

High Court Ruling for the First Time Considers What Directors Duties Survive the Insolvency of a Company

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Hunt (as Liquidator of Systems Building Services Group Limited) v Michie and Others [2020] EWHC 54 (Ch)

On 21 January 2020 ICC Judge Barber handed down a decision which considered, in what is believed to be a first, the question of whether director's duties survive the insolvency of a Company.

ICC Judge Barber found that a director of an insolvent company breached his fiduciary duties to the company by his actions in the administration and subsequent liquidation including in purchasing a property from the company's previous liquidator at what he knew to be an undervalue and unreasonably causing preferential payments to be made to a certain creditor and dividend and salary payments to be made to himself. It was noted during the case that to date there has been little jurisprudence or commentary regarding enforcing a director's duty post-appointment of an administrator/ liquidator.

The judgment confirms that the onset of insolvency does not terminate a director's existing duties, including that to have regard to the company's creditors as a whole when in or near insolvency. Even though a director's executive functions cease on the appointment of an administrator or liquidator in a creditors voluntary liquidation (except as permitted by the insolvency office holder), the directors' duties remain extant. ICC Judge Barber noted that those duties are independent of and run parallel to the duties owed by an administrator or liquidator in respect of the company.

The issue of directors of a company purchasing assets of that company in a pre-packaged insolvency sale has frequently been an area of controversy. This judgment shows that, in addition to the rules and practice directions relating to how an insolvency office holder should conduct pre-pack sales, where directors are the prospective purchasers they will themselves need to ensure that they have due regard to their own duties to the company.