

The duty of company directors to avoid conflicts of interest: an illustrative case

Directors are required to act in the best interests of the company, and to fulfil this duty they must avoid conflicts between their own interests and the interests of the company. As a recent case illustrates, a failure to avoid perceived conflicts can lead to disputes with shareholders.

In the case of *Hart Security Australia Pty Ltd v Boucousis & Ors*, Hart Security Australia Pty Ltd's (HSA) majority shareholders, the Hart Group, alleged that HSA's sole director, Christian Boucousis breached his duty to avoid conflicts of interest.

HSA engaged in negotiations with Northern Territory Airport Pty Ltd (NTA) for a contract whereby HSA was to provide security services at the Darwin and Alice Springs airports. The negotiations stalled because NTA required a bank guarantee and HSA could not provide the bank guarantee without the financial backing of the Hart Group, which they were unwilling to provide.

Boucousis discussed the NTA negotiations with ATMAAC International Pty Ltd (ATMAAC), another security services provider. The discussions resulted in a proposal under which ATMAAC would purchase the Hart Group's interest in HSA and provide the financial backing necessary for HSA to meet NTA's requirement for a bank guarantee. The proposal involved substantial financial benefit to Boucousis, including an offer for Boucousis to be employed as a director of ATMAAC.

Ultimately HSA did not enter into the deal with ATMAAC. A claim was however brought against Boucousis by HSA for breaching his duties as a director. It was alleged that Boucousis engaged in conduct which would divert the NTA contract opportunity to ATMAAC and bestow substantial financial benefit on Boucousis.

The NSW Supreme Court found that Boucousis had not breached his duties in negotiating with ATMAAC, despite the "substantial personal benefits" that he would have received if the deal had gone ahead. It was found that as the Hart Group would not provide the bank guarantee, entering into a deal with ATMAAC was the only real option open to Boucousis to enable HSA to secure the NTA contract. Therefore Boucousis was acting in the best interests of the company. Any potential conflict was found to be "theoretical" as it did not provide "any real inducement" to Boucousis.

In addition to the claim against Boucousis, a claim was brought against Boucousis' legal advisors for knowingly assisting in the alleged breach of duty. However, as the claim against Boucousis' had failed, the claim against his legal advisors also failed.

While Boucousis ultimately won at trial, the case illustrates the need for directors to be acutely aware of any potential conflicts of interest where a transaction may bestow some personal benefit on them. A failure to take proper care can expose a director to the risk of costly legal proceedings and potential liability to pay damages. Taking appropriate action, such as providing notice to the board and obtaining informed consent of the company at the time the potential conflict arises, will assist in avoiding any breaches of duty. This will put the director in a much stronger position in the case of a dispute with shareholders.

The case is also a reminder to professional advisors to be mindful when engaged by directors in circumstances where there is a potential conflict. If a professional advisor is found to have knowingly assisted the director in breaching his duties, they can also be found liable.

If you have further questions on directors' duties, or for further information, please contact:

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