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# INSOLVENCY BULLETIN

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## **LACK OF RECORDS IS NO DEFENCE FOR UNEXPLAINED PAYMENTS**

On 29 October 2020, Deputy Insolvency and Companies Court Judge Frith gave judgment in *Hunt (As the liquidator of Wow Internet Limited) and Anor v Majid [2020] EWHC 2890 (Ch)*.

The case concerned unexplained payments made from Wow Internet Limited (“the Company”), to its sole director, Mr Quasim Majid, in breach of his statutory and legal duties. At trial, the amount claimed was £52,431.30.

The Company was involved in digital marketing and entered CVL on 8 July 2014. It was dissolved on 15 October 2015 and restored to the register on 25 April 2017, when Stephen Hunt was appointed liquidator.

During the course of his detailed investigation, the liquidator made various enquiries as to the extent and availability of the accounting records of the Company. The documents delivered up by the former liquidator comprised of a creditor folder, which included some invoices, a sales invoice folder and a bank statements folder. Some payments were made from the bank account after the insolvency commenced.

Numerous enquiries were made of Mr Majid who, as referred to in the judgment, was informed that *“the First Applicant, in his capacity as liquidator, was endeavouring to determine whether or not payments were lawfully made to the Respondent. It was also made clear that if there was any failure to deliver up such books and records, the Court would be invited to draw the appropriate adverse inferences from their absence”*. Mr Majid maintained that he had supplied all Sage and other accounting records relating to the director’s loan account to the former liquidator. The Applicants contended that Mr Majid did not maintain adequate records as required by certain provisions of the Companies Act 2006.



Under cross-examination, Mr Majid made certain concessions that the payments had not been made for company purposes, but also contended that other payments were for genuine purposes.

Counsel for the Applicants took Deputy Judge Frith to *Toone v Robbins [2018] B.C.C. 728* where the Chief Registrar stated *“Directors who receive money from the company cannot be heard to say “We have received company money: but our record keeping is so bad that the basis upon which we received it is unclear. So by reason of our defaults we ask you to assume in our favour that we took the money lawfully”*.

Reference was also made to the Court of Appeal decision in *Re Mumtaz Properties Limited [2011] EWCA Civ 610* where it was stated that *“documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence”*.

Deputy Judge Frith stated *“It seems clear to me that there was at least a prospect that there were other documents that could have been disclosed and which have not been put forward by the Respondent”*.

With regard to payments from the bank account made after liquidation, totalling £5,119.82 no *“satisfactory explanation”* was provided to the Deputy Judge *“either orally, or from the disclosed documents”*. The Applicants succeeded in their claim in full.

### **Editor’s Note**

The onus is on the director to explain why the payments effected by him were lawful. If the records are lacking, then the court is entitled to draw an adverse inference against the director and in favour of the liquidator. This case is therefore very helpful for office holders.

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