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# Invalidity of joint administrators' appointment and clarification of the *Duomatic* principle

## Randhawa & Anor v Turpin & Anor [2017] EWCA Civ 1201

In a fascinating (and very readable) judgment, the Court of Appeal has held the appointment of joint administrators made under paragraph 22 of Schedule B1 to the Insolvency Act 1986 ("**IA 1986**") to be invalid because, among other things, the appointment was made following an inquourate board meeting. Readers are encouraged to read the judgment, as the following is merely an overview of the facts and conclusions.

### BACKGROUND

BW Estates Limited (the "**Company**") was incorporated in 1986. Mr Robert Williams ("**Robert**") subscribed for 75 shares and his wife, Mrs Pauline Williams ("**Pauline**"), subscribed for 25 shares. In 1988 or 1989 Pauline's 25% shareholding in the Company was transferred to Belvadere Investment Company Limited, a company incorporated in the Isle of Man ("**Belvadere**"). In October 1996, Belvadere was dissolved, so that any of its assets passed to the Crown as *bona vacantia* under Manx law. Belvadere was, however, never removed from the register of members of the Company. In August 2009, David Williams ("**David**"), Robert and Pauline's son, was appointed as a director of the Company, and Robert and Pauline resigned as directors of the Company (Robert had given an undertaking to the court in directors' disqualification proceedings that he would not act as a director of any company). David therefore became the sole *de jure* director of the Company. It was alleged, however, that David was, in relation to the Company's affairs, accustomed to act on the instructions of Robert, despite his disqualification. On 11 September 2013, David purported to appoint Andrew Turpin and Matthew Hardy of (as then was) Poppleton & Appleby (the "**Joint Administrators**") as joint administrators of the Company under paragraph 22 of Schedule B1 to IA 1986.

**Paragraph 12 of the Company's Articles provided as follows:**

> *"12. Unless and until otherwise determined by the Company in General Meeting, the number of the Directors shall not be less than two nor more than five."*

**Under the heading of "Proceedings at General Meetings", Table A provided:-**

*"40. No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum".*

## CHALLENGE

**The appellants challenged the validity of the Joint Administrators' appointment on the following bases (among others):**

- that the sole director of the Company (David) had no right to appoint the Joint Administrators under paragraph 22(2) of Schedule B1 to IA 1986
- that the Company was not at the relevant time a single member company so as to allow David to constitute a valid quorum in a members' meeting
- that the *Duomatic* principle was not engaged in this case, and therefore Robert and/or David could not have varied the Articles by conduct

By way of reminder, the *Duomatic* principle is the principle that where that which has been done informally could, but for an oversight, have been done formally and was assented to by 100% of those who could have participated in the formal act, if one had been carried out, then it would be idle to insist upon formality as a pre-condition to the validity of the act which all those competent to effect it had agreed should be effected.

**The court held that:**

- the word "member" in regulation 40 of Table A included in the Articles and in the relevant sections of the Companies Act 2006 includes any member registered on the company's register, whether alive or dead, and, if corporate, whether subsisting, in an insolvency procedure or dissolved. Accordingly, the Company never became a single member company because Belvadere remained on the register as the holder of 25% of the shares in the Company, even though it had been dissolved. It was more appropriate to construe the term "member" as encompassing the member's successor in title than to deem the company transformed into a "single member company"
- in view of the Articles requiring a quorum of 2 directors at board meetings of the Company, the sole director of the Company had no right to appoint the Joint Administrators under paragraph 22(2) of Schedule B1 to IA 1986. There was nothing in that section to suggest that either a company or its directors could act except in the manner set out in the articles under which the company was incorporated
- in circumstances where Belvadere was a registered member of the Company at the relevant time, but was neither notified of the proposal to appoint an administrator nor assented to any such course, the *Duomatic* principle could not apply. In the absence of the *Duomotic* principle being applied, Robert and David's conduct could not have had the effect of amending the Articles so as to allow David to exercise the powers of the Board alone
- even if it were to have been shown that Robert owned Belvadere, his consent could not have been relevant in the circumstances of this case. Belvadere was dissolved, and its property had passed to the Crown under Manx law

## COMMENT

The decision, to a large extent, turned on its unique facts (a dissolved Manx shareholder, an outdated register of members, a disqualified *de facto* director, alleged phantom companies, beneficial interests etc.), but is an important clarification as to the scope and applicability of the *Dumoatic* principle. The case is also a timely

reminder that directors (and their advisors) should take care in reviewing a company articles of association prior to purporting to appoint administrators.

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