High Court rules on the Personal Liability of a Director and Company Secretary

Date: 8th Apr 2019

Andrew Allen recently appeared in the High Court, leading Mark Greaves, on behalf of the First, Second and Third Defendants in *Antuzis & Others v DJ Houghton Catching Services Ltd & Others* [2019] EWHC 843 (QB), in proceedings concerning an application for summary judgment and trial of a preliminary issue.

Judgment for the Claimants was handed down on 8 April 2019, when the Defendants were represented by Carin Hunt of Outer Temple Chambers.

Summary Judgment: *Breaches of Contract*

The Claimants were Lithuanian nationals who had been employed by the First Defendant, a registered company, to catch chickens at various farms in order that they could be transported for slaughter. They alleged that they were paid below the minimum wage; that they were subject to unlawful accommodation charges and work

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finding fees; and that they never received holiday pay or overtime pay. It was also alleged that the Claimants' wages were frequently withheld. Mr Justice Lane, having examined the oral and documentary evidence, gave judgment that those alleged breaches of contract had in fact occurred.

Preliminary Issue: *Personal Liability*

The preliminary issue related to whether the Second and Third Defendants could be held personally liable for inducing those breaches of contract by the First Defendant.

The Third Defendant owns the First Defendant and is its sole Director, and the Second Defendant is the First Defendant's Company Secretary. They both run the company together.

Andrew Allen argued that the Second and Third Defendants could not be held personally liable, on the basis of the rule established in *Said v Butt* [1920] 3 KB 497:

...if a servant acting bona fide within the scope of his authority procures or causes the breach of a contract between his employer and a third person, he does not become liable to an action of tort at the suit of the person whose contract has thereby been broken.

Mr Justice Lane accepted that the principle in *Said v Butt* applied but found that the Second and Third Defendants had not acted *bona fide* and so did not escape personal liability under the *Said v Butt* rule given that they had acted in clear breach of their duties under sections 172 and 174 of the Companies Act 2006 by seeking to maximise profit, and thereby personal gain, at the expense of the reputation and survival of the First Defendant company.

To find out more about Andrew's practice or to instruct him directly, please contact businessclerks@outertemple.com.

Barristers: Andrew Allen QC | Carin Hunt

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