THE MATTER OF THE SPARC GROUP LIMITED (EN DÉSASTRE) [2022] JRC 194

The test for disqualifying directors has been revisited In the Matter of the SPARC Group Limited (*en désastre*) [2022] JRC 194. The Royal Court has determined that a director's conduct throughout an insolvency period, namely, through their co-operation with the Viscount, is a key consideration as to whether a director should be disqualified, and for how long. At a stroke, the judiciary has given the Viscount teeth.

This is the first time a Jersey director has been disqualified by the Royal Court in 20 years, and one of the first times due to misconduct with the Viscount.

FACTS OF THE CASE

In 2018, SPARC Group Limited (the "**Company**"), under its sole director, had attempted to redevelop property in London, and had accrued various debts in the process.

On 24 February 2020, the Company was declared en dèsastre, and was set to be wound up by the Viscount. Under Article 18 of the Bankruptcy (Désastre) Jersey Law 1990 (the "Bankruptcy Law"), directors have a statutory duty to co-operate fully with the Viscount, both in providing requested information, and in distributing proceeds and assets to discharge the Company's debts. Under Article 18(2A) of the same act, failure to do so without a reasonable excuse, is a criminal offence, punishable by up to six months imprisonment or a fine.

Throughout the process, the sole director was felt to have fallen far short of his statutory obligations. Such breaches included:

- vaguely or barely communicating with the Viscount, with his last co-operative correspondence dated 25th June 2021;
- filling in a questionnaire 15 months after the deadline, and even then, only partially;
- changing address without informing the Viscount, requiring him to contact an agency to find him;
- feigning an illness in order to get extensions;
- incorporating an English company under a similar name without informing the Viscount or explicating the connection between them.

As such, the Viscount applied for sole director to be disqualified.

THE LAW

Under Article 24(7) of the Bankruptcy Law, the Viscount may utilise Article 78 of the Companies (Jersey) Law 1991 (the "Companies Law"), to apply to the Royal Court for the director of a company to be disqualified. Under Article 78, the Royal Court should order disqualification "*if it is satisfied that the person's conduct in relation to a body corporate makes the person unfit to be concerned in the management of a body corporate.*" Jersey courts tend to follow the dictum of Smith JA in Dimsey [2000] JLR 401, that this phrase should be given its "ordinary," "simple" meaning.

Once disqualified, the former director is not only barred from being a director of said company for the penalty period, but also of any other company in that jurisdiction.

Usually, this relates to whether a director has breached their fiduciary duties in regards to the company; conducting themselves with reasonable care and skill and making decisions only if they are in the best interests of the company.

Essentially, the Article is usually concerned with **how** the company came to be insolvent, rather than the actions of the director **once** it is insolvent. However, directors, as affirmed in the recent British Supreme Court case of BTI v *Sequana* [2022] UKSC 25, continue to have a duty to consider a company's creditors until the company is fully dissolved.

The maximum period of disqualification under the Companies Law is 15 years, which is reserved for the most serious, repeat offenders. The objective of said penalties is primarily the protection of the public and Jersey's reputation as a regulated and honest jurisdiction for companies.

To do this, the Royal Court has often looked for guidance in the English Court of Appeal case *Sevenoaks Stationers (Retail) Limited* [1991] Ch 164, due to similar company provisions found in English law.

In *Dimsey*, the Royal Court agreed with Dillion LJ's dictum in Sevenoaks that the penalty of 15 years should be divided into three branches:

(i) "*The top bracket of disqualification for periods over ten years should be reserved for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified yet again.*

(ii) *The minimum bracket of two to five years' disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious.*

(iii) *The middle bracket of disqualification for from six to ten years should apply for serious cases which do not merit the top bracket.*"

These guidelines also consider the conduct of the director throughout the entire period, rather than just the severity of the specific breach. Thus, Jersey courts have found the UK's position to be persuasive and have tended to apply it verbatim to situations in Jersey.

THE DECISION OF THE ROYAL COURT

The Royal Court ruled in favour of the Viscount and ordered that the director be disqualified for ten years.

In making its ruling, the Court determined that the director had "*flagrantly breached*" his obligations under the Bankruptcy Law, and by extension, his fiduciary duties to take into account the Company's creditors. Due to his evasive and disrespectful behaviour with the Viscount, the Royal Court stated that he was "*a person unfit to be concerned in the management of a body corporate*," whether in Jersey, or anywhere else.

As such, the Royal Court felt justified in barring him from being a director, being employed or being involved in the management of any company in Jersey, for ten years, unless he receives leave from the court to do so.

Furthermore, the Court determined that where directors are involved in insolvency proceedings, there should be evidence of open, honest and genuine co-operation with the Viscount. Hesitance, or total failure to comply with the Viscount could be considered serious grounds for disqualifying said director.

CONCLUSION

This ruling has brought Jersey more in line with the UK's rules on director's duties towards creditors, and will be an important case to note for any directors seeking to wind up, or make insolvent, a company in Jersey. It will be a sharp deterrent for any director currently in désastre proceedings as even lax compliance with the Viscount could see them subject to disqualification proceedings. This will be particularly relevant as more companies face insolvency as global and local markets begin to contract.

Moreover, this ruling echoes Jersey's overall efforts to keep itself as a jurisdiction trusted by international companies and regulators. Jersey wants to be seen as a jurisdiction where directors cannot shirk off responsibilities they would be held accountable for on the mainland. It wants to be seen as a jurisdiction where people cannot evade their debts through dishonesty or non-compliance. This has been a key component of other recent legislation and rulings, such as the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020.

In short, the laxer days of regulation in Jersey are well over, and it is likely the island will continue its current trend of striving to obtain the highest regulation possible. The Viscount has now shown that he has sharp teeth and is capable of wounding. As we enter one of the deepest recessions in living memory, directors must show extreme caution and be fully cooperative with the Viscount, or face disqualification and imprisonment.

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