Commercial and Insolvency Update October 17

A Strict Interpretation of the Duomatic Principle

Randhawa v (1) Turpin (2) Hardy (as former Joint Administrators of BW Estates)

[2017] EWCA Civ 1201

The Court of Appeal has reaffirmed the need for formality and strict compliance with articles of association in the management of a company's affairs. The Court declined to apply the *Duomatic* principle to validate the appointment of joint administrators by the sole director of a company whose articles of association required a quorum for directors' meetings of two and a quorum for general meetings of two. This decision is a reminder that the *Duomatic* principle cannot always be used as a fall-back option to cure procedural defects in company decision-making processes.

The company originally had two shareholders, a husband and wife. The wife's shareholding was transferred to a company (Belvedere) which was later dissolved, but remained on the register as being a member of the company. The husband was disqualified as director and his son replaced him as sole director.

The son appointed the Respondents as joint administrators under paragraph 22 of Schedule B1 to the Insolvency Act 1986 (IA 1986). The appellants challenged the validity of their appointment. They argued that the sole director was not entitled to make the appointment since there was no second director to make up a valid quorum, and that the *Duomatic* principle could not apply

because it would require the consent of the two registered shareholders required for a quorum at the shareholders' meeting.

Buckley J said in Re Duomatic [1969]:

"where it can be shown that all shareholders who have a right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into effect, that assent is as binding as a resolution in a general meeting would be."

The Court of Appeal held *inter alia* that the principle simply could not apply in a scenario where one of the registered shareholders was a corporation which no longer existed, because it required the consent of all registered shareholders. Belvedere remained a member of the company and was therefore a shareholder who ought to have been involved in such decisions. Belvedere's membership of the company could not be disregarded because it was dissolved. The company should either have restored Belvedere from dissolution so that it could provide its consent (which would have been unlikely, given the passage of time) or alternatively, another director should have been appointed to provide the quorum for management decisions.

This decision is helpful in clarifying the requirements for the application of the *Duomatic* principle, and serves as a reminder that when a company changes the way in which it operates, this may necessitate amendments to the company's articles of association.

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