

Directors avoid disqualification

22 July 2024

A company had issued a bond of c.£5m to 213 individuals, who had been told that the bond was backed by a bank guarantee. After the company was later wound up, the Official Receiver was told by the bank that a guarantee had not been issued.

The Secretary of State brought director disqualification proceedings against the directors, alleging that there was no guarantee (as had been stated in marketing brochures) and that the directors had not completed adequate checks to ensure the existence of the guarantee to protect investors' money.

The directors defended the claim on the basis that they reasonably relied on advisors. They didn't have access to the original documents as these were held by Escrow agents, but had relied on those agents to inform them if the guarantee was properly executed and binding. The company's contract with the agents included an obligation to procure a valid guarantee. The directors also took advice from a London-based advisor with a reputation for bond issues and taking a company public.

The court held that, in fact, a bank guarantee did exist, but even if it did not, it was reasonable for the company and the directors to rely on the advice and representations made by its external advisors. The Secretary of State's claim was dismissed.

Active Ticketing Limited [2024] EWHC 1024 (Ch)