



**Sole Director? Be aware of your duties**  
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## Key takeaways

- The sole director of a company was found to have breached his duties as a director by causing the company, which was in difficult financial circumstances, to make unsecured loans to another company associated with the director.
- It is important for directors to distinguish between the interests of the company and their own interests, even as a sole director.
- A sole director of a company, even if they are the sole creditor of that company, must have regard to and discharge their duties as a director of the company.

## Background

Mr Stanton was sole director of Bryve Resources Pty Limited (the **Company**) which was wound up in 2022. The Company's liquidator alleged that Mr Stanton had breached his directors' duties by causing certain payments to be made to a related company, Qube, of which Mr Stanton was also sole director.

The Company was incorporated in order to invest in a manganese mine in Namibia. Qube was incorporated for the purpose of operating a logistics business transporting ore for the manganese project.

From 2014 to 2016, Mr Stanton caused the Company to advance \$1.55 million in unsecured, interest-free loans to Qube. During the period the loans were being made, Qube had insufficient assets to repay the loan, and the Company itself was in a precarious financial position.

In causing the Company to advance the loans, did Mr Stanton breach his duties as sole director of the Company?

## Decision

The Court found that Mr Stanton had breached his duties of good faith and care and diligence as a director. It was reasonably obvious to Mr Stanton that the loans to Qube were not in the Company's interests. Qube's ability to repay was doubtful, and without security or interest, the loans were all risk with no potential benefit.

The Court emphasised that the Company's interests were not to be equated with those of Mr Stanton. At a time when the Company was in a financially precarious position, Mr Stanton's duty of good faith required him to consider the interests of the Company's creditors.

By causing the Company to make unsound loans to Qube, Mr Stanton impaired the Company's ability to repay its creditors. It did not matter that the only creditors were Mr Stanton himself and Stanton WA, the trustee of Mr Stanton's discretionary trust. His position as a beneficiary under the trust did not entitle him to treat Stanton WA's interests as if they were wholly aligned with his own.

The Court also found that other payments made by the Company to Mr Stanton's creditors were voidable transactions under the *Corporations Act 2001* (Cth). While the payments benefited the Company by reducing its indebtedness to Mr Stanton, this unreasonably left the Company without funds to pay its other creditor, Stanton WA.

## Conclusion

*Bryve* affirms that being a sole director, and even significant creditor, of a company does not entitle one to disregard the company's interests as a separate legal entity. The director may still face liability for breaching their duties to the company.

If you would like any further information or would like to discuss your legal rights, please contact [Chris Kintis](#) or your usual ClarkeKann contact.

[Bryve Resources Pty Ltd \[2022\] NSWSC 647](#)