

Personal liability of officers of company where adequate accounting records not kept

609. (1) Subject to subsection (2), if—

(a) a company that is being wound up and that is unable to pay all of its debts has contravened any of sections 281 to 285, and

(b) the court considers that such contravention has—

(i) contributed to the company's inability to pay all of its debts, or

(ii) resulted in substantial uncertainty as to the assets and liabilities of the company, or

(iii) substantially impeded the orderly winding up of the company,

the court, on the application of the liquidator or any creditor or contributory of the company, has the following power.

(2) That power of the court is to declare, if it thinks it proper to do so, that any one or more of the officers and former officers of the company who, with respect to the contravention, is or are in default shall be personally liable, without any limitation of liability, for all, or such part as may be specified by the court, of the debts and other liabilities of the company.

(3) On the hearing of an application under this section, the person bringing the application may himself or herself give evidence or call witnesses.

(4) Where the court makes a declaration under this section, it may give such directions as it thinks proper for the purpose of giving effect to the declaration.

(5) In particular, and without limiting subsection (4), the order providing for a declaration under this section, or a supplemental order, may include provision for making the liability of any person under the declaration (the “respondent”) a charge on—

(a) any debt or obligation due from the company to the respondent, or

(b) any mortgage or charge, or any interest in any mortgage or charge, on any assets of the company held by or vested in—

(i) the respondent or any company or other person on the respondent's behalf, or

(ii) any person claiming as assignee from or through the respondent or any company or other person acting on behalf of the first-mentioned person in this subparagraph.

(6) The court may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under subsection (5).

(7) In subsection (5)(b)(ii) “assignee” includes any person to whom or in whose favour, by the directions of the person liable under the declaration, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; however the expression does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(8) The court shall not make a declaration under this section in respect of a person if it considers that—

(a) the person took all reasonable steps to secure compliance by the company with sections 281 to 285, or

(b) the person had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of a director of the company who has been formally allocated such responsibility, was—

(i) charged with the duty of ensuring that those sections were complied with, and

(ii) in a position to discharge that duty.

(9) This section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

(10) In this section “officer”, in relation to a company, includes a person who has been convicted of an offence under section 389 , 392, 393, 406 or 876 concerning accounting records of the company or, as the case may be, a statement made to statutory auditors concerning such records.