

Bonham, Michael & ors v. Blake Laphorn Linell & anr [2006] EWHC2513 (Ch).

23 APRIL 2008

CATEGORY:
ARTICLE

Facts of the Case

The claimant owned a substantial number of shares in a private company and borrowed money against those shares in order to discharge his debts and acquire further shares in the private company. The lender was to acquire an entitlement to a share in the proceeds of sale of the shares in the private company. However, the claimant had previously established a trust into which all of his shares in the private company were to be transferred. When the claimant did not transfer his shares into the trust the trustee, without first obtaining a Beddoe Order, started proceedings against the claimant seeking to enforce the transfer of shares in the private company to the trust. The claim was settled by consent but a substantial costs liability remained for the trustees. The claimant therefore issued proceedings against both the trustees and the solicitors advising them, on the grounds that the trustees had acted in breach of trust by pursuing litigation relating to the transfer of shares and that the trustees' solicitors had been negligent in failing to advise the trustee that the litigation had no real prospect of success. It was common ground that the trustees were entitled to recover their costs from the trust fund in so far as they fell within the statutory indemnity provided by s30(2) Trustee Act 1925 (superseded by s31(1) of the Trustee Act 2000) and for expenditure to be within the scope of the statutory indemnity it was necessary for a trustee to show that the expenditure in question was properly and reasonably incurred.

The Decision

The judge dismissed the claim and found for the defendants that it had been proper and reasonable for the trustees to commence and pursue the litigation against the claimant. It was found that because the trustees had a good arguable case the claimant had been obliged to transfer his shares in the private company into the trust, therefore the claim had a reasonable prospect of success. In reaching that decision the judge concluded that there was considerable doubt about the value of the shares in question and that there was therefore a substantial risk that the creditor to whom the claimant had borrowed money would be forced to call in the loan made. There was accordingly a very real risk that the trust did not hold sufficient assets to meet the liabilities of the trustees, to meet the money owed to the creditor and the creditor's lenders. The value of the shares not transferred to the trust was a loss to the trust and if the trustees had simply allowed the claimant to retain the shares, they might rightly have been criticised by the remaining beneficiaries of that trust. Furthermore, if the trustees did not enforce the transfer of the shares they would potentially be missing out on an opportunity to add further value to the trust by increasing its already large shareholding in the private company, which would make it more attractive to a purchaser. It was also held that the trustees did not act in breach of trust in pursuing the litigation and deciding not to obtain a Beddoe Order. The trustees therefore had not acted in breach of trust in paying trust moneys in settlement of legal costs incurred.

Interesting Point

It is not necessary for trustees to obtain a Beddoe Order where it is proper and reasonable for the trustees to commence and pursue litigation.