

Corporate Recovery

Summary

White Cedar - Cordil

White Cedar Developments Ltd v Cordil Construction Ltd

The High Court recently delivered its Judgement in the case of:
White Cedar Developments Limited (White Cedar), Plaintiff and Cordil
Construction Limited (Cordil), Defendant

The subject of this judgement is White Cedar's application for an interlocutory injunction restraining Cordil from advertising, presenting or otherwise proceeding with any petition pursuant to s. 213 of the Companies Act 1963 to wind up White Cedar.

In summary, there was a building agreement made between the parties to regulate the execution and completion by Cordil of the design and construction of a retail and commercial centre. In March 2011 a dispute arose between the parties regarding the sums due to Cordil under the building agreement. In the same month receivers were appointed over all the assets of Cordil. The building agreement provided for the termination of the contract if receivers were appointed to Cordil.

After a conciliation process, the conciliator made a recommendation that White Cedar was obliged to pay Cordil the sum of €700,649.00. As nothing transpired after the recommendation of the conciliator, proceedings to wind up White Cedar were threatened in the event of the amount claimed not being paid. White Cedar commenced legal proceedings.

The position of Cordil was that it was entitled to bring a petition to wind up White Cedar based on the fact that it is a creditor of White Cedar and served a s. 214 demand on White Cedar which has not been complied with.

The court found that the recommendation of the conciliator was conclusive and binding. However, the obligation to pay was one obligation only in the overall scheme of mutual rights and obligations of the parties under the building agreement. All such obligations continued to apply notwithstanding that the dispute may be resolved.

The Court also concluded that White Cedar disputed the debt claimed to be due by Cordil in good faith, on substantial grounds and in a very convincing manner. The service of the s. 214 had been premature. It had not been shown that White Cedar was indebted to Cordil, and accordingly, Cordil did not have standing to present a petition to wind up White Cedar. The Court was also convinced that the presentation of such a petition would constitute abuse.

The High Court made an order restraining Cordil (pending the trial of the action) from advertising, presenting or otherwise proceeding with the petition to wind up White Cedar.

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