

Scottish Court Landmark Ruling Has Implications for all Companies

Leading independent Scottish law firm **bto** solicitors has announced a landmark judgement of the Inner House of the Court of Session which has significant implications for all companies. The case clarifies provisions of the Companies Act 2006 concerning company property following restoration of a company to the Companies Register.



In the case of *ELB Securities v Alan Love and Prestwick Hotels Limited*, **bto**'s client, ELB Securities Limited, owned a commercial property on Buchanan Street in Glasgow which was leased to a company, Prestwick Hotels Limited (PHL). PHL was struck off the Companies Register and dissolved due to its failure to comply with its statutory obligations, i.e. failure to lodge company accounts over a six year period.

In terms of the Companies Act 2006, when a company is dissolved its property (including leasehold property) falls to the Crown as *bona vacantia* and the Crown must then decide whether or not to disclaim the property.

The Queen's & Lord Treasurer's Remembrancer (QLTR), the Crown's representative in Scotland which deals with ownerless property, subsequently issued a Notice of Disclaimer indicating that the Crown had no interest in the lease. ELB therefore sought to recover possession of the premises in a court action at Glasgow Sheriff Court.

In the meantime, PHL was restored to the Companies Register by order of a Sheriff at Hamilton Sheriff Court. PHL claimed that the effect of restoration to the Companies Register was that it was deemed never to have been dissolved and so the lease remained in force. Accordingly, PHL maintained that there was no foundation for ELB's action to recover possession of the premises. In contrast, **bto** argued that the effect of section 1020 of the 2006 Act was that the Notice of Disclaimer terminated PHL's interest in the lease and so the restoration of PHL was irrelevant. The Sheriff agreed with the arguments for PHL and dismissed ELB's action.

bto appealed that decision and Sheriff Principal Scott at Glasgow, preferring **bto**'s arguments, found the lease to have been terminated. ELB was therefore entitled to recover possession of the premises. PHL subsequently appealed to the Inner House of the Court of Session, but PHL's arguments were once again comprehensively rejected and it held that the Notice of Disclaimer had terminated the lease.

David Young, associate from **bto** solicitors, handling the case, said: *"In coming to this conclusion, the Sheriff Principal and Inner House found that the interpretation of the 2006 Act proposed by PHL would be to disregard the special provisions of the Act relating to the company's property that qualified the effect of restoration to the Company Register. Concerns were shared as to the uncertainty and confusion that would arise in the commercial world if the restoration of the company also automatically meant the restoration of the company's interest in transactions, contracts, titles, leases and loans. Parliament simply could not have intended such results when the Act was originally drafted. For landlords it would mean that for many years after the dissolution of a tenant company, they would be at risk that the tenant company might one day be restored and potentially have a better claim to the tenanted property than the tenant in situ.*

"Whilst the judgement remains subject to the possibility of an appeal to the Supreme Court, the judgement is a valuable lesson for all in the UK involved with the management of a company that, should your company fail to comply with its statutory requirements, its assets may be lost forever and you cannot look to restoration as a cure."