

J News In Focus

Company restored to register not reinstated as tenant: Inner House

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The restoration of a dissolved company to the register of companies does not reinstate it in its former property rights, in particular as tenant of leased premises, the Inner House has ruled.

Lady Paton, Lady Smith and Sheriff Principal Mhairi Stephen QC gave the ruling in refusing an appeal by Prestwick Hotels Ltd and its director Alan Love from a decision of Sheriff Principal Scott at Glasgow, granting decree of declarator and removing to the company's landlords ELB Securities Ltd. The company had been dissolved and struck off for failing to comply with statutory obligations, including lodging no accounts for six years, but was restored to the register on a petition averring that it was solvent and carrying on business and the failures had been due to oversight. Following the dissolution the Queen's and Lord Treasurer's Remembrancer, acting for the Crown, had disclaimed title to the lease.

The sheriff dismissed the action but the sheriff principal allowed ELB's appeal.

Before the Inner House the company argued that s 1032 of the Companies Act 2006 had the effect that the company was deemed never to have been dissolved. Any commercial uncertainty could be met by the discretion given by s 1031.

Lady Paton, delivering the opinion of the court, pointed out that s 1032 provided for the "general effect" of restoration but this was qualified by the special provisions dealing with a company's property. These had the effect that all the company's rights in property were specifically brought to an end, though interested parties were entitled to have property transferred to them. That did not apply to the company itself. As a result, the company's rights in the lease had come to an end.

The appellants' argument "would lead to uncertainty and confusion in the commercial world", and make petitions for restoration much more complicated.

David Young of bto solicitors, who acted for ELB, said that if the appellants had succeeded, it would have meant that for many years after the dissolution of a tenant company, landlords "would be at risk that the tenant company might one day be restored and potentially have a better claim to the tenanted property than the tenant *in situ*".

He added: "Whilst the judgment remains subject to the possibility of an appeal to the Supreme Court, the judgment is a valuable lesson for all in the UK involved with the management of a company that, should your company fail to comply with its statutory requirements, its assets may be lost forever and you cannot look to restoration as a cure."