

Application seeking a Disqualification Order, for a period of 15 years, under section 427 of the Companies (Guernsey) Law, 2008 as amended.

[2020]GRC084

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between:

THE GUERNSEY FINANCIAL SERVICES COMMISSION “Applicant”

and

PETER EDWARD DAWSON-BALL “Respondent”

Hearing date: 16th October 2020

Judgment handed down: Tuesday 8th December, 2020

Before: Jessica E Roland, Deputy Bailiff

Advocate for the Applicant: Crown Advocate J Hill

The Respondent was unrepresented.

Cases, Texts and Materials referred to in Judgment:

The Companies (Guernsey) Law 2008 as amended

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended

The Regulation of Fiduciaries, Administration Business and Company Directors etc. (Bailiwick of Guernsey) Law, 2000

Introduction

1. The Guernsey Financial Services Commission (“GFSC”) by a cause dated 15 November 2019 seek an order under section 427 of The Companies (Guernsey) Law 2008 as amended (the “Companies Law”) that the Respondent be prohibited from:

- (a) being a director, secretary or other officer of any company;
- (b) being a shadow director of any company;
- (c) participating in, or being in any way concerned in, directly or indirectly, the management, formation, or promotion of any company;
- (d) participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any overseas company;
- (e) being an administrator of any company;
- (f) being a receiver of a cell of any protected cell companies; and
- (g) being a liquidator of any company

for a period of 10 years or such other period as the Court may be pleased to order.

2. I granted leave at the commencement of the hearing for the Applicant to amend the cause so that it referred to 15 years as being the relevant period. This is the maximum period of disqualification under section 429 (1) of the Companies Law and it was evident from the affidavit of Mr Simon Gaudion, Director of Enforcement division of the GFSC dated 14 November 2019 filed in support of the application and the clear intention of the skeleton argument that this should be a reference to the maximum period under the Companies Law.
3. The GFSC seeks the disqualification following the conviction of the Respondent on the 11 February 2019 by the Royal Court of the following:
 - (i) One offence of money laundering contrary to section 39 (1) of The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended (the “Proceeds of Crime” Law);
 - (ii) Two offences of acquiring, possessing and using the proceeds of criminal conduct, contrary to section 40 (1) of the Proceeds of Crime law.

For these offences the Respondent was sentenced to 180 hours of community service for Count 1 and in respect of the two counts under section 40 (1) of the Proceeds of Crime Law, 15 months’ imprisonment concurrent on each suspended for a period of 2 years.

4. Directions had been given on the 24 January 2020 in relation to the filing of skeleton arguments and additional evidence by either party and again on the 10 July 2020. No skeleton argument or evidence was filed by the Respondent but in addition to oral submissions the Respondent was permitted to rely on a statement dated the 5 July 2020. The GFSC relied on the affidavit of Simon Gaudion as aforementioned and a brief skeleton argument supplemented by the oral submissions of Crown Advocate Jason Hill.

The Facts

5. For the purpose of this judgment the relevant facts can be summarised.
6. In 2009 a Prohibition Order was made against the Respondent pursuant to section 17A of The Regulation of Fiduciaries, Administration Business and Company Directors etc. (Bailiwick of Guernsey) Law, 2000 following his involvement with a business known as Claridges Trustees Limited.
7. Subsequently the Respondent became involved with the business dealings of an individual called David Noakes and his company Immuno Biotech Limited. The Respondent was the financial controller of the business although not a director. The business activities of the company involved the sale and distribution of unlicensed medicinal products, GcMaff and Goleic. Mr Noakes was sentenced to 15 months in custody in England for offences related to the sale and distribution of unlicensed medicinal products. As set out above, the Respondent was, following a not guilty plea, convicted of the three offences linked to his role within Mr Noakes’ organisation.

The Law

8. Section 428 of the Companies Law sets out the grounds for the Court in exercising its discretion to make a disqualification order where it considers by reason of a person’s conduct in relation to a company, or otherwise, that the person is unfit to be concerned in the management of a company.

9. Section 428 (2) sets out factors which the Court must take into account in determining whether a person is unfit and section 428 (3) sets out the factors the Court may also have regard to in considering an individual's conduct. If the Court finds that the person's conduct is such that the person is unfit to be concerned in the management of a company then the Court can make a disqualification order for a maximum of not exceeding 15 years.

Submissions

10. Advocate Hill invited the Court when exercising its discretion whether to disqualify the Respondent to consider in particular section 428(2)(a) the person's "*probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a director, secretary or officer of a company*"; section 428 (2) (f) "*his knowledge and understanding of the legal and professional obligations of directors, secretaries or officers of a company*" and also section 428 (3) (c) "*any convictions he has for any offence and in particular any offence involving fraud or dishonesty.*"
11. Advocate Hill referred to the convictions themselves and the fact that the Respondent had been the subject of the Prohibition Order in 2009 and submitted that not only did these go to the disqualification itself but were aggravating features in relation to the consideration of the length of disqualification. Reference also was made to the fact that the Respondent pleaded not guilty but was found guilty, and the sentencing remarks of Mr J.R. Finch OBE, Judge of the Royal Court (as he was then) following the Respondent's convictions after a not guilty trial.
12. The statement by the Respondent filed in July 2020 focussed on his continued feelings of injustice in the system that convicted him and his feelings of persecution in the GFSC's pursuit of his disqualification following his previous prohibition. I have taken note of his submissions that his title of financial controller belied a lack of control of the company's finances and that it was Mr Noakes who controlled the company's finances. He was also adamant that he was also a victim of David Noakes' criminality and that Mr Noakes "*lied through his teeth*" to the Respondent and others.
13. I note what the Respondent says in terms of his age (he is 66), the fact that he has a new career well away from the running of any company and has no wish to be involved in the running of a company again whether in Guernsey or overseas. He does however ask for an exception to be made in relation to two BVI companies of which he is a director of many years and plays a crucial part in long standing litigation where his business associate (and now friend) is seriously unwell and needs his ongoing assistance.

Decision

14. I am satisfied that the offences for which the Respondent was convicted in 2019 demonstrate that he is unfit to be concerned in the management of a company. I also take into account in coming to that conclusion the previous Prohibition Order and the failure by the Respondent to accept the decision of the Royal Court in convicting him or the sentence which was handed down for those offences, all of which is evident from his statement of 5 July 2020.
15. In considering the length of the disqualification, the Applicant invited the Court to make a disqualification order towards the top end of the scale. Advocate Hill submitted that as a matter

of principle, disqualification for 15 years does not require the case to be the most serious that the Court has seen; it only requires the case to have crossed the threshold into the category justifying imposition of the maximum period of disqualification. Whilst this might be the case nevertheless in line with normal principles of fairness the period of disqualification must reflect the gravity of the misconduct and relevant aggravating and mitigating factors.

16. In considering the length and the breadth of the order I am particularly mindful of the need to protect the Bailiwick's reputation. For a small jurisdiction heavily dependent upon the provision of financial services to persons beyond these shores, the reputation of the Bailiwick is fundamental to the sustainability of the island's economy for the benefit of the population as a whole. The Respondent was found guilty of a money laundering offence and offences involving the proceeds of crime. As learned Judge of the Royal Court Finch set out in his sentencing remarks this "*was a matter of serious criminality with ramifications beyond our borders.*" The fact that the Respondent had already been subject to a sanction by the GFSC must be an aggravating factor in considering the appropriate length of disqualification. I have also taken into account the Respondent's lack of acceptance of his role in the offending as found by the Royal Court in convicting and sentencing him; also of his failure to consider the consequences of his conduct and that of those he associated with on people, often in very difficult circumstances, who were taken-in and exploited. As Judge Finch said "*the financial operation of these activities, including directorships and business reputation were essential to the running of this large-scale scam*". One of the purposes of this legislation is to protect the public against future conduct not only locally but also in the appropriate case, any overseas companies. The Respondent's continuing failure to recognise his own culpability for his poor past conduct gives me little confidence that anything other than a considerable disqualification of the full breadth of activities described under section 427 (1) of the Companies Law will be in the public interest.
17. I note what Respondent says in terms of his age, the fact that he has a new career well away from the running of any company and has no wish to be involved in the running of a company again. As referred to above he does however ask for an exception to disqualification under section 427 (1) (f) in relation to overseas companies be made for the two BVI companies. I am not prepared to carve out these companies from the general disqualification. Whilst it is unfortunate that the Respondent's acquaintance may be impacted by this decision (although there was no evidence filed by the Respondent to support this), ultimately it is as a consequence of the Respondent's own conduct that this disqualification has come about. I consider it would be an irresponsible exercise of the discretion of this Court, having found that the Respondent's conduct was such that it considered him to be unfit to be concerned in the management of a company within Guernsey, to permit the Respondent to continue to participate or be concerned with an overseas company. I also note that it has been almost 11 months since the Respondent became aware that the GFSC were pursuing this action giving considerable time for preparations to be made given the possibility that the disqualification would be made.
18. In all the circumstances I consider the disqualification prohibiting the Respondent should be for 12 years in relation to all the activities described in section 427 (1) of the Companies law. This disqualification shall run from 7 days after the date of this judgement to enable Mr Dawson-Ball to resign or otherwise step down from being a director of any company or companies wheresoever situated if he has not done so already.