HAYNES BOONE

Caveat Empty Stockings - Does Palmer Birch make Limited Liability less Limited'

By Robert Blackett | December 31, 2018

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The present article principally concerns *Palmer Birch (a partnership) v Lloyd & Anor* [2018] EWHC 2316 a decision of the TCC (Russen HHJ) from July 2018 about corporate personality and limited liability. The judgment opens with the following passage:

> *"This claim reveals the perils of contracting with an undercapitalised limited liability company, with no guarantees from the individuals associated with it, as HHL was plainly one such company. The claim also reveals less directly the potential pitfalls for those individuals who choose to operate through the medium of such a limited company which proves not to be good for its contractual obligations …"*

The case raises interesting issues and the decision is not easily reconciled with the leading authorities (*Aron Saloman (Pauper) v A. Saloman & Co. Ltd.* [1897] AC 22, *Petrodel v Prest* [2013] UKSC 34) or with the statutory scheme laid down by parliament in the Insolvency Act 1986.

For all that the nearly-400 paragraph judgment in the Palmer Birch case may be an interesting one, it is not the most promising subject for an article to be featured in the December edition of this publication, wherein articles must traditionally make some attempt at a Christmas theme.

New Life from the Wreckage

The closest that the story of corporate personality comes to Christmas seems to be Northern Lapland, which has been claiming to be the home of Santa Claus since around 1926. In that year a Finnish radio station claimed that Santa lived at Korvatunturi, a remote mountainous spot in the far North. In the 1960s Santa would bow to commercial pressures and he officially moved to Rovaniemi, 225 miles to the South, a spot which was more accessible for tourists.

In early 1553 North of Korvatunturi, long before Santa began looking into the local real estate, fishermen working the coast made a grim discovery. They stumbled upon two sailing ships, the Bona Esperanza and the Bona Confidentia which had set off from Deptford docks in London the preceding summer to look for a Northeast passage to China. Each was an icy tomb, filled with the frozen bodies of its crew. Trapped by the encroaching ice and forced to overwinter in the darkness above the Arctic circle, they had died, not of starvation or hypothermia (for they were well-provisioned) but of carbon monoxide poisoning, having gathered and burned coal in an attempt to warm their poorly-ventilated ships.

Those deaths came at the dawn of a mercantile age characterised by extraordinarily risky ventures. Those willing to undertake long sea voyages might acquire great riches, sometimes for little more than glass beads and baubles (the most famous example being Minuit's acquisition of Manhattan), or else lose their vessels and, with them, their fortunes and their lives.

To read the full publication, click on the PDF linked below.

Caveat Empty Stockings - Palmer Birch and Limited Liability.PDF