

2022 in Review: Practical Evidential Tip

Piers Digby – Radcliffe Chambers



Proving knowledge

Re JD Group Ltd [2022] EWHC 202 (Ch) – the court did not find it necessary to establish the director in a fraudulent trading case had ‘blind eye’ knowledge; the court felt able to infer the director knew he was trading fraudulently even if he was unaware of the identity of the other parties to the transaction.

Showing a debt

Re Rossi [2022] EWHC 1053 (Ch) – in IVA meetings, the creditor cannot rely on the fact the debtor's proposal sets out the debt owed to that creditor as proof of the debt. It is for a creditor to make a claim and substantiate it to the chair's satisfaction. On appeal, by a dissatisfied creditor, the court is not limited to reviewing the decision of the chair, but will reconsider whether on the balance of probabilities the debt is established.

Issues of privilege

Thomas & ors v Metro Bank plc & ors (Re Ilya Yurov) [2022] EWHC 2122 (Ch) – trustees in bankruptcy summarised legal advice on the proper meaning of Russian law in a witness statement, which founded their application. The respondent considered it would be unfair for the court to proceed on that basis without the underlying legal advice being disclosed. The respondent succeeded despite several interesting arguments by the trustees.

Proof of finances

Atkinson (as trustee in bankruptcy of Mark Harvey Lorrell) v Lorrell [2022] EWHC 433 (Ch) – variation in an IPA could be backdated. Going back as far as the original date of the IPA would require forensic accountancy, but possible to go back to the date of the application (rather than the date of the current order) on the basis of the information which gave rise to that application.

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