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solicitors & sports lawyers

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## Welcome

to our quarterly newsletter. In this issue, we look at a significant case from the Court of Appeal that warned company directors of their duties, the temporary extension of business rates relief for commercial properties, and an issue that looks set to become increasingly relevant as the recession takes hold – property fraud.

## Inactive directors may be liable for others' transgressions

Company directors were recently given a stark warning by the Court of Appeal about the dangers of turning a blind eye to their fellow directors' activities.

In the case of Lexi Holdings plc (in administration) v Luqman (2009), Lexi was the provider of bridging finance to property purchasers. Between October 2002 and November 2006, nearly £60m of Lexi's money was dishonestly misappropriated by the managing director of the company via three of the company's bank accounts and in over 100 payments made to 16 recipients. The recipients of the funds included two of the managing director's sisters, who were also non-executive directors of the company. In October 2006 Lexi went into administration and the administrators commenced proceedings to recover the misappropriated funds from not only the managing director, but also from the two sisters.

At first instance, the court found the two sisters liable only for the relatively small sums that they had received. However, the Court of Appeal overturned this and decided the sisters were also jointly liable for approximately £40m of the misappropriated funds. This decision was made on the basis that they had breached the duties they owed to the company as directors, and in doing so failed to prevent a loss that could otherwise have been prevented.

### Failure to ask questions was a breach of duty

The Court made this decision after finding that the sisters were aware that the brother had previous fraud convictions but failed to inform the other directors of this. The Court also concluded that the sisters failed to ask sufficient searching questions relating to aspects of his business dealings that required explanation. Had they done so, the court held that the brother could not have shown that his actions were genuine. As directors, the sisters had a duty to be alert to potential transgressions and, once they were aware of these, they should have informed the

company's auditors and other directors, and sought appropriate advice. The Court concluded that had they done this, a significant part of the misappropriation could have been prevented. As a result, the sisters were found jointly liable for this significant, preventable part.

This case reminds company directors of their supervisory role in a company's administration, which includes a duty to actively challenge and monitor the board. In particular, directors must not ignore other directors' actions that should highlight risks of fraud or misappropriation. Such inaction, or even a failure to take sufficient action, is a failure to carry out their directorial duties and may result in being held jointly liable for preventable fraud or misappropriation. It is therefore essential that you are fully aware of your responsibilities as a company director, particularly following the introduction of the Companies Act 2006 which expanded the directors' list of duties.

### How can you avoid a breach of your duties?

Practical steps include ensuring board meetings occur regularly, proper minutes are taken and relevant up-to-date information regarding the company's activities is circulated. All information should be reviewed carefully, with any relevant questions being asked. If you then continue to have concerns, you should seek professional advice.

If you would like more information on your duties as a company director or would like to discuss your company in more detail please contact Mark Edmondson or Deborah Hargreaves in our commercial litigation team on 01638 560556 or at [mae@edmondsonhall.com](mailto:mae@edmondsonhall.com) or [dh@edmondsonhall.com](mailto:dh@edmondsonhall.com) respectively.

*per virtutem vincemus*

*- By excellence we shall succeed*

## Property Fraud: A Growing Risk

In troubled times it is inevitable that some people will turn to criminal methods of raising money. While land and buildings are often the most valuable assets people own, many people are unaware that these assets are also attractive targets for fraud. Particular favourites for fraudsters are:

1. Properties free from mortgages;
2. Investment/tenanted properties;
3. Empty or unoccupied properties.

For example, a common method is for a fraudster to take out a mortgage in the property owner's name. While the fraudster takes mortgage proceeds, the property owner is left with a mortgage taken out in his/her name and is often unaware of this until the mortgage company, having received no repayments from the fraudster, applies for possession of the property. This leaves the owner not only with the problem of how to prove a fraud has taken place, but also defending potentially expensive legal proceedings just to retain possession of his/her house!

### How Can You Minimise The Risk?

There are a number of ways to do this, depending on whether your property is registered with the land registry. If your property is not registered then you should consider whether to apply for voluntary first registration of your title. Registration gives you a greater security of title and, depending on the situation, if you are the victim of fraud you could be able to claim compensation from the Land Registry. Of course, the benefits of first registration are not limited to fraud, as registration will also save you time and effort when you wish to sell or lease your property.

If your property is registered with the Land Registry, you can:

1. Ensure that the addresses for service on your title, to which letters and notices relating to the property are sent, are correct and up-to-date. In addition, the Land Registry will accept up to three addresses for service, further minimising the risk that a change to the title will be made without you being aware of it. One address must be a UK postal address, but the remaining two can be UK or foreign postal addresses or email addresses.
2. You can place a restriction on your title to stop anyone other than a proper conveyancer changing the register. Where this restriction is in place, the Land Registry will not register a dealing with the property unless a solicitor or other professional

conveyancer, who are under a duty to ensure they are satisfied the person wishing to change the title register is the same person as the registered owner, certifies that they have checked the identity of the person seeking the change.

If you would like any further information about the risks of property fraud or on the methods of preventing fraud discussed above, please contact Sarah Witherington or Iain Hibbert in our property team on 01638 560556 or at respectively [sw@edmondsonhall.com](mailto:sw@edmondsonhall.com) or [ih@edmondsonhall.com](mailto:ih@edmondsonhall.com)

## Extension of Business Rates Relief

To uproar from the business community, the Government recently abolished business rates relief for most unoccupied commercial properties, granting most commercial properties only 3 months' 100% business rates relief (or 6 months' for industrial and warehouse premises). This move was widely condemned, the Royal Institute of Chartered Surveyors calling it a "revenue raising exercise with no thought of the potential consequences", hitting commercial landlords at a time when the economy was struggling.

As a result, the Government has temporarily extended the period of relief available. From 1 April 2009, empty properties with a rateable value of less than £15,000 (or £21,500 in London) will be exempt from business rates until 31 March 2010. However, the Government has reiterated that there are no current plans to reinstate indefinite relief permanently.

If you have any queries relating to these changes, please contact Iain Hibbert on 01638 564488 or email [ih@edmondsonhall.com](mailto:ih@edmondsonhall.com)

## News from the Team

Litigation partner Deborah Hargreaves, Practice Director Martin Lane, commercial property associate Iain Hibbert and secretary Jo Scrivener will be joining **Racing Welfare** for their 10k sponsored run through the centre of London on Sunday 12 July 2009. More details of the event if you wish to take part can be found at [www.racingwelfare.co.uk](http://www.racingwelfare.co.uk). Your support will be greatly appreciated as Debbie, Martin, Iain and Jo leave their desks behind and try to show Paula Radcliffe how it's done. Of course, any sponsorship would be greatly appreciated and donations can be made at our Just Giving website [www.justgiving.com/edmondsonhall](http://www.justgiving.com/edmondsonhall). Details of their progress will be available in our next update due in the autumn!

Please note that this newsletter is not intended to give specific advice and it should not be construed as doing so. It is designed merely to alert clients to some of the issues. It is not intended to give exhaustive coverage of the topic. Professional advice should always be sought before action is either taken or refrained from as a result of information contained herein.

As always we appreciate your feedback on all or any part of this newsletter. To give feedback please email [ml@edmondsonhall.com](mailto:ml@edmondsonhall.com) and let us have your comments. If you wish to join our mailing list for future editions please let us have your email details. If you feel this newsletter would benefit a friend or a colleague, please let us have their email details and we will ensure they receive a copy and will also be added to our mailing list for future editions.