



Corporate Turnaround and Insolvency

Conversion by liquidators

IPs are always on guard for potential conversion claims - but what happens when no title can be established? Euromex clarifies the whole mess.

The background

In *Euromex Ventures Ltd and others v BNP Paribas Real Estate Advisory and others (01/10/2013, EWHC 3007)*, a company called Euromex and its director brought a claim against the former administrators of Hardial Digital Services (HDS) for conversion of assets. HDS and its connected companies engaged in television broadcasting and production businesses, all run from a central studio. The parent company (Hardial Limited) had owned television equipment with significant value, which had been mortgaged to both HDS and another related company (Quinella) in order to secure various inter-company liabilities.

The issues

Euromex and its directors alleged that the security had been transferred to one of two individuals (being family members), and that by selling the assets which had been subject to the mortgages to BNP Paribas Real Estate Advisory, the administrators and BNP had committed conversion.

The administrators counterclaimed on the basis that the directors his brother had undertaken to meet the costs of HDS' administration.

What did the court decide?

The court found that there was conflicting evidence about ownership of the relevant assets. On the one hand, Hardial's 2001 accounts showed it as owning the relevant assets before the chattel mortgages were entered into. However, HDS's 2003 accounts showed that it owned the relevant assets (and those assets were on its fixed assets register). The director had also sworn (in an affidavit) that the relevant assets were owned by HDS. This estopped the director from denying that HDS owned those assets at the point of sale to BNP.

In relation to the assignments of the chattel mortgages, the court decided that neither were genuine and that both were likely to have been created only after HDS went into liquidation.

On the face of it, HDS was owner of the relevant assets at the time it went into liquidation.

On the issue of administration funding, the evidence (including emails and an affidavit) supported the administrators' claim that

the director and his brother had agreed to fund the administration of HDS. As a result they were liable for the administration costs.

What does this mean for practitioners?

Conversion is a perennial problem in insolvency proceedings, and is an easy smokescreen for directors to raise in order to delay or frustrate a proposed sale of assets. It is a particularly prevalent issue where the books and records are not particularly transparent. Whilst IPs (and purchasers, who are also potentially liable) will be naturally be cautious of such claims, this decision demonstrates the pragmatic approach which the court will take, by going back to books and records, as well as contemporaneous emails and other evidence in order to get to the bottom of the matter.

There are several steps which IPs can do to protect themselves before the issue arises, if they are in doubt of the bona fides of the directors behind a company. One is to ensure that the companies records are secured as early as possible and that a statement of affairs is obtained as early as possible (for example under para 47 of Schedule B1 of the Insolvency Act 1986). Such statements contain a statement of truth on behalf of a director which, if they subsequently raise inconsistent claims, will act against them.

The other (more drastic) action is to use the powers under Section 236 IA 1986 to examine directors before the court. Obviously this is a more expensive option, but will drive out any potential issues before a competent authority.

Contacts

For more information on this subject please contact:



Patrick Cook

Partner

+44 (0)117 307 6807

patrick.cook@burgess-salmon.com



Richard Clark

Senior Associate

+44 (0)117 902 6626

richard.clark@burgess-salmon.com