

CHP 16/0073

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION
CHANCERY PROCEDURE**

Between:

THE ISLE OF MAN FINANCIAL SERVICES AUTHORITY

Claimant

and

(1) **ALAN LOUIS**

(2) **LYNN KEIG**

(3) **JOHN McCAULEY**

(4) **ROUSSEAU MOSS**

(claim discontinued pursuant to order 21 October 2016)

(5) **DIRK FREDERIK MUDGE**

(6) **LUKAS NAKOS**

(7) **ANDREW MARK ROUSE**

Defendants

Judgment summary issued by the High Court of Justice of the Isle of Man

This summary is provided to assist in understanding the judgment of the court. It does not form part of the judgment. The judgment itself is the only authoritative document. The full judgment is available at www.judgments.im.

On 23 February 2017 His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, delivered a judgment dealing with issues in respect of the application of the Isle of Man Financial Services Authority (the "Authority") for disqualification orders against Lukas Nakos and Andrew Mark Rouse under the Company Officers (Disqualification) Act 2009 (the "2009 Act").

The First Deemster concluded that in the circumstances of the case the Authority could proceed under both sections 4 and 5 of the 2009 Act and the Authority's application was within the time periods specified in sections 3(3) and 5(3) of the 2009 Act.

The Deemster held (at paragraph 38 of the judgment) that both sections 4 and 5 of the 2009 Act appeared permissive and there was no statutory restriction on the Authority proceeding under both sections.

The Deemster held (at paragraph 76 of the judgment) that on the proper construction of section 3(3) and taking into account the evidence and submissions in the case, the Authority's application pursuant to section 4 of the 2009 Act was within time.

The Deemster held (at paragraph 105 of the judgment) that on the proper construction of section 5(3) the Authority's application pursuant to section 5 of the 2009 Act was within time.

The Deemster held (at paragraph 116 of the judgment) that under section 5(3) there was no prohibition on filing an application for a disqualification order before the beginning of the time period specified.

As the Deemster had concluded that the application was within the relevant time periods there was no need for the Deemster to determine whether the court should grant leave to proceed out of time. The Deemster however gave some first instance guidance. The Deemster (at paragraph 128 of the judgment) stated that in considering whether to exercise its discretion to grant or withhold leave, the court must have regard to all relevant factors including the:

- (1) gravity or seriousness of the allegation;
- (2) strength of the case against the defendant;
- (3) length of delay;
- (4) reasons for the delay;
- (5) extent, if any, to which the defendant contributed to the delay;
- (6) extent to which the defendant would be unfairly prejudiced as a result of the delay; and
- (7) public interest.

23 February 2017