SMSFAdviser

Court ruling clarifies rules governing SMSF management

By Keeli Cambourne, Deputy Editor, SMSF Adviser and Matthew Burgess, Director, View Legal

A Federal Court decision last week provides further clarity on the rules governing the management of SMSFs, Matthew Burgess, director of View Legal, said.

The decision involved former Star Entertainment CEO Matthias Michael Bekier who in June 2026 was given a six-year disqualification from managing corporations (see Australian Securities and Investments Commission v Bekier (Penalty Judgment) [2026] FCA 756) which is the subject of an appeal.

"However in Bekier, in the matter of an application by Bekier [2026] FCA 1499, the Court nevertheless granted him leave to continue acting as a director of a company that serves solely as trustee of his family's SMSF," Burgess said.

"The ability to continue to as a director of the relevant trustee company of the SMSF (Leliwa Holdings Pty Limited) was subject to two key conditions, namely that the company continued to act only as trustee of the SMSF; and eligible beneficiaries of the SMSF remained complying with the superannuation regime, that is limited Bekier and members of his immediate family."

Burgess said in reaching its conclusion the Court confirmed a company duly incorporated in accordance with statute is a legal person distinct from its members, notwithstanding that its ownership and management may be concentrated within one family (see Salomon v A Salomon & Co Ltd [1897] AC 22).

"It also noted that a person who is otherwise disqualified from acting as a director can apply to have an exception to the disqualification, given that any prohibition is protective, not punitive, and the Court's discretion must be exercised with that purpose in the forefront (see Frigger, in the matter of an application by Frigger [2019] FCA 1730)," he said.

"The relevant considerations include the nature and circumstances of the disqualification; the plaintiff's character and conduct, including since the disqualification; the likelihood of repetition; the management role proposed; and the degree of control and supervision that would attend that role (see Duffy, in the matter of Westgate Ports Ltd (ACN 096 501 727) [2010] FCA 608)."

Furthermore, Burgess said the Court stated that while ASIC had consented to Bekier acting as a director of the trustee of the SMSF, the Court confirmed that ASIC's informed consent was "relevant but not determinative" and the Court must itself be satisfied that leave is consistent with the protective purpose under the Corporations Act (see Macalister, in the matter of an application by Macalister [2021] FCA 1455).

"Here the Court noted that the proposed management role for which leave is sought is materially different from the senior executive role in which the contraventions occurred. Furthermore, it was held there would be limited exposure of third parties or the public to Bekier's management of the SMSF trustee company, while there was also an absence of employees and debt, the support of its only other director, and ASIC's informed consent," Burgess said.

"Thus, Bekier was permitted to act as a director of the SMSF trustee, despite the conduct giving rise to his wider directorship disqualification order being serious, and although not involving personal dishonesty, still comprising of:

(a) sustained failures to respond appropriately to information bearing on legal, regulatory and reputational risks concerning The Star Entertainment Group's dealings with junkets and its principal banker;

(b) contraventions occurring over a significant period and involving more than an isolated lapse of judgment;

(c) no demonstrated developed insight into why the conduct represented serious failures in the discharge of duties."

Burgess said while the outcome may appear surprising, coming within months of the disqualification order being made, the decision highlights the fact that the rules in this area are ultimately predicated on being protective not punitive; a distinction which matters.

"That is, a protective regime requires a more nuanced consideration of what risk actually exists," he said.

"Ultimately, the Court held the key features of the trustee company Leliwa Holdings Pty Ltd, dramatically reduced the class of people potentially exposed to risk (as compared to being a director of The Star Entertainment Group Ltd).

"These features included that there are only two directors and four shares and that Bekier acted solely as trustee of an SMSF. There were also no employees; no debt; the SMSF did not trade and was funded entirely from its own resources; and the beneficiaries of the SMSF the company was trustee of were limited to Bekier and his immediate family."