Court of Appeal considers non-contractual agency in family business (Dinglis Management Ltd and another v Dinglis Properties Ltd)

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Commercial analysis: Iain Quirk, barrister at Essex Court Chambers, examines the decision of the Court of Appeal in Dinglis Management Ltd and another v Dinglis Properties Ltd allowing the appellants' appeal against a High Court decision that the first appellant company was liable to account as agent for the respondent company and that the second appellant was liable to account as a director of the respondent.

Dinglis Management Ltd and another v Dinglis Properties Ltd [2019] EWCA Civ 127, [2019] All ER (D) 61 (Feb)

What are the practical implications of the judgment?

The judgment in *Dinglis Management Ltd and another v Dinglis Properties Ltd* analyses the particular circumstances of an informal family business run between family members without documented contractual arrangements and operated on the basis of informal understandings (to which the family members had generally adhered over a number of years). There are many such businesses.

The practical implications are that the court will give effect to those arrangements even where they do not necessarily fit into a neat legal characterisation. Here, the High Court had found that the collection of rents by one family company on behalf of another gave rise to an agency—but the Court of Appeal overturned that finding, giving effect instead to the understanding between the family members (ie the principals of the family companies), albeit undocumented and informal, as to how those companies should operate.

What was the background?

This was a successful family business investing in and managing a significant portfolio of (largely residential) rental properties. The properties were owned by one company, the respondent, and managed by another, the appellant. The respondent and appellant were companies owned by the family members. The appellant's function was to provide a barrier or buffer between the property owner (ie the respondent) and the tenants, in particular to shield the respondent against claims (this was referred to as the 'buffer principle'). However, much of the structure was undocumented and the business operated on the basis of informal understandings that is typical of family businesses. The 'boss' of the business was the father, and his son and daughter were accustomed to act on his instructions.

There was a family breakdown and disagreement as to how the rents were to be accounted for as between the respondent and the appellant and hence the revenue of the business accounted for as between the family members. The respondent, which was controlled by the father, claimed that, in letting properties owned by it and collecting the rents, the appellant acted as its agent and was liable to account to it for the rents, subject to limited deductions. The appellant said that the buffer principle fatally undermined the existence of an agency—the whole purpose of its relationship with the respondent was that the latter was insulated from claims and it would not be if the appellant had contracted with tenants as the respondent's agent.

The judge at first instance held in favour of the respondent, finding that the appellant was its agent and ordering an account both from the appellant and its principals (namely the son and daughter).

What did the Court of Appeal decide?

The Court of Appeal overturned the first-instance decision. It held that it was 'wholly inconsistent' with the express purpose of the appellant (ie to act as a buffer between the respondent and tenants) to conclude that the appellant was the respondent's agent. It would defeat those arrangements and the intention in establishing them.

One of the important points to emerge from the judgment is the role of intention and purpose behind a (family-owned) corporate structure and how that impacts on characterisation of a legal relationship between two corporate entities in the structure. This becomes interesting in the context of a so-called non-contractual agency relationship (as the judge found at first instance in this case) because the intention being looked at in that situation is (by definition) something short of enough to become contractual between the companies, and yet enough to defeat the manifestation of will required to establish a principal-agent relationship under English law.

Iain Quirk appeared with Stephen Houseman QC for the appellants in this case.

Interviewed by Robert Matthews.

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