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A FAILURE TO PROVE DE FACTO DIRECTORSHIP

A *de facto* director is someone who acts as a director but is not formally appointed as such and is not registered as a director at Companies House. A shadow director is also not formally appointed or registered, but is someone in accordance with whose directions the directors of a company are accustomed to act. A *de jure* director is formally appointed and registered.

Secretary of State for Business, Energy and Industrial Strategy v Rahman [2020] EWHC 2213(Ch) was a claim made under Section 8 of the Company Directors Disqualification Act 1986 against Mr. Rahman. The allegation was that employment had been given to individuals who were not eligible to work in the UK. Mr Rahman was not a *de jure* director. The *de jure* director of the company had already provided an undertaking not to act as a director or in the management of a company. Judgment was given on 14 August 2020.

The evidence that Mr. Rahman was a *de facto* director was based on three facts:

- That Mr. Rahman had successfully applied for a premises licence to sell alcohol. The business, an Indian restaurant, needed to open quickly due to financial constraints. An application for a premises licence must appoint a designated premises supervisor, who is usually the person with day to day responsibility for the premises and who holds a personal licence. Mr Rahman held a personal licence. He stated that he did this as a personal favour for the appointed director. HHJ Mathews described this as a “*straightforward pretence*”.
- A member of staff was interviewed by immigration officers who described Mr.

Rahman as “*the boss*” and “*the owner*”. HHJ Mathews described this as “*an extraordinarily slender basis for saying that the defendant has assumed the responsibilities of a director of the company*”.

- Mr. Rahman had organised internet advertising for a group of restaurants, including the one in question. The judge considered this the weakest of the three matters relied on.

The judgment of Morgan J in *Instant Access Properties Limited v Rosser [2018] EWHC 756(CH)* was cited in that “*There does not appear to be a clear legal test to help one decide whether a person is or is not a de facto or shadow director*”.

HHJ Mathews stated that “*In my judgment, the evidence presented in this case, properly viewed... does not demonstrate on the balance of probabilities that the defendant was a de facto director of the company. It shows only that there may be something further to look into. The problem is that the claimant has not looked into it. And what there is, as I say, does not get him home*”.

Editor’s note

The judge was critical of the investigation, describing it as “*superficial*”. This case is a useful reminder that it is for a claimant to prove his case in as much detail as possible and, where there is uncertainty, go the extra mile to gain supporting evidence.

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