

CONTRACTING WITH A COMPANY: CHECK FOR DIRECTOR AUTHORITY!

A recent High Court judgment reminds us once again of how important it is, when dealing with a company, to check that whichever director/s you are dealing with is/are fully authorised to bind the company.

R3.8m in claims attacked

- A liquidation application was launched against a property developing company with 3 directors,
- The applicant creditor was owed some R3.8m in loan and suretyship claims,
- Its problem was that the suretyship and loan agreements had been signed by only one of the directors of the property company, with the knowledge and approval of the second director but not of the third,
- The third director (acting as trustee of a creditor trust) opposed the liquidation application on the grounds that the first and second directors had acted without authority. He argued that the creditor had no claim against the company, and therefore had no standing to liquidate it,
- The Court found on the facts that the creditor had failed to prove that the first and second directors had acted with authority. Nor had it proved that they were held out as being persons authorised to manage the company's affairs. Thus it could not enforce any claim, and the liquidation order was refused.

So, how do you prove authority?

You must firstly show that you were dealing with someone who had either actual or apparent (often called "ostensible") authority to contract with you. **You can't enforce your claim if you can't prove authority!**

Assumptions, assumptions

As a rule you are allowed to assume that the board of directors and any managing director have the necessary authority. The same doesn't generally apply to any ordinary director or employee, except perhaps to the extent that they hold an executive position (financial director or branch manager perhaps) which suggests that they have authority "usual to that type of position". Of course you can't make any assumptions at all if you *actually knew*, or *should have known or suspected*, that the director or employee was acting outside his/her powers and authority.

No wriggle room

To complicate matters (sorry, but this is important and to your advantage) what happens if a company tries to wriggle out of its contract with you on the basis that, unknown to you, the director had breached some internal company procedure? Since usually only insiders will know about a company's internal policies, it would be highly unfair to you if that were allowed.

To protect you, our law says that, once you have proved actual or apparent authority as above, *you can then assume that all the company's internal rules and policies have been complied with*. Out of interest, if you ever hear lawyers earnestly and learnedly debating "The Turquand Rule", this is what they are talking about.

Beware – our law on this is both complex and fraught with grey areas, and the notes above are just a summary of some general legal principles. Insist on directors you contract with producing written proof of authority (a formal company resolution to start with) and **take legal advice on your particular circumstances!**

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