25 Sept 2015

business insider

Daily Record

Comment: Landmark court ruling has implications for all companies

David Young, associate with bto solicitors

The owner of a hotel which was struck off the Companies Register and dissolved has failed in an appeal against a decision that its lease with its landlord ended on its dissolution.

The ruling has significant implications for all companies.

In the case of ELB Securities v Alan Love and Prestwick Hotels Limited, ELB Securities Limited, owned commercial premises 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 falls to the Crown as 'bona vacantia', i.e. ownerless, and the Crown must then decide whether or not to keep 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.

However in the meantime, PHL was restored into existence and re-listed on the Companies Register by order of a Sheriff at Hamilton Sheriff Court.

PHL thereafter entered into the court action at Glasgow and argued in defence to the action that on it being restored, certain provisions of the 2006 Act created a pretence that PHL had never been struck off.

Accordingly, they maintained that the lease was to be treated as remaining in force and therefore there was no foundation for ELB's action to recover possession of the premises.

In contrast, we argued that the notice of disclaimer terminated PHL's interest in the lease and so the fact that it was restored as a company was irrelevant.

At that point though the Sheriff agreed with PHL and dismissed ELB's action.

We appealed that decision however and the Sheriff Principal at a Glasgow preferred our arguments and found the lease to have been terminated.

ELB was therefore entitled to recover possession of the premises.

PHL subsequently appealed to the Court of Session but its arguments were once again comprehensively rejected and it was held that the notice of disclaimer had terminated the lease.

In coming to this conclusion, the Sheriff Principal and the three Judges in the Court of Session 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 a result 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.