ASIC wants Centro directors to be disqualified

Sarah Danckert From: *The Australian* August 02, 2011 12:00AM

AUSTRALIA'S corporate watchdog is seeking to disqualify the eight current and former directors of Centro Properties Group, saying the fact that they acted honestly in signing the company's faulty financial accounts is not a good enough defence.

The Australian Investments & Securities Commission is seeking the bans after the Federal Court found in late June that the directors had failed in their duties when they failed to identify the incorrect classification of billions of dollars of short-term liabilities.

In its submission to the Federal Court, ASIC asked that former chief executive Andrew Scott and former chief financial officer Romano Nenna be handed three-year bans and financial penalties of $100,000 each.

ASIC asked Justice John Middleton to consider disqualification periods of six to 18 months and up to $60,000 in fines for the company's current and former non-executive directors, including current chairman Paul Cooper and former chairman Brian Healy.

Counsel for ASIC, Mark Derham QC, said that while ASIC did not disagree with the court's finding that the eight men had acted honestly, that did not reduce their responsibility for certifying documents they had not carefully reviewed as true.

"If they had understood and applied their minds to the financial statements and recognised the importance of their task, each director would have questioned each of the matters not disclosed," Mr Derham said.

Mr Derham asked the court to consider the penalties as a form of general deterrence, saying directors should be mindful of the consequences both to themselves and to corporations if they fail to grasp and enact their duties with due care and diligence.

Mr Derham also said weight must be given to the seriousness of the consequences of the contravention.

However, counsel for six of the eight defendants, Philip Crutchfield SC, said that the directors' success in steering the company through the extremely difficult period that followed the reclassification of the accounts was testament to the characters and professionalism of the men involved.

This sentiment was echoed in an affidavit from Transurban and Westpac chairman Lindsay Maxsted [a registered liquidator] speaking to the characters of the defendants.

"It is my view that the leadership, resilience, diligence, professionalism and hard work of the non-executive directors throughout the whole of 2008 was critical in ensuring that Centro and its managed funds continued as going concern," Mr Maxsted said.

Centro Properties' 2007 accounts failed to disclose about $1.5 billion in short-term liabilities, instead classing the debt as non-current liabilities, and failed to account for guarantees of about $1.75bn.

Centro Retail Group's accounts also failed to disclose approximately $500 million in current liabilities.

Under cross examination, a clearly emotional Mr Nenna said he went blank after being informed in a company corridor by the company's chief accountant that $1.5bn in short-term liabilities had been misclassified as non-current.

"I have no recollection of what happened after that conversation; I can't even recall the board meeting (held shortly afterwards)" he said.

"I just wasn't well," Mr Nenna added.

ASIC asked Justice Middleton to disregard the argument put by counsel for the defendants that the press coverage of the case was penalty enough.

Mr Derham said the damage caused to other companies in the property sector should be considered by the court. "It's not just a mere technical oversight. It had a major effect on the market," he said.

The hearing will continue over the next few days and Justice Middleton is expected to take two to three weeks to determine the penalties.