



LEGAL BRIEFING

In the matter of Carson Country Homes Ltd

[2009] Ch D Davis J

The Facts

A company's directors divided the administration of a company between them. One dealt with matters relating to finance and the other to the daily operation of the company. There were company loans between the company and its parent. The director dealing with the finances would occasionally replicate the others signature on financial documents. The other director was happy for this to be done providing that he was kept informed of the nature of the document to which his signature was being applied.

The first director agreed a debenture and a guarantee with a bank. He signed them and also replicated the other director's signature.

The bank became concerned about the level of inter-company loans. The Court was then asked to appoint an administrator. The relationship between the two directors had broken down by this stage, and the director in charge of the day to day matters said that the appointment of the administrator was not valid because he had not put his signature on the debenture or the guarantee. The finance director had no choice to agree that the other director's signature was forged. However, he argued that the director knew and agreed to the replication of his signature.

The Issues

There were three issues before the court:

- (i) Did the finance director have the authority to sign on the other's behalf?
- (ii) Would Section 44 of the Companies Act 2006 render the debenture invalid in any event because of the forgery? and finally
- (iii) Could the finance director bind the company in any event?

The Decision

The first issue was factual, and the Judge preferred the evidence of the director whose signature had been forged, rather than that of the finance director. As a result the finance director did not have any express or implied authority to sign the other's name.

However on the basis that a principal could be bound by the fraudulent act of an agent, then a company could be bound by the fraudulent act of a director. As the finance director had signed in his capacity as company secretary the company was bound. The bank was therefore entitled to rely upon the document, notwithstanding the forged signature.

The administrator was, therefore, validly appointed.

Comment

This is another case relating to the validity of a guarantee, which in turn affected the appointment of an administrator. The interesting aspect here was that one of the directors forged the signature of another director. The practice appeared to have been accepted between the two whilst the companies were

solvent. However, once their relationship broke down the director whose signature had been forged said that he knew nothing about the guarantee. The Judge believed him, and therefore accepted that the finance director had in reality forged another director's signature.

However, the finance director had the power, when acting as the company secretary to bind the company. The forged signature was therefore irrelevant and the company was bound. The guarantee was valid and so the bank could appoint an administrator.

Nicholas Gould
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