

Directors' conflicts and declarations of interest

The Court of Appeal has overturned an earlier High Court judgment and decided that a director had made a valid declaration of his transactional interest in a proposed management agreement with the company¹.

Background

- C was a members' club offering water skiing activities. D had been chairman and director until 2017. D was also partner with his son in an unincorporated partnership which ran a water ski school and a shop selling related equipment. C's day to day administration was conducted from the partnership's shop premises by D and his son.
- From 2007 the management fees paid to them were raised to £35,000 a year. In his chairman's report for the March 2007 AGM, D had announced that this had been decided. This was confirmed in minutes of the May 2007 board meeting, which recorded that this was agreed following "earlier board discussions".
- These arrangements continued for ten years until new directors came on the board and D resigned as director. C then claimed repayment of £350,000 paid by way of management fees, alleging D had failed to declare his transactional interest in the relevant (unwritten) management agreement as required under the applicable statutory regime. Although the relevant regime at the time applied under the Companies Act 1985, much of the Court of Appeal's comments are also helpful in interpreting the current equivalent provisions which apply under the Companies Act 2006.

Decision

- The Court of Appeal allowed the appeal from the earlier High Court decision and decided that sufficient disclosure had been made.
- The Court of Appeal emphasized that the statutory provisions covered a wide range of interests and potential interests and the level of disclosure required varied with the circumstances.
 - Where, as here, the director's interest is clear and obvious, very little may need to be said. If a director's interest is more indirect, a fuller explanation may be necessary. What is required is a clear declaration of the nature of the director's interest so that the board is fully informed of the real state of things.
 - It was significant here that the potential conflict of interest had been expressly acknowledged in earlier minutes of the January 2007 board meeting, including that the directors had taken due regard of it. Although the new management fee had not yet been set, it had been agreed at the time that the pre-existing level of fee was unrealistic and had to be increased.
 - The Court of Appeal gave general guidance on the statutory rules. Whilst disclosure should generally be made before the contract is concluded, the terms of the contract may not necessarily have been finally settled by the time of the board meeting at which the declaration is made.
 - If there is a series of board meetings to consider a proposed contract, disclosure must be made at the first such meeting but need not be repeated at every subsequent one.
 - A general notice may be given in very general terms, such as of being a member of a specified company or firm.

¹ *Fairford Water Ski Club Ltd v Cohoon and Another* [2021] EWCA Civ 143.

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- The aim of the statutory regime is to ensure disclosure of a director's transactional interest and not to obtain approval of such interest. As such, the terms or amount of any payment were not needed, let alone a valuation or assessment of value for money. That would be more relevant to assessing the separate issue of whether a particular arrangement was in a company's best interests. The effect was that the directors did not need to have an independent valuation of the rent under the lease of the premises occupied by the partnership. Minutes of an April 2006 board meeting had noted that it was hard to get a meaningful external valuation due to the unusual nature of the premises involved. The Court of Appeal noted that any challenge on valuation would have failed anyway, due to the judge's finding at first instance that the rent was not financially disadvantageous.

Key lessons

- **Context is key:** The level of detail and explanation that a director need give to effect a valid declaration of a transactional interest depends on the facts and context.
- **Disclosure needed, not approval:** A declaration of a transactional interest need not provide an independent valuation of the interest and consent is not required (unlike in relation to an underlying situational conflict). Here, this meant that valuation of the rent under the lease of the partnership's premises was not needed.

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