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Canargo Limited: Failing to comply with the Guernsey Companies Law

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This is the first reported judgment of the Guernsey Royal Court where the applicant, Canargo Cayman Limited, sought to have a company placed into liquidation on the basis that the company failed to provide a member with a set of accounts pursuant to sections 251 of the Companies (Guernsey) Law 2008.

Background

Canargo, who was beneficially owned by Mr Clifford Isaak, was the registered owner of 25% of the issued share capital of the company. The other 75% of the company was directly owned by Mr David John Ramsay.

Mr Ramsay was a director of the company. Mr Isaak had been a director of the company but had been removed against his will at an extraordinary general meeting of the company.

The primary business of the company was as a participant in a joint venture agreement concerning oil and gas exploration in Georgia.

Legal Discussion

The Court considered the two different obligations imposed by sections 251(1) and 252(2) of the law to provide accounts to a member.

The obligation under section 251(1) makes it mandatory for the company to send accounts to members within twelve months of the end of the financial year.

The obligation under section 252(2) of the law imposes a duty to send the most recent accounts to a member within seven days of a request to do so unless the member has made a similar request within the financial year.

The Court accepted the hearsay evidence before it that Mr Isaak had not received accounts for the year end 31 December 2015 and that he had requested the company's financial information. In accepting the hearsay evidence, the Jurats also took into consideration that Mr Ramsay had been given the opportunity to file evidence in response to the application but had failed to do so.

The Court acknowledged that it had a wide discretion and that compulsory liquidation was a draconian step.

An alternative would have been to order that the company provide the accounts within a reasonable period of time. However, in the circumstances of this case, the Jurats considered that, given the amount of time that had

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elapsed since the accounts were due and had been requested, the order to place the Company into compulsory liquidation should be made.

Conclusion

The case is interesting in its consideration of a company's obligation to provide financial information to its members and the circumstances in which the Court will place a company into liquidation for failure to comply with its statutory obligation. It also serves as a warning to directors to bear the company's duties to its members in mind particularly when there is a dispute between shareholders.

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