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Survival of a company despite the death of its sole director and shareholder

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In *Shah v Targetstock Limited* CR-2023-002366, 25 May 2023, ICC Judge Greenwood, the facts were as follows:

Mr Shah died on 25/2/23. Mrs Shah, his wife, died on 15/7/21.

The shareholders of NRK Medical Limited (“NRK”) were Targetstock Limited, the defendant (a non-trading company), with 2,999 shares and Mr Shah who held 1 share as nominee for the defendant.

The shareholders of the defendant were Mr Shah and Mrs Shah, each holding 25 ordinary shares. On her death, subject to the grant of probate, Mrs Shah’s shares in the defendant devolved upon Mr Shah.

Mr Shah was the sole director of both NRK and the defendant.

Under Mr Shah’s will, his residuary estate, which included his shares in the defendant, passed to the claimants, his children and executors. It was anticipated that application would be

made for probate by the end of May 2023. However, given the delays at the Probate Registry, it seemed likely that there would be no grant for months. Probate was applied for in relation to Mrs Shah’s estate on 5/7/22 and some 10 months later the grant was still awaited.

There was no provision in the Articles for the executors to appoint a director or directors in the event of death of the sole director and shareholder. Only members could do this.

If the claimants could secure their entry on the register of members, they would pass a written resolution to appoint themselves as directors. Once shareholders in and directors of the defendant, they would be able to appoint themselves as directors of NRK.

However, there was no-one who could implement the claimants’ wish to be registered as shareholders of the defendant and update its register of members. They were unable to effect by themselves their entry on the register of members.

As a result of Mr Shah's death, NRK was facing challenges in continuing to trade, for example, in paying suppliers, its employees, HMRC and other creditors.

NRK's bank had been informed that Mr Shah had died and it was likely they would freeze its bank account.

The claimants applied by Part 8 claim pursuant to s.125(1)-(3) Companies Act 2006 for an order that:

1. The register of members of the defendant be rectified by entering their names as the joint holders of the shares currently registered in the names of Mr Shah and Mrs Shah and removing their names.
2. they have permission themselves to make the necessary entries on the defendant's register of members.
3. Service be dispensed with pursuant to CPR 6.16.
4. There be no order as to costs.

There are three cases where similar applications had been made and succeeded:

(a) *Kings Court Trust Limited v Lancashire Cleaning Services Ltd* [2017] EWHC 1094 (HHJ Hodge sitting as a judge of the High Court)

The claim was issued on 11/4/17 and came before the court the following day. The sole shareholder/director of the defendant company, Mr Pilling, had died on 28/2/17.

The company was continuing to trade but its account had been frozen by its bank on 7/4/17. The claimants, Mr Pilling's executors, intended to appoint a director to take control of the company, and since there was no company secretary nor director, there was no-one who could respond to the application on behalf of the company and so the claimants sought an order dispensing with service and an immediate hearing of the application.

some special or idiosyncratic rule of law.

Probate had not yet been granted.

The judge initially expressed concern about the fact that probate had yet to be granted: paragraph 8, but after an application was made for probate during a short adjournment of the hearing, he was persuaded on the authority of *Re Goodman* [2013] EWHC 758; [2014] Ch 186 that it was open to executors who had not yet proved to bring the proceedings.

(b) *Elliott v Cimarron UK Ltd* [2017] EWHC 3872 (Barling J)

Mrs Elliott, the sole shareholder and director of the defendant company, died on 25/10/17. Her husband, Mr Elliott, applied for probate of her will on 6/12/17.

There were no directors nor shareholders.

The learned judge was satisfied that the company was viable.

There was a serious risk that the company's bank accounts would be frozen.

Normally speaking, it would be appropriate to wait until the grant of probate. However, in some cases even to wait for a month or two could put a company in unacceptable jeopardy.

The learned judge's attention was drawn to *Re Goodman* and to *Kings Court Trust*.

(c) *Williams v Russell Price Farm Services Ltd* [2020] B.C.C. 636 (HHJ Paul Matthews sitting as a judge of the High Court)

The defendant company was run by its sole shareholder and director. On his death, he left a will naming the claimants as executors, and under Table A of the articles, his share in the company passed to them. However, there was no provision in the articles for executors to appoint directors and therefore only members could do this. Without a director in place, the company did not have the necessary authorities to operate its bank account and continue its operations.

“ The executors had not yet applied for probate, but considered that the situation could not wait for probate to be granted and the estate to be distributed and consequently applied for rectification of the register.

Considering the exceptional urgency, the court was satisfied that there was unnecessary delay in registering the fact that the deceased was no longer a member of the company; this opened the gateway for rectification.

In the light of the fact that probate had not yet been applied for, the court obtained undertakings from the executors that they would not renounce probate but apply for it as soon as possible, and that they would pay all necessary taxes in order to ensure probate could issue.

The court referred to *Goodman* and followed *Kings Court Trust Limited*.

The claimants in *Shah* submitted that given:

(i) an application for probate had yet to be made in regard to Mr Shah’s estate, but that even if it had been made, it would likely take months to obtain the grant;

(ii) The need for urgent relief so that directors could be appointed as soon as practicable to run NRK;

(iii) The claimants were prepared to offer undertakings in the terms sought and given in the *Williams* case;

the court should make the order sought.

ICC Judge Greenwood agreed and made the order sought.

Making cryptocurrency-related payments and will ignore those payment instructions, but consider themselves bound to comply with instructions like those given by Mrs Phillips to remit £700,000 to a bank in the UAE with which she had no prior dealings.

However, once can see how unworkable the banking sector would become if banks started second-guessing explicit payment instructions, actively going against their customer’s wishes. As the Supreme Court said, it is for parliament and regulators to make rules on whether banks should be permitted, or obliged, to save individuals or companies from themselves in cases of APP fraud, not the court.



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