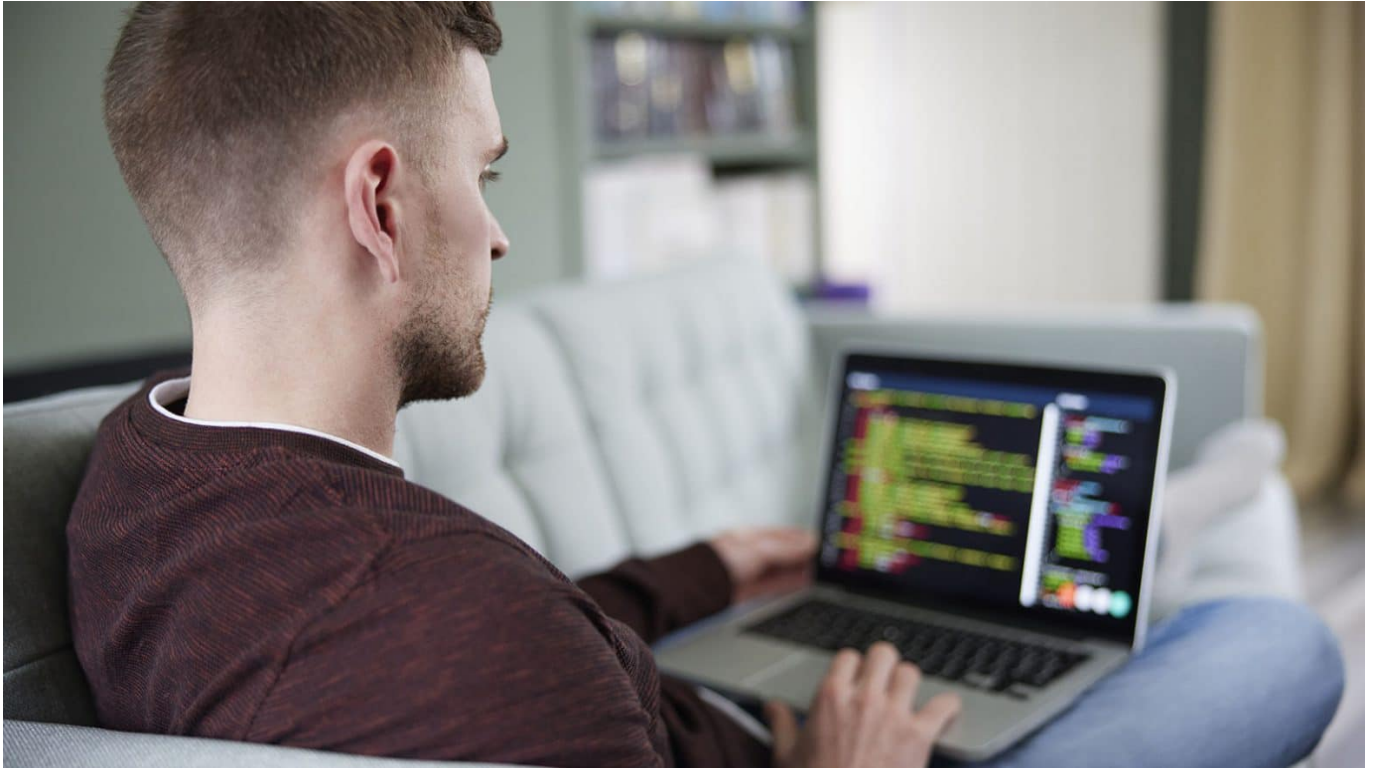


Directors' duties in smaller companies



The Court of Appeal has delivered an interesting judgment on how compliance with directors' duties should be assessed in smaller more informally run companies. The case is *Humphrey v Bennett* [2023] EWCA Civ 1433.

The claim

Essentially the claimants in the case alleged that the defendants had wrongfully personally exploited a business opportunity in a property business in which they were all shareholders. It was alleged that in doing this the defendants were in breach of their duties as directors of the company. The claimants brought a derivative action (an action on behalf of the company) against the defendants.

Legal issues

The key legal issues dealt with in the Court of Appeal judgment relate to three sections of the Companies Act 2006 relating to the duties of directors:

s.175 – the duty to avoid conflicts of interests

s.177 – the duty to declare an interest in transactions

s.1157 – which enables the court to grant relief from liability to a director who has breached their duty but has acted honestly and reasonably.

Both s.175 and s.177 set out steps which should be taken to avoid breaching the duties. These relate to proper disclosure of interests and obtaining the authority of the board to relevant transactions.

The appeal was from a finding by the lower court granting summary judgment to the claimants on the basis that one of the defendants had not complied with their duties under s.175 and s.177 and that there was no basis to grant relief under s.1157.

The Court of Appeal judgment

The appeal was allowed. It was found that the Judge in the lower court had taken a too rigid approach to what was required under s.175 and s.177. They had not taken into account the nature of the company and the informal way it was run. On the available facts it was perfectly possible that the defendants could make out a successful defence at trial that they had discharged their duties.

In relation to s.1157, the Court of Appeal rejected the argument that a director who personally benefitted as a result of breach could not rely on the section without an “extremely powerful case”. Previous case law should not be treated as having added a restriction on the broad wording of this section. Accordingly, a Judge should be cautious about granting summary judgment when the full evidence has not been tested.

On a point of law, the Court of Appeal also rejected an argument that where a failure to carry out the specific steps required under s.175 or s.175 is identified then it precludes a claim for relief under s.1157. They emphasised the broad nature of the relief available under this section.

Summary

The Court of Appeal has highlighted the importance of the factual context in cases of alleged breach of duty by directors. What might be sufficient to satisfy the steps required by s.175 and s.177 or justify relief being granted under s.1157 may be quite different in a small more informally run company than in one with a formal board structure and lines of reporting. It is an injection of common sense into a complex area, albeit one that makes the analysis more focused on the facts and hence the outcome harder to predict.

How we can help

The fact specific nature of decisions in this area means that it is important to get advice from solicitors with genuine expertise. Cripps' [commercial dispute resolution team](#) is recognised for delivering expert advice to companies and their directors.



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