



briefing

Business Support & Insolvency – August 2009

Re. Carson Country Homes Ltd [2009] EWCH 945

This case gives some useful guidance on quite unusual circumstances. In this matter a director signed a debenture for a bank on behalf of the company he represented and then forged the signature of the second director, purporting to the bank that the document had been signed personally.

The facts of this case are relatively unusual as directors do not regularly counterfeit signatures of other officers of the company who are not there in person to sign themselves. Often a dispute involving a forged signature will be that of someone who could never have been regarded as having any authority on behalf of the company. The document which was signed and returned to the bank was also of significant importance to the company, eventually leading to the appointment of administrators.

The court held in favour of the bank in finding that the debenture had been validly executed. A summary of the facts and basis of the findings in this case follows;

Brief facts

Administrators were appointed in respect of Carson Country Homes Ltd (CCH) by Barclays Bank pursuant to a debenture purportedly made by CCH in favour of the bank. One of the directors, Mr Carter, claimed that the signature on the debenture which purported to be his was actually forged by another director of CCH, Mr Jewson.

Mr Carter claimed that due to the forgery of his signature on the debenture it was therefore a nullity and void. The consequence of this was that the administrators were not validly appointed. The administrators brought the action in order to seek clarity and to establish if they had been validly appointed.

Mr Jewson dealt with most of the administration and financial affairs of CCH. Mr Carter allowed Mr Jewson to sign documentation in his absence so long as he was aware in general terms of what was happening. It was common for Mr Jewson to sign documentation himself and also with a reproduction of the signature of Mr Carter.

When Mr Jewson signed the debenture for the bank he did not tell Mr Carter of the transaction but nevertheless signed on his behalf as had been common practice. Mr Jewson then returned the signed document to the bank. Soon after there was a default on the terms of the debenture and the bank in accordance with their agreement with CCH, appointed administrators.

The bank believed the document had been signed by Mr Jewson and Mr Carter until Mr Carter informed them otherwise following the appointment of the administrators.

The decision

The debenture had clearly not been executed in accordance with the rules set out in [Section 44 of the Companies Act 2006](#) which states that the common seal must be affixed, or the document must be signed by two "authorised signatories" (i.e. directors and the company secretary) or a director in the presence of a witness (s.44.(2)). The decision therefore turned on the interpretation of [Section 44 \(5\) Companies Act 2006](#) which states:

"In favour of a purchaser a document is deemed to have been duly executed by a company if it purports to be signed in accordance with subsection (2).

A "purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property."

It was held that the bank had acted in good faith on the belief that the document had been signed by both directors. Valuable consideration was taken to be the continued support by the bank of the group of companies of which CCH belonged.

It was found that Mr Jewson had ostensible authority on behalf of CCH to warrant to the bank that all the formalities relating to the execution of the debenture had been complied with, and most importantly that the signatures were genuine. The Judge based his decision on the long standing practice between the two directors in which Mr Carter allowed Mr Jewson to handle all of CCH's dealings with the bank and to counterfeit his signature on other documents. It is important to note that the Judge made this finding despite the fact that Mr Carter had not been made aware of the document or its execution by Mr Jewson as he had insisted on in the past.

More information

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Paul has a broad based practice and specialises in corporate recovery, restructuring and turnaround work.

Highly experienced in the creation and implementation of recovery strategies. Paul advises financial institutions and stakeholders, insolvency practitioners, directors, and creditors.

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