

Director's duty of confidentiality did not include a duty to return confidential documents

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The High Court has held that a non-executive director was not obliged to return all documents he had received during the course of his appointment which related to the company.

Sir Paul Judge was appointed as a Non-Executive Director of Eurasian Natural Resources Corporation on 6 December 2007; he also held directorships in other companies. The terms of that appointment included confidentiality provisions precluding the disclosure of any information acquired during his appointment to third parties. On 25 April 2013, the SFO publicly announced its investigation into Eurasian relating to allegations of fraud, bribery and corruption. On 5 June 2013, Eurasian terminated Sir Paul's directorship and requested that he deliver up all information he had received during the course of his directorship.

The SFO served Sir Paul with a notice requiring him to provide information relevant to its investigation; the notice bore a warning that failure to comply without reasonable excuse was a criminal offence. Sir Paul's solicitors emailed the SFO asking what should be done with the documents in his possession which were being requested by Eurasian. The SFO confirmed that the documents should not be returned to Eurasian and added that to do so would be a criminal offence. Sir Paul's solicitors agreed to ensure that no privileged information was sent to the SFO but Sir Paul declined to sign an undertaking to return to Eurasian all confidential information once the SFO's notice was complied with.

Eurasian argued that, in addition to a duty of confidentiality, Sir Paul was subject to an implied duty to deliver up documents; it applied for an injunction to restrain breaches of those alleged duties.

The High Court considered that Sir Paul was under no contractual duty to deliver up documents legitimately received in the course of his appointment. In the absence of an express clause requiring it, non-executive directors as a matter of course, are not obliged to return such documentation. The Court took a view that the existence of such a duty would not make business sense, as it would require a considerable amount of work for the director to comply with, particularly where the director holds multiple appointments. It was also relevant that Sir Paul was directly obliged by the SF0 not to provide documents to Eurasian. However, the Court held that it may choose to exercise its discretion to require delivery up in any event if there were evidence of misuse.

This decision can be contrasted with ordinary employees and executive directors where the expectation is much stricter both in terms of staff sending documents home, which may be gross misconduct.

Eurasian Natural Resources Corporation Ltd v Sir Paul Judge
[2014] EWHC 3556

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