

Individual trustee liability

Any charity with potentially substantial financial liabilities, which includes charities with employees or holding property, should ensure that individual trustees are protected against claims by other parties. The best way of doing this in most cases, and the only way of doing it in the case of employment contracts, is for the charity to be established as a corporation with limited liability. This usually means a company limited by guarantee, a charitable incorporated organisation or a community benefit society. The case of *Hamid v Francis Bradshaw Partnership* illustrates the fact that even this can be ineffectual if legal documents are incorrectly prepared. Without due care, individuals can still be responsible for the liabilities of the charities which they represent, even though the charity has limited liability.

The *Hamid* case is in a sense curious, because in this case it was an individual making a claim against a party who alleged that the claim was brought in the wrong name, and should have been brought in the name of the company. The advantage for the defendant was that the company had in fact gone into liquidation. However, the case illustrates that whatever the situation, courts will only consider what the legal documentation appears to mean in its context, and if there is no ambiguity they will not read the contract to mean something else than it actually says.

In the *Hamid* case, part of the contract was in writing, and part of it was by verbal agreement. Mr Hamid signed correspondence in his own name, with “Moon Furniture” after his name. Moon Furniture was in fact the trading name of Chad Furniture Store Limited, the company that had gone into liquidation by the time the action took place.

At no time prior to the proceedings was the defendant aware that Moon Furniture was in fact the trading name of Chad.

The court held that the fact that the defendant could have found out that Moon Furniture was Chad’s trading name was irrelevant. All the court was entitled to do was to look at the contract the way that the parties would have understood it at the time it was made, with the benefit of the background information at the time. The claim was therefore allowed and it was held that Mr Hamid’s signature made him, personally, a contracting party. Whilst this worked in Mr Hamid’s favour the case demonstrates that individuals can unintentionally become personally liable.

The court did refer to the criminal offences that arise where a company fails to include certain details in its contractual documentation.

In addition, as far as charities are concerned it is still a criminal offence not to state that a company is a charity in all instruments creating, transferring, varying or extinguishing an interest in land (section 194 of the Charities Act 2011).

However the main worry in practice for charities is that if documents are not correctly prepared individual trustees may be liable for very substantial compensatory awards, including awards under employment contracts and for commercial services.

All of the above refers to the interpretation of existing contracts, rather than the power of the court to “rectify” (i.e. change the expressed terms of) contracts where the parties have made a mistake in drawing them up. It may just be possible for individuals who have found that they are liable personally on the strict interpretation of contracts to argue that the contract does not represent the intention of the parties because there has been some kind of mutual mistake, or exploitation of a known error in the documents by the other party.

However, all court action is expensive, and this type of action is likely to be very expensive because it is likely to involve detailed examination of complex evidence. As in all litigation, there is no guarantee of success even when there appears to be a strong case. It is far better to get it right in the first place.

Hamid v Francis Bradshaw Partnership [2013] EWCA Civ 470

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