THE COURT OF APPEAL

CIVIL

Neutral Citation Number: [2019] IECA 210

Record No. 2014/826

McGovern J.
Baker J.
Donnelly J.

BETWEEN/

ARNAUD D. GAULTIER

APPELLANT

- AND -

THE REGISTRAR OF COMPANIES

RESPONDENT

- AND –

LOIRE VALLEY LIMITED

NOTICE PARTY

RESPONDENT

JUDGMENT of Mr. Justice McGovern delivered on the 23rd day of July 2019

1. This is an appeal against a judgment and order of Dunne J. delivered on the 8th March, 2013, in which she refused the appellant's application for a judicial review of the respondent's decision to dissolve Loire Valley Limited ("the company"). The company was dissolved on the 6th April, 2012 as no annual returns had been filed by the company for the year 2010 as required by Section 125 of the Companies Act 1963. On the 13th January, 2012 the respondent issued an involuntary strike off notice pursuant to Section 12 of the Companies (Amendment) Act 1982. This notice stated that unless all the outstanding returns were delivered to the Companies Registration Office (CRO) within one month that a notice would be published in Iris Oifigiúil with a view to striking the name of the company off the registrar. The returns were not filed as required by that notice and the company then failed to file its 2011 annual return with the CRO. On the 24th February, 2012 a statutory notice was published in Iris Oifigiúil stating that at the expiration of one month from the date of publication of the notice the company would be struck off the registry and dissolved unless all outstanding returns were filed.

2. By e-mail dated the 12th February, 2012 the appellant contacted the CRO requesting a restoration of the status of the company as "normal" on the basis that it had ongoing litigation with the Revenue Commissioners but no other reason was giving for the non-filing of the returns, and as the returns were not made the company was duly struck off the Register on the 1st April, 2012 and notification was published in Iris Oifigiúil on the 6th April 2012. It is important to note that no formal application for restoration was ever made by the appellant either to the CRO or to the court, as provided for in the Companies Acts.

3. The appellant brought the High Court proceedings by way of application for judicial review in which he made serious accusations against the respondent including of misfeasance, nonfeasance and obstruction to the administration of justice. Dunne J. found that there was nothing in the papers before the court that disclosed any deficiency in the actions of the respondent and there was no defect in the process by which the company was dissolved. In the course of her judgment the trial judge said:-

> *"Before leaving the issue as to the role of the court in judicial review proceedings, I should refer to one other matter raised by the applicant herein as to the bona fides of the respondent in these proceedings. He has suggested that the decision to strike off the company was made to obstruct the company in the proceedings it contemplated against the Revenue Commissioners. The State is a party to a vast proportion of the litigation that takes place in this country. Some of the parties in litigation involving the State in one form or another are companies. I have never before heard it suggested that a company was dissolved by reason of the fact that the Registrar of Companies was motivated improperly to dissolve a company or not to exercise a discretion in respect of the company, because that company was involved in litigation against one or other arm of the State. There is simply no evidence to support this allegation made by the applicant. It is a disgraceful and scurrilous allegation and one that should not have been made. The simple fact is that this company was dissolved in accordance with the provisions of the Companies Acts - 2012 for failure to file annual returns."*

4. The conduct of this appeal was not helped by an extraordinary and intemperate submission that the appellant could not get a fair hearing because the members of this court would in some way be influenced by the fact that the trial judge is now sitting on the Supreme Court. It is regrettable that such a submission should have been made in the absence of any evidence to support it.

5. On the 15th day of October, 2012 the respondent swore an affidavit verifying the grounds of opposition to the application for judicial review. The affidavit set out extensive correspondence which took place between the appellant and/or the company and the respondent in which the statutory regime for the filing of returns and the consequences of non-compliance were fully set out. Of particular note is a letter of the 21st May, 2012 from the respondent informing the appellant of the options available to him if he

wished to have the company restored to the register. This included the option of applying to the High Court pursuant to s.12 B(iii) of the Companies (Amendment) Act 1982 (inserted by s.46 of the Companies Act (No. 2) Act 1999) for an order restoring the company to the registrar which application is required to be on notice to the respondent, the Minister for Finance and the Revenue Commissioners. The respondent also informed the appellant that the respondent's letter of no objection to a s.12(B)(iii) restoration is conditional upon all outstanding annual returns being filed in the context of the restoration application. The appellant was also informed that "in the event that an applicant establishes sufficient 'cause to the contrary' to the satisfaction to the judge as to why the company ought not to be required to file its outstanding annual returns, the court may dispense with the annual return filing requirement (s.12(B)(iv)) CAA 1982 inserted by s.46 CA (No. 2) Act 1999)."

6. In spite of this correspondence the appellant declined to avail of the procedure provided for in the Companies Acts but commenced judicial review proceedings on the 5th July, 2012. It is important to note in that context that on restoration a company is deemed to have continued in existence as if its name had not been struck off.

7. The notice of appeal sought thirteen grounds of relief. Three of the grounds were not in the statement of grounds and can be disposed of on that basis. They are:

"Ground (iv):

> • seeking a declaration on the meaning of the public interest as used in the European Convention of Human Rights (Article 1 of 1952 Protocol) and its non-applicability on the decisions taking by the respondent of depriving the applicant of his property, namely his company, the notice party in these proceedings, by striking off its name and pronouncing its dissolution;

Ground (v):

> • an order of mandamus directing the respondent to give the precise goals of her above mentioned decisions; and

Ground (x):

> • an order for the respondent to pay general damages to the applicant in the sum of €70,000."

8. In the course of her judgment the High Court judge noted that the appellant's application to cross-examine the respondent on her affidavit was not pursued and that the application before her essentially concerned the re-instatement of the company to the register. It is not necessary therefore for this court to deal with the issue of cross-examination even though it is referred to in the notice of appeal.

9. Dunne J. carried out an extensive analysis of the relevant case law applicable to applications for judicial review. She referred to *Star Homes (Midleton) Limited v. Pensions Ombudsman and Anna Szeefs* [2010] IEHC 463 in which she adopted the views of Hedigan J. that the applicant bears the burden of proof in judicial review and cannot use that procedure to challenge the merits of a decision. She then went on to refer to *Ryanair Limited v. Flynn* [2003] I.R. 240 and *The State (Keegan) v. Stardust Compensation Tribunal* [1986] I.R. 642 and *O'Keefe v. An Bord Pleneála* [1993] 1 I.R. 39 which require an applicant to establish that the decision sought to be impugned plainly and unambiguously flies in the face of fundamental reason and common sense or that there was a lack of jurisdiction.

10. In *Bailey v. Flood* (Unreported, High Court, 6th March, 2000) Morris P. at p. 27 stated:

> "The function of the High Court on an application for judicial review is limited to determining whether or not the impugned decision was legal, not whether or not it was correct."

11. In *Ryanair Limited v. Flynn* Kearns J. stated at p. 266:

> "The limits of the remedy of judicial review were cogently addressed by Murphy J. in *Devlin v. Minister for Arts* [1999] 1 I.R. 47 when he said at p. 58:-
>
> > 'Judicial review is a valuable legal process. Over a number of years it has been invoked to correct some misunderstandings and occasional abuses in the exercise of statutory powers. The manner in which those powers must be exercised has been stated and restated by the courts in many cases a number of which were referred to in the judgment of the learned trial judge. The requirement that statutory powers (among others), even those expressed to be absolute, must be exercised in accordance with the requirements of natural and constitutional justice is well known and generally understood. Likewise it must be widely appreciated that the only function of the courts in relation to the exercise of such powers is to review the procedures in which they are exercised. In the absence of express statutory provision the courts do not have an appellate role by which they can reverse or review the actual decision taken. In these circumstances it may be expected that the need to invoke the remedy of judicial review in relation to public officials will diminish significantly. Certainly it would be regrettable if this procedure, which achieved so much good, was to be invoked unnecessarily or in such a way as to delay or defeat the proper exercise of administrative powers. Public officials may not be permitted to exercise their powers improperly: neither should they be impeded from exercising them properly.'"

12. These principles were accepted by the High Court judge and in my view represent a correct statement of the law.

13. Neither the High Court nor this court is concerned with the merits of the impugned decision. Having said that the appellant has adduced no evidence to show that the respondent was not acting in accordance with the statutory regime laid down in the Companies Act for the dissolution of companies for failing to file returns.

14. An important consideration for any court hearing a judicial review application is to establish whether there were effective alternative remedies available to the applicant seeking that relief. In this case it is clear that the Companies Acts provide a comprehensive stand-alone procedure for the dissolution of companies for failing to make annual returns including procedures by which a company can seek relief from dissolution. Not only did this stand-alone statutory regime provide the proper means for the company to seek relief from dissolution and restoration to the register but the relevant provisions of the Companies Acts had been brought to the attention of the appellant shortly before he commenced these judicial review proceedings. On that ground alone, the High Court judge was entitled to refuse the application for judicial review.

15. While the appellant invited the court to interpret the meaning of the words "unless cause shown to the contrary" as it appears ins.311 (2) of the Companies Act 1963 and sections 12(3),12A(3), and 12B(5) of the Companies (Amendment) Act 1982 it is unnecessary to do so as he failed to avail of the procedures provided for in the Companies Acts in order to have the company restored to the register.

Conclusions
16. The appellant has failed to meet the test required for a judicial review either by way of establishing irrationality in the decision of the respondent or want of jurisdiction to make the orders sought to be impugned.

17. There was an effective alternative remedy available to the appellant and the company under the provision of the Companies Act which was not availed of.

18. The High Court judge considered all the appropriate jurisprudence and the legislation applicable to the dissolution of companies and I am satisfied that she was correct in her conclusions.

19. I would dismiss the appeal.