

Directors and exploiting business opportunities

The recent case of *Aerostar Maintenance International Limited and another v Wilson and others* provides a sobering reminder of the risks created when an individual takes the benefit of a business opportunity which they should exploit through their company.

The Facts

Mr Ashfield was involved in negotiations for the purchase of a number of aircraft. He approached a friend, Mr Wilson, who was a Director and employee of Aerostar Maintenance International Limited ("AMIL") because he wanted AMIL to be involved in the proposed transaction.

During the course of the negotiations, Mr Ashfield started pressing Mr Wilson to take the benefit of the proposed contracts from AMIL for himself. Mr Ashfield respected the abilities of Mr Wilson and preferred to do business with him alone rather than AMIL. After some persuasion, Mr Wilson agreed to this course of action, motivated largely by his dissatisfaction at his past treatment by AMIL.

Mr Ashfield set up a company called "Aviation Management International Limited", which shared the initials A-M-I-L, and opened bank accounts in its name. Mr Wilson was the only subscriber and the first director. This new company replaced AMIL in the proposed contracts. Mr Ashfield's explanation for these changes led the other contracting parties to believe that they were still contracting with AMIL, rather than a new and separate entity.

Even after the new company had entered into contracts in place of AMIL, Mr Wilson continued telling the board of AMIL that negotiations for the contracts were ongoing, albeit at an advanced stage. Mr Wilson later resigned from AMIL and told the board that the company had lost the contracts. He did not say who, if anyone, had won the contracts.

The Consequences

Neither Mr Wilson nor Mr Ashfield thought that they were doing anything illegal. In their email correspondence they referred to Mr Wilson "doing the dirty" on AMIL. However, they meant this in a moral rather than legal sense and felt they were justified because AMIL had earlier "done the dirty" on Mr Wilson. They also believed that Mr Wilson's business dealings led to his duties as a Director being relaxed so that he was free to act in conflict with AMIL and could take for his own benefit business opportunities which belonged to or were being pursued by AMIL. The Court disagreed with these assessments.

In relation to Mr Wilson, the Court found that he had breached the fiduciary duties he owed as a Director of AMIL and his obligations as an employee of AMIL. He had not acted in good faith, sought to make a profit out of his position as Director, placed himself in a position

where his own interests conflicted with his duties to AMIL, did not act in the best interests of AMIL and used information he had as an employee of AMIL for his own purposes.

In relation to Mr Ashfield, the Court found that he induced Mr Wilson to breach his contract of employment with AMIL, had conspired to injure AMIL by unlawful means and dishonestly assisted Mr Wilson's breaches of his fiduciary duties.

In relation to the new company, the Court found that it also had conspired to injure AMIL by unlawful means, could not retain the benefit of the aircraft contracts, and had dishonestly assisted Mr Wilson in committing a breach of his fiduciary duties.

AMIL were therefore successful in their claims against Mr Wilson, Mr Ashfield and the new company. Mr Wilson, Mr Ashfield and the new company were liable to account for the profits they made, equitable compensation and damages, the amounts of which were to be determined at a later date.

The Lesson

This case provides a clear reminder that individuals conducting commercial activities either through or with companies must remember the duties owed by the Directors and employees to those companies.

In any business situation, the individuals involved may feel as though the commercial opportunity belongs to them personally. However, when reaching a deal they must be careful to avoid conflicts between their own personal interests and their fiduciary duties. Unless there is a clear and legally sustainable basis for believing that the duties owed in normal circumstances by a Director or employee of a company do not apply, the financial and legal consequences of ignoring these matters can be significant, even for those with no dishonest intent.

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