

High Court clarifies position in relation to substantial property transactions with directors

Kerr & Ors v Conduit Enterprises Ltd

In 1997 the two directors of the company and others purchased a building and leased it to the company. Ownership of the company changed hands a number of times and, in 2008, the then new owners purported to void the lease on the basis that it had never been approved by shareholder resolution. The landlords issued proceedings seeking a declaration that the lease was valid.

The court held that:

the requisite value of a lease, for the purpose of the section is its assignment value at the time it was granted i.e. the price the company could have expected to obtain for assigning the lease to another party immediately after its creation. As this value was held to be nil and the lease was valued at nil in the accounts, the court held that this arrangement fell outside the scope of section 29; and

an informal resolution of all of the shareholders is sufficient to constitute the resolution of the company in general meeting required by the section (Buchanan & Anor v McVey & Anor followed) even where this was constituted by the agreement of all of the shareholders who were also directors at a board meeting.

Comment

Section 29 is a mechanism that can be used by insolvency practitioners to void transactions that are of no current benefit to the company, where the approval process was not followed.

This judgment restricts the use of section 29 in this manner where assets were leased at market value and makes it clear that informal approval by shareholders suffices to validate transactions.

It might be noted that by virtue of Section 218 of the National Asset Management Agency Act 2009, Section 29 can not be used to void a transaction where an acquired bank asset would be rendered void by its application.

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