Cripps

# High Court clarifies meaning of “the directors” in applications for an administration order

William Angas and Justin McConville were delighted to assist their client, a company director, in dismissing an application for an administration order which had been brought by a co-director without his agreement as the other director on the board.

The decision of David Halpern KC, sitting as a High Court Judge, in Re LYHFL Limited [2023] EWHC 2585 (Ch) was handed down today, and is of note in deciding that one of two directors has no power to apply to the Court for an administration order, without the approval of the majority of the directors and without a valid board resolution.

## Impact of this decision

**The decision suggests that the existing principle applying to out of court appointments by the directors (i.e. that an appointment is only valid if it is made by all or a majority of directors pursuant to a valid board resolution) should apply equally to an application by “the directors” for an in court appointment. Some doubt had existed in relation to this as a result of two first instance decisions (Re Brickvest Limited in 2019 and Re Nationwide Accident Repair Services Ltd in 2020) in which the Court had made administration orders on the application of a sole director, even though they were unable to pass a valid resolution to do so. David Halpern KC was able to distinguish Re Brickvest and Re Nationwide on the basis that they were sole director cases but, of particular note for practitioners, he also held that he would decline to follow them if it were necessary to do so.**

**As the Judge dismissed the application on this legal issue, he did not need to address the applicant’s assertion**

**that the company was insolvent or that the statutory purpose of administration had not been made out, which were robustly defended by our client, and entirely at odds with the evidence prepared for our client which demonstrably showed the company was solvent.**

## What our client had to say:

Our client had this to say about the excellent result: "The business is not insolvent by any measure and is trading successfully as our happy customers and suppliers will attest to. Nevertheless, the application proved an enormous distraction to the business and was very stressful to me given the dire potential outcome sought by my co-director. I am indebted to Will, Justin, and all the team at PDT (now Cripps), as well as my barrister, James Knott of 4 Stone Buildings Chambers and Tony Murphy of Harrisons Business Recovery, for their hard work and expert guidance. PDT responded to the application at very short notice and I was impressed how they left no stone unturned and put my response in a manner which the Judge obviously found very compelling."

Will Angas added: "*This decision provides very helpful guidance to company directors and their advisers regarding the law concerning how and when directors may apply to the court for an administration order. More importantly, we were very pleased to be able to fight off the application to ensure the continued trading of the business and protect the livelihoods of its staff.*"

Will Angas

Partner

Justin McConville

Managing Associate