



Carlyle Capital: Directors win appeal

April 2019

In an eagerly awaited judgment in the Carlyle Capital Corporation Limited (in liquidation) ("**CCC**") litigation, the Guernsey Court of Appeal has upheld the first instance judgment of 2017 and has dismissed the plaintiffs' appeal.

Background

The ongoing, hard-fought litigation surrounding the collapse of CCC in the midst of the 2008 financial crisis, is of considerable local and international interest. The claim brought by CCC – a Guernsey incorporated investment fund that invested in prime US residential mortgage backed securities – and its liquidators, against its former directors and investment manager, is the single largest to ever come before the Guernsey courts.

Collas Crill act for the fund's three former independent directors.

After a six-month Royal Court trial in 2016, Lieutenant Bailiff Marshall QC dismissed all of the claims in a meticulous 524 page judgment, handed down in September 2017. CCC and its liquidators subsequently appealed, and the Guernsey Court of Appeal heard the appeal over a two week period in October 2018.

Court of Appeal Judgment

The Court of Appeal's 47 page judgment notes the care which the Lieutenant Bailiff gave to her appraisal of each factual and expert witness, and praised her judgment as detailed and careful.

The Court endorsed the key finding, that the plaintiffs' claim depended entirely on hindsight, before going on to conclude that in its view, there was ample evidence to support the conclusion - that there was no breach of the directors' or investment manager's duty of care. It also found that the Lieutenant Bailiff's factual findings presented an "insuperable obstacle" to the fiduciary duty claim, which continued to be pursued against the independent directors, before dismissing that element of the appeal as well.

Finally, the Court upheld the Lieutenant Bailiff's legal conclusions in relation to incorporation of provisions of Articles of Association into a director's terms of engagement; held that in order for a person to be guilty of 'wilful default', it is necessary for the person concerned to have suspected (or 'appreciated') that their conduct might constitute a breach of duty but to have decided to continue with the conduct nevertheless; and decided that the statutory term 'misfeasance' does *not* include a mere breach of the duty of skill and care (i.e. mere negligence).

Conclusion

The CCC litigation continues to play an important role in the continual development of Guernsey company law, and the funds and

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corporate services markets can take comfort that the case law applicable to directors' duties in Guernsey is now well-developed and consistent with other common law jurisdictions. In addition, the Guernsey courts and legal services sector have demonstrated once more that they can handle the largest and most complex financial services litigation cases in a timely, just and efficient manner.

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