



VOISIN LAW

The High Court of England & Wales recently considered the prescription period applicable to claims against directors of Jersey companies for breaches of their duties imposed by the Companies (Jersey) Law 1991 (the “**Law**”).

In Re Level One Residential (Jersey) Limited and Special Opportunity Holdings Limited [2017] EWHC 1105 (Ch) involved an application by the joint liquidators of two Jersey companies (each of which had its centre of administration in England) (the “**Companies**”). In summary, the liquidators asserted that certain payments were made by the Companies without a legitimate purpose and, consequently, the directors had breached their duties.

The duties of a director of a Jersey company are set out in Article 74(1) of the Law:

- *“A director, in exercising the director’s powers and discharging the director’s duties, shall act honestly and in good faith with a view to the best interests of the company; and*
- *exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.”*

Under Jersey law, the prescription period of a cause of action is the time period in which that cause of action may be brought as a claim. The liquidators argued that the claims for breach of the Article 74 duties could be brought within ten years of the disputed payments. The directors’ argued that the prescription period was three years. It therefore fell to the High Court to determine the issue.

The matters of Jersey law considered by the High Court were determined as matters of fact, with three Jersey Advocates providing expert evidence to assist. Under Jersey law, the High Court judgment is not binding upon Jersey Courts, but is likely to be highly persuasive.

The High Court determined that the prescription period for claims brought in relation to breaches of the duties under Article 74 of the Law was ten years, rather than three years.

Considering Article 74(1)(b) alone, the High Court found that there was no good reason to apply a period other than the previously established default period of ten years for personal claims under Jersey law. Turning to Article 74(1)(a), and despite the “*clear analogies*” between breach of directors’ fiduciary duties and breach of trust, it found that there were “*good reasons, relating both to consistency in the periods applying to Article 74(1)(a) and other causes of action and to coherence between Article 74(1)(a) and (b), for concluding that the Jersey courts would not displace the default 10-year period*”.

This finding is of significance for directors of Jersey companies. In light of this judgment, potential liability for their acts and omissions that amount to breaches of duty would subsist for ten years, not three. Jersey directors who also provide trustee services should recognise that this is longer than the prescription period of three years for breach of trust under Jersey law.

The High Court also acknowledged that a director may owe an equivalent duty under civil law (i.e. a duty in tort), but this tortious duty would arise because the conditions for its existence are met. Directors of Jersey companies must bear in mind that the circumstances giving rise to a breach of Article 74 duties could also amount to a claim in tort. If the prescription period of a tortious claim has expired then the



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director may still face liability because the prescription period for claims under Article 74 would, in light of this judgment, have continued to run.

At some point in the future, the Royal Court of Jersey will have to consider the High Court's findings. What it will choose to do is anybody's guess. In the meantime, directors...beware.