BAR WARS: INN KEEPING WITH CONVENTIONAL AUTHORITIES

Graeme Kirk

In Allnutt v The Nags Head Reading Ltd & Others [2019] EWHC 2810 (Ch), ICC Judge Prentis reviewed the authorities on shareholders' Unfair Prejudice as governed by the Companies Act 2006 s.994.

Ted Allnutt had been one of the directors of a company established to breathe new life into a Reading pub in 2007. His fellow shareholders voted to remove him in February 2016 because of his involvement with a local rival pub which they perceived as a conflict of interest and a breach of his director's duties.

In April 2016, Mr Allnutt issued a claim in the Employment Tribunal alleging Unfair Dismissal and Age Discrimination. Those claims were unsuccessful, so he issued a claim in the Chancery Division seeking an order requiring the remaining shareholders to buy his shares and for compensation for the loss of his directorship.

In O'Neill v Phillips [1999] 1 WLR 1092, Lord Hoffman noted that fairness was the criterion by which the Court had to decide whether or not to grant relief, and that this should be measured against the company's articles or what equity would regard as good faith. The Court also recalled that s.175 imposed an obligation to avoid a situation in which a director has an interest which *conflicts or possibly may conflict* with the interest of the company. This required complete disclosure by a director, or the 'informed consent' of the company so as to acquiesce (the Duomatic principle).

Whereas the other directors had taken various hands-on roles in the pub's management, Mr Allnutt was originally responsible for the website and for ordering wine and glasses. He held 10,000 shares, being 20% of the total (indicative of his initial capital contribution).

In 2013, Mr Allnutt's friend and fellow shareholder Mr Oates retired from working behind the bar of the Nags Head, but continued behind the scenes. This upset Mr Allnutt, who had been considering his own retirement and was spending increasing amounts of time in Thailand.

Mr Allnutt had discussed the purchase of the nearby Butler pub with the shareholders of the Nags Head, but they all declined. So in July 2014 Mr Allnutt and a separate business partner acquired the freehold of the Butler and invested in its refurbishment and the implementation of a new range of beers which was made possible by buying out the beer tie (as had been done at the Nags Head).

Mr Allnutt argued that there was no real conflict or that it was implicitly approved. However at trial, the Judge found that he was and remained involved in the strategy, investment and marketing of the Butler. By contrast he had had little to do with the Nags Head since he had walked out from a rowdy football crowd there, after which he had failed to complete the New Year's Eve order. His role in the Nags Head had therefore diminished whilst his interest in the Butler developed, while he retained his 20% shareholding and directorship in its neighbouring rival.

The Judge therefore concluded that "Mr Allnutt's involvement in the Butler was in manifest conflict with his duties as director of the Company. That conflict was at no stage approved by his fellow directors or shareholders, or otherwise consented to, or acquiesced in". His claim was accordingly dismissed.

Employment: Gilham v Ministry of Justice [2019] UKSC 44, [2019] 1 WLR 5905

Dominic Bright

This appeal considered the status of judicial office holders in the context of statutory protection bestowed upon whistle-blowers.

Issues

There were three issues:

Whether a judge qualifies as a 'worker' or a 'person in Crown employment' for the purpose of the protection given to whistle-blowers under Part IVA of the ERA 1996;

If not, whether this is discrimination in the enjoyment of the right to freedom of expression under the Convention; and

If so, what is the remedy?

Employment

Judges hold a statutory office. They do not *necessarily* hold office pursuant to any kind of contract, however, they *may* do so under a contract with the person or body for whom they undertake to perform work or services. To decide, it is necessary to look at (at least) three factors.

First, the manner in which the judge was engaged. Secondly, the source and character of the rules governing service. Thirdly, the overall, constitutional context.

The President of the Supreme Court found that:

"Taken together, all of these factors point against the existence of a contractual relationship between a judge and the executive or any member of it. Still less do they suggest a contractual relationship between the judge and the Lord Chief Justice."

It is inferred that a judge is not a 'person in Crown employment' due to the existence of sections 50, 51, and 83(2) and (9) of the Equality Act 2010.

Discrimination

The four questions when analysing discrimination under the Convention are as follows:

Do the facts fall within the ambit of one of the Convention rights;

Has the applicant been treated less favourably than others in an analogous situation;

Is the reason for that less favourable treatment one of the listed grounds or some 'other status'; and

Is that difference without reasonable justification (in other words, a proportionate means of achieving a legitimate aim)?

The answer to all four questions is "clearly yes".

Remedy

The ERA 1996 should be read, and given effect, so as to extend its whistle-blowing protection to the holders of judicial office.

Disposal

The appeal was allowed. The case was remitted to the Employment Tribunal on the basis that the appellant is entitled to claim the protection given to whistle-blowers.

Personal injury: Aldred v Cham [2019] EWCA Civ 1780

James Tunley

At the end of last month, the Court of Appeal gave judgment in an important appeal concerning the recovery of disbursements in ex-portal, fixed costs cases under CPR 45.29I(2)(h).

The claimant, who was a child, sought to recover the cost of counsel's quantum advice. The claim had exited the RTA portal and CPR Part 45, Section IIIA applied. It was argued that the disbursement was recoverable as "any other disbursement reasonably incurred due to a particular feature of the dispute". The County Court accepted the argument because the CPR required the advice and the fact the claimant was a child was a particular feature of the dispute.

The Court of Appeal disagreed and held the claimant's status as a child had "nothing whatever to do with the dispute itself". It was a characteristic of the claimant and was not generated by or linked to the dispute itself. On the meaning of "a particular feature of the dispute", the Court said that it includes matters such as how the accident happened, whether the defendant was to blame for the accident, the nature, and the scope and extent of the injuries. Consequently, this may give rise to the cost of an accident reconstruction or other expert or specific advice from counsel.

Work done by counsel in advising on quantum in child cases was deemed to be included within the fixed costs, which at the different stages of the claim are considered to include all costs that ordinarily are incurred.

The decision has also made it clear that translation costs are not recoverable under CPR 45.29I(2)(h). Previously it was not uncommon for claimants to recover these. The Court of Appeal said that the fact that someone could not speak English was also not something that arose out of a particular feature of the dispute.

Claimants may feel hard done by given that quantum advice or translation services are required by the CPR. The Court of Appeal referred to the comments made in Sharpe v Leeds City Council [2017] 4 WLR 98, in which it was said that the fixed costs regime inevitably meant there would be swings and roundabouts. To a certain extent both parties lose out by virtue of costs being fixed.