Good News for Directors of Trustee Companies

In the 2008 case of Gregson v HAE Trustees Limited, the High Court decided that a claim cannot be brought directly against the directors of a trustee company arising from the company’s breach of trust in the absence of dishonesty. Although this was not a pensions case, it is thought that this principal extends to the directors of a company which is the trustee of an occupational pension scheme.

Background

In the case of individual trustees, each individual is potentially personally liable for a breach of trust (although in practice most trustees are protected by an exoneration or indemnity clause and possibly liability insurance).

From the point of view of personal liability, the position of an individual is improved to a certain extent where he is a director of a trustee company as opposed to being an individual trustee. This is because generally a trustee director is protected by the "corporate veil", i.e. he can shelter behind the separate legal personality of the trustee company. However, this protection has limits and in certain circumstances the corporate veil can be pierced and the trustee directors can be held personally liable for a breach of trust committed by the trustee company.
**Dog-leg claims**

Following the High Court case of *HR v JAPT* in 1997, one of the ways in which this corporate veil could potentially be pierced is by a so called “dog-leg” claim.

Directors of a company (including the directors of a trustee company) owe a range of duties to their company. These include fiduciary duties based on their office as directors and various statutory duties (including duties in relation to wrongful and fraudulent trading). If a director acts in breach of these duties, the company could claim against the director for any loss caused.

In *HR v JAPT* a member of a pension scheme which had lost money argued that by causing the trustee company to act in breach of trust, the directors were in breach of their duties, and the trustee company therefore had a claim against the directors. The member also argued something new - that the trustee company’s claim against the trustee directors was held on trust by the trustee company for the benefit of the member, thereby allowing the member to bring a claim directly against the trustee directors. This rather convoluted argument (which has become known as a dog-leg claim) is an attempt to make the directors of a corporate trustee personally liable for the loss to a pension scheme. The court decided that a dog-leg claim could potentially exist in appropriate circumstances.

This decision caused concern amongst trustee directors because it was unclear in what circumstances they could be held personally liable, for example could they be liable if they had acted negligently but honestly?

**What has changed?**

In *Gregson v HAE Trustees Limited* (11 years after *HR v JAPT*), the beneficiary of the trust attempted to make a dog-leg claim against the directors of a corporate trustee. The High Court decided that such a claim cannot be brought if there is no dishonesty on the part of a trustee director.

**Conclusion**

It seems that after *Gregson*, the directors of a corporate trustee can breathe a sigh of relief that one of the ways in which they might have been held personally liable has gone. The corporate protective veil has therefore been widened and a trustee director is protected from personal liability in a wider range of circumstances. This case may encourage individual trustees to look again at setting up trustee companies so that they can benefit from this added layer of protection against personal liability.