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**Case tests out new companies law**

A precedent has been set in the verdict of a case brought against Miller & Baird (CI) Ltd by the Public Services Department. In the judgment, the jurors exercised their powers of discretion to halt the compulsory winding up of the Company. This is the first time such a judgment has been passed in the Guernsey Court.

Advocate John Greenfield, (who represented the Company in Court and is Head of Litigation at Carey Olsen) said: “This has been an interesting test case for Guernsey. With no previous Guernsey case law to utilise the Court had to look to the English courts for precedents. In this case the winding up order was refused due to an outstanding cross claim. Under English law, an order such as the one sought by Public Services can be declined, so long as there is good reason. Under the Companies Law in Guernsey this is also the case but there had been no guidelines laid down previously as to how the Court’s discretion would be exercised.”

Discretion in these cases is to be used to decline the application if:

1. there is a genuine and serious cross claim (or a “claim of substance – real as opposed to frivolous”); and
2. the Company had been unable to litigate the claim to a final conclusion (or there was a claim which the Company had not reasonably been able to litigate); and
3. the cross-claim is in an amount exceeding the amount of the Petition Debt.

All three points were satisfied in this case, as Miller & Baird had a significant cross claim against the States of Guernsey.

As this is the first time that this law has been tested in the Guernsey Court, Advocate Greenfield is recommending it is reviewed both as to content and procedure (where there are significant differences with English practice) because such applications can have the most drastic consequences for a Company even if it successfully resists the winding up petition because of the publicity that is naturally attracted to the application.

Issued by Chris Chilton, Orchard PR, Tel. 01481 240600

NOTES TO EDITORS:

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