D) 237 (May)	CACivD	24/05/2011	CaseSearch Entry
Considered	Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd (in admin)	[2011] EWCA Civ 347 , [2012] Ch 453 , [2011] 4 All ER 335 , [2011] 2 BCLC 501 , [2011] Bus LR 1126 , [2011] 2 P &	CACivD	29/03/2011	CaseSearch Entry

Treatment	Case Name	Citations	Court	Date	
		CR D14, [2011] All ER (D) 321 (Mar)			
Considered	Murad v Al-Saraj	[2005] EWCA Civ 959 , [2005] 32 LS Gaz R 31, [2005] All ER (D) 503 (Jul)	CACivD	29/07/2005	CaseSearch Entry

Document information

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