THE HIGH COURT

[2000 No: 58COS]

IN THE MATTER OF THE COMPANIES ACTS 1963 - 2001
AND
IN THE MATTER OF DOCUMENT IMAGING SYSTEMS LIMITED IN LIQUIDATION

Judgment of Ms.Justice Finlay Geoghegan delivered on the 22nd day of July 2005.

1. By Order of the High Court made on the 3rd April, 2000, Document Imaging Systems Limited ("the Company") was ordered to be wound up and Eamonn Leahy was appointed Official Liquidator.

2. In the course of the winding up the Liquidator brought two separate applications pursuant to s.150 of the Companies Act, 1990 each on a notice of motion seeking declarations of restriction thereunder in respect of the respondents to the motion.All such respondents were former directors of the Company.One such motion was against Joseph Corcoran alone.The other motion was against Simon Coyle, Kathryn Corcoran and Kenneth Blowers.On each of the motions multiple affidavits were filed by the Liquidator and the respondents.Those affidavits disclosed disputes between the respondents as to their respective conduct as directors of the Company.In particular Mr.Corcoran made assertions relating to the conduct of Mr.Coyle and Mr.Blowers as directors of the Company.

3. An issue arose on the facts in the affidavits as to whether Mr.Corcoran was a director of the Company within twelve months of the date of commencement of the winding up.I directed that that issue be determined as a preliminary issue.On the 6th April, 2005, having heard the matter, I determined that Joseph Corcoran was not a director of the Company at the date of, or within twelve months prior to, the commencement of the winding up.Accordingly, I dismissed the motion brought against Mr.Corcoran under s.150 of the Act of 1990.Two further issues have now arisen in relation to the application under s.150 of the Act of 1990 against the remaining three respondents.Firstly, Mr.Corcoran has applied to be joined as a party to that application.Secondly, if he is not permitted to be joined as a party, should the Liquidator be entitled in the motion against the other respondents to rely on the affidavits already filed by Mr.Corcoran in the s.150 application against him.

Joinder of Mr.Corcoran as a party

4. The application on behalf of Mr.Corcoran to be joined as a party is made pursuant to O.15, r.13 of the Rules of the Superior Courts, 1986.Insofar as material this provides:

> "No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added..."

5. The factual basis of the application is that Mr.Corcoran is both a creditor and contributory of the Company.The Company was originally incorporated in March, 1993 to exploit certain technology.The original shareholders were Mr.Corcoran, Mrs.Corcoran and Mr.Blowers in equal shares.In 1996 Mr.Coyle became a director as part of an investment scheme.Mr.Corcoran resigned as a director in September 1997.The Company ceased trading in November 1997; it appears to have been subsequently struck off the register of companies and subsequently restored and the petition presented for its winding up.

6. On behalf of Mr.Corcoran, it is contended that he is a person with direct knowledge of the respondents as directors of the Company and that the evidence which he has to offer and submissions which might be made on his behalf would be relevant to the determination of the application under s.150 of the Act of 1990 against the respondents.The purpose of Mr.Corcoran seeking to be joined is to support the Liquidator's application for a declaration of restriction of Mr.Coyle and Mr.Blowers.

7. It is submitted that the discretion of the court under O.15, r.13 is wide.Reliance was placed upon a passage from the judgment of Hardiman J.in T.D.I .*Metro Limited v.Delap (No.1)* [2000] 4 I.R.337.That was an application by the Attorney General to intervene in an appeal against an order of *certiorari* of the High Court.

> "Although the Attorney General has not in my view any entitlement as of right to intervene and be heard in the present proceedings he has applied to do so.That is something which the court should consider very seriously.The court has a jurisdiction in its discretion to allow a party to be joined in the proceedings even at the appeal stage where this is considered to be necessary in the interest of justice and where there is no specific rule of law excluding the additional parties at that stage of the proceedings".

8. There is no doubt that the court has a wide discretion in the exercise of its jurisdiction under O.15, r.13.However in an application such as this, where a person is seeking voluntarily to be joined in proceedings, the court must be satisfied that he is a person "whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter".

9. This will primarily depend upon the nature of the proceedings and the issues to be determined.Where, as in this application, a person is seeking to be joined to support the applicant, it appears relevant also to consider whether he has locus standi to pursue the application.

10. The application to which Mr.Blowers seeks to be joined is an application under s.150 of the Act of 1990.It is brought on a notice of motion in the liquidation proceedings.I do not consider anything turns on this but the nature of the jurisdiction being exercised by the court in an application under s.150 is of central importance.

11. The jurisdiction conferred on the High Court by s.150 of the Act of 1990 is exclusively a statutory jurisdiction.It imposes a mandatory obligation on the High Court under s.150(1) to make the declaration of restriction in respect of certain persons who had been directors of insolvent companies unless they satisfy the court of the matters set out in the section.However s.150 as originally enacted made no provision for the persons by whom such an application might be brought before the court.In *Steamline Limited (In Voluntary Liquidation)* [2001] 1 I.R.103 Shanley J., considering an application by a creditor of Steamline Limited to maintain an application under s.150(1), at p.105 of the judgment stated:

> "All enactments should be given a purposive construction: that is, a construction which promotes the remedy the Oireachtas has provided to cure a particular mischief.Armed with such a canon of construction, this court approaches

> Part VII of the Act of 1990 noting that the legislature has expressly provided a particular restriction for particular types of conduct; it is a restriction to be imposed by the court, but which cannot realistically be imposed in the absence of a procedure whereby applications for such a restriction are made to the court by parties with an interest in making such an application.I believe that the court ought to construe s.150(1) in such a way as to promote, rather than restrict, the remedy provided for in that subsection: while the grounds for the disqualification of a director and other officers of a company differ from the grounds warranting restriction of a director, nonetheless, it does appear to me that the persons authorised by s.160(4)(b) to bring an application for a disqualification order are, broadly, the same category of persons who would have an interest in seeking an order for the restriction of a director.In promoting, rather than restricting, the remedy provided for in s.150(1), this court ought, in my view, to construe the mandatory power provided therein as exercisable on the application of any one of the class of persons identified in s.160(4)(b) of the Act of 1990 being persons identified by the legislature as having an interest in moving an application for a disqualification order and whom the legislature would have intended to have a like interest in relation to applications to restrict directors.Accordingly, in my view, Musgrave Ltd., as a creditor of Steamline Ltd., is entitled to maintain this application".

12. Counsel for Mr.Corcoran sought to rely upon the approach taken by Shanley J.and in particular the construction of s.150(1) in such a way as to "promote rather than restrict the remedy provided for".

13. The statutory position is now however quite different to that considered by Shanley J.in Steamline Limited (In Voluntary Liquidation) [2001] 1 I.R.103.The Oireachtas, in s.41 of the Company Law Enforcement Act, 2001, amended s.150 of the Act of 1990 inter alia by the insertion of subsection (4A) which provides:

> "An application for a declaration under subsection (1) may be made to the court by the Director, a liquidator or a receiver".

14. Notwithstanding this express wording, counsel for Mr.Corcoran has urged that the court should take the view that the Oireachtas has acknowledged the interest of a creditor or contributory in bringing applications in relation to former directors such as in s.298 of the Act of 1963, and that the court should continue to take the approach of Shanley J.to applications under s.150, notwithstanding the amendment made in 2001, and hold that Mr.Corcoran is a person who could bring an application under s.150 of the Act of 1990.

15. I cannot accept this submission.The Oireachtas has specifically, by the 2001 amendment, provided that the jurisdiction conferred on the High Court under s.150 should be exercised on the application of one of the persons named in subs.(4A).They have done so in circumstances where they have in s.160(4) of the Act of 1990 specified a different class of persons who may bring applications under s.160(2) of the Act of 1990.Applying the well established principle of construction that the intention of the Oireachtas should be construed from the words used when given their ordinary meaning, I must conclude that the Oireachtas intend (since the passing of the Act of 2001) that applications under s.150 be brought by the persons named in s.150(4A) and not by any other person.If it were intended that other persons could bring such an application then the Oireachtas would have specified such additional categories as it has done in s.160(4) of the Act of 1990.Accordingly I have concluded that the court has no jurisdiction to permit a person who is not the Director of Corporate Enforcement, a liquidator or a receiver to be an applicant in proceedings under s.150(1) of the Act of 1990.

16. This conclusion leaves open the question as to whether the court, notwithstanding the terms of s.150 of the Act of 1990, has a discretion under O.15, r.13 in an appropriate case to join a person as a notice party to an application brought by the Director, a liquidator or a receiver under s.150 against respondent directors.Counsel did not specifically make submissions on this issue and I wish to reserve my decision until it properly arises and is fully argued.However, even if such a discretion exists, where, as on the facts of this application, a person wishes to be joined for the purpose of making submissions in support of the application by a liquidator, it appears to me to follow that, having regard to the statutory scheme of s.150, there would have to be exceptional circumstances in which a court would permit such a person to be joined as a notice party.No such exceptional circumstances arise on the facts of this case.The Liquidator supports the application of Mr.Corcoran to be joined as a party but does not submit that he is precluded from, or prejudiced in, pursuing the application if he is not joined.

17. Accordingly on the first issue I have determined that Mr.Corcoran should not be joined as a party to the application under s.150 by the Liquidator against Mr.Coyle, Mrs.Corcoran and Mr.Blowers.

Mr.Corcoran's affidavits.
18. The Liquidator submits that if Mr.Corcoran is not joined as a party to the motion, he, the Liquidator, wishes to rely in the application against Mr.Coyle, Mrs.Corcoran and Mr.Blowers on the affidavits already filed by Mr.Corcoran.I have concluded he should be entitled to do so.

19. A liquidator will normally not have direct knowledge of the conduct of respondent directors whilst directors of the Company in liquidation.He is the designated applicant by the Oireachtas.He should put before the court all relevant and admissible evidence available to him in relation to the issue to be determined by the court under s.150.Most often this issue is whether the directors have acted honestly and responsibly in the conduct of the affairs of the Company whilst a director.

20. For much of the operating life of the Company Mr.Corcoran was a fellow director of the respondents.He has direct knowledge of what happened at material times which is probably relevant.Whilst the affidavits already filed have been filed on a separate motion in a separate application under s.150 of the Act of 1990, it appears to make no practical sense to rule them out on this basis.The Liquidator would be entitled to now request Mr.Corcoran to swear affidavits dealing with the affidavits of the respondents and file same in the motion against the remaining respondents.It would simply create added costs for the Liquidator in the application.

21. Accordingly I will make an order that the affidavits already sworn by Mr.Corcoran in the application brought by the Liquidator against him shall be treated as filed in the application against the respondents, Mr.Coyle, Mrs.Corcoran and Mr.Blowers.In so ordering, I am not determining whether or not any portion of those affidavits contain admissible and relevant evidence.I have not considered those affidavits in the course of this application.The respondents remain entitled, on normal evidential grounds, to object to any portion of those affidavits.Such objections should be dealt with by the judge hearing the s.150 application.