**DIXON v CROWN ESTATE COMMISSIONERS – A NEW WAY TO GET PROPERTY OUT OF A DISSOLVED COMPANY**

How to get property (and in particular land) back from a company which has been dissolved and the 6 year time limit upon restoring the company has expired is a problem which arises with worrying frequency. Upon dissolution land vests in the Crown (or a Royal Duchy) as bona vacantia and then may be the subject of an escheat to another manifestation of the Crown (or a Royal Duchy). In the significant case of *Dixon v Crown Estate [2022] EWHC 3256 (Ch)* HH Judge Hodge KC sitting as a Judge of the High Court in Manchester accepted a novel argument that the shareholders in the company could rely upon a proprietary estoppel existing at the date of dissolution to make a vesting order in their favour.

The facts of the case were simple. The company was entirely solvent and had 2 shareholders. Its assets consisted of two properties (both free from mortgage) and cash. The shareholders wished to amicably separate their business interests and were advised that the best way of doing so was to place the company in a members’ voluntary winding-up and distribute the assets in specie, in particular each shareholder was to take one property at an agreed valuation. The cash was duly distributed. Unfortunately, none of the formalities for a winding-up took place and the two properties remained registered in the name of the company. However, the shareholders believed that the company had been wound up and in particular that the properties had been transferred to the shareholders. Tax was paid on this basis and the shareholders knew of and encouraged the Registrar of Companies to strike the company off the register. The problem was only discovered well after the 6 year time limit upon restoring a company to the register had expired.

The shareholders ultimately applied to the High Court for orders vesting the two properties in them pursuant to *s181 Law of Property Act 1925* and *s44(ii)(c) Trustee Act 1925*. The application succeeded. The reserved judgment of HH Judge Hodge KC is noticeable in several respects.

Firstly, the Judge re-affirmed the rule that a vesting order would only be made where the applicant could show a proprietary interest binding upon the company at the date of dissolution. In particular the Judge followed the leading judgment of Harman J in *Re Strathblaine Estates Ltd [1948] Ch 229, at 230* and the decision of the High Court of the Republic of Ireland in *Clariant AG and Clariant Plastics & Coatings (Ireland) Ltd [2020] IEHC 211 at para 7* and endorsed the modern restatement of the rule in the decision of Master Clark in *Lizzium Ltd v Crown Estate Commissioners [2021] EWHC 941 (Ch)*.

Secondly, the Judge accepted that such a proprietary interest could consist of a claim in proprietary estoppel binding upon the company, which he found to exist. At the date of the dissolution the shareholders and the company both believed that the properties had been transferred to the shareholders, the shareholders had paid tax on such basis and the shareholders had deliberately allowed the company to be dissolved in the belief that it had no assets. It was no bar to a proprietary estoppel that both the company and the shareholders shared the same mistaken belief (*Re Eaves [1940] Ch 109, at 117-8; Taylors Fashions Ltd v Liverpool Victoria Trustees Co. Ltd (1979) [1982] QB 133n*). While the Judge quoted extensively from judgments in the Supreme Court in *Guest v Guest [2022] UKSC 27; [2022] 3 WLR 911*, the issue of whether to satisfy the detrimental or expectation interest did not arise, since the two measures gave the same result.

Thirdly, the Judge was prepared to make vesting orders under both s*181 Law of Property Act 1925* and *s44(ii)(c) Trustee Act 1925*. In *Dixon v Crown Estate* the Treasury Solicitor had disclaimed the properties which had passed to the Crown as bona vacantia and hence there had been an escheat and the original legal estate had determined. In making the order under *s181 Law of Property Act 1925* the Judge did not follow the judgment of Harman J in *Re Strathblaine Estates Ltd [1948] Ch 229, at 230-1* who held that this provision only applied to the very few cases where dissolution caused a company’s land to revert to the grantor. Instead, the Judge followed the decision of Roth J in *UBS Global Asset Management (UK) Ltd v Crown Estate [2011] EWHC 3368 (Ch)* where an order was made under *s181* (although Re *Strathblaine Estates Ltd* was not referred to in that judgment). To give *s181 Law of Property Act 1925* a wider and entirely literal effect is to be welcomed since as Roth J pointed out, *s44(ii)(c) Trustee Act 1925* is not applicable in all cases.

While running a case on proprietary estoppel will be a way of getting property away from the Crown (or a Royal Duchy) in many cases, it is not applicable in all cases. An argument based on proprietary estoppel is only available where there is a belief or representation that an asset is not vested in the company and is not available where the shareholder or other claimant simply does not direct their minds to the question of ownership. Further, it must be possible for the company to have legally passed the property to the shareholder. There are only a limited number of ways in which a company can return capital to shareholders, and none were applicable in *Dixon v Crown Estate*. However, in *Dixon v Crown Estate* the company had ample “distributable profits” and could have made a dividend in specie. There were no other legal impediments to such a dividend. The courts will not allow a claim based upon proprietary estoppel to succeed where there was conscious impropriety, but the parties in *Dixon* were in good faith.

RICHARD OUGHTON was Counsel for the Applicants in *Dixon v Crown Estate Commissioners*.