Neutral Citation: [2016] NICh 15 | *Ref:* **HOR10078**

Judgment: approved by the Court for handing down | *Delivered:* **25/10/16**
*(subject to editorial corrections)**

2014 No: 120539

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

(COMPANIES WINDING UP)

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IN THE MATTER OF CLOUGHVALLEY STORES (NI) LIMITED
(IN LIQUIDATION)
AND THE INSOLVENCY (NI) 1989

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HORNER J

Introduction

[1] This case has a long and convoluted history. The only issue before this court is whether the winding up Order made by Master Kelly on 19 March 2015 is valid. The appellants, Mr and Mrs Michael Quinn, appeal as shareholders and directors of Cloughvalley Stores (NI) Limited ("CVSNI"). Ninety eight per cent of the share capital of CVSNI is owned by Cloughvalley Stores Ltd ("CVROI") a company registered in the Republic of Ireland which is presently in receivership. The appellants own one share each in CVSNI.

Background Facts

[2] On 13 January 2011 Allied Irish Banks plc ("AIB") placed CVROI in receivership. It held a mortgage debenture as security for CVROI's indebtedness. On 17 October 2011 Mr Thomas Keenan, Insolvency Practitioner, was appointed by the Directors of CVSNI as Administrator under paragraph 23 of Schedule B1 of the Insolvency (NI) Order 1989 ("the Order") with the consent of the Northern Bank Limited ("the Bank") as a holder of a qualifying floating charge dated 26 April 2004 made between CVSNI and the bank. On 27 November 2014 a petition was filed to wind up CVSNI in Northern Ireland by the administrator on the ground that CVSNI was unable to pay its debts. On 19 March 2015 the Master made an Order winding up CVSNI. It is this Order which is being appealed by the appellants.

[3] The grounds of appeal involve a number of claims. Some of these have not been pursued. The main case which was made is that the Master should not have made the winding up Order because the averments in the Petition and supporting affidavit are plain wrong. The COMI of CVSNI is not in Northern Ireland and/or the appropriate person to bring any application to wind up CVSNI was a receiver over CVROI. Thus, in the circumstances, the European Regulations had been vitiated by the winding up Order made by the Master.

[4] The appeal was listed before Gillen LJ, and upon undertakings given to the court by the appellants as directors that they would not remove, dissipate or otherwise interfere with CVSNI's assets, he decided to remit the matter to the Master to review her decision in the light of the COMI argument that the appellants now wish to develop and which had not been fully explored before the Master at the original hearing.

[5] The hearing took place on 21 April 2016. The Master gave an admirably comprehensive judgment. She noted that Mr Quinn had on behalf of CVSNI and its Directors executed the requisite statutory notice pursuant to paragraph 15 and 23 of Schedule B1 of the Order. Each notice was completed under oath and did contain a statutory declaration that the COMI of CVSNI is located in Northern Ireland as is its registered office. The Notice had further provided that EC Regulation 1346/2000 ("the Regulations") applied and that the proceedings were to be the main proceedings as defined by Article 3 of the Regulations. It is worth pointing out that no person, and in particular, no creditor, other than the appellants has made such an argument. The Master set out clearly and in detail the relevant legal principles. She identified the relevant date as the date of the appointment of Mr Keenan as administrator, that is 17 October 2011. On that date the material factors as found by her were:

> "(i) The registered office of CVSNI was 8 Newry Road, Crossmaglen, Co Antrim.
>
> (ii) The main interests of CVSNI was that of a convenience store ("Quinn's Superstore") – the economic activity of which was conducted by CVSNI on a day to day basis from its business premises and/or registered office at Newry Road, Crossmaglen, Co Armagh, Northern Ireland.
>
> (iii) CVSNI's bank and banking arrangements were conducted in Northern Ireland.
>
> (iv) CVSNI's statutory compliance obligations in respect of tax and VAT were to HMRC in Northern Ireland.

(v) CVSNI's regulatory obligations in respect of annual returns were to Companies House in Northern Ireland.

(vi) CVSNI was ascertainable to highlight third parties particularly creditors and potential creditors in Northern Ireland."

[6] Further she went on to say there was no evidence CVSNI held assets or pursued economic interests in any other jurisdiction. She concluded at paragraph [12]:

> "Applying the relevant legal principles, in order to rebut the presumption of COMI in Article 3(1) of the Regulation, Mr and Mrs Quinn would have to successfully argue that as at 17 October 2011 CVSNI met the two parts of the test per recital 13 in the Republic of Ireland. Moreover, to achieve this, they must do so by reference to the criteria that is objective and ascertainable by third parties. But aside from reference to the shareholding CVSNI, which they argue is ascertainable by third parties from Companies House, they offer no evidence that CVSNI could or did meet both parts of the test in the Republic of Ireland on the relevant date. On the other hand it is abundantly clear on the facts that on the relevant dates CVSNI did meet the two parts of the test in Northern Ireland. This is also consistent with both the presumption in Article 3(1) of the Regulation and the Guidance in the Thirteenth recital. Accordingly, I find the presumption of COMI as per Article 3(1) of the Regulation has not been rebutted. I find therefore that the COMI of CVSNI lies in Northern Ireland and thus in the jurisdiction of the High Court in Northern Ireland."

[7] On this appeal from the Master the court's attention has been drawn to proceedings which have been taken in the Republic of Ireland to enforce the guarantees against the appellants given in respect of CVSNI. They argued that although they were Republic of Ireland residents proceedings ought to have been instituted in Northern Ireland. Not surprisingly their attempt to run such an argument was rejected and leave was refused by Ms Justice Irvine who concluded her judgment as follows:

> "It is, therefore, highly unfortunate, given that they have, in so many respects, completely inaccurate views as to what the law is, that the Quinns should have chosen to make serious allegations against both representatives of

> Northern Bank and the courts. It may be entirely understandable that litigants in person do not fully understand the law. It is less understandable or acceptable that serious personal allegations are made which are, and to a very significant extent, based on a completely erroneous view of the law."

[8] Prior to the appeal a skeleton argument was filed on behalf of the appellants again raising the COMI point as a central issue. The appellants also relied on subsidiary grounds which included:

(a) The lack of evidence of the replacement, proper vacation or appointment of the petitioner as opposed to the administrator who did not enjoy the power to wind up by petition CVSNI in administration.

(b) The disqualification of Directorship proceedings arising out of the winding up Order of the CVSNI which will have cross-jurisdictional impact upon both appellants who are resident in the Irish Republic.

(c) The petitioner should not be permitted to rely upon averments which were inaccurate and materially so.

(d) There were cause guarantees between CVSNI and CVROI.

[9] None of these subsidiary grounds were pursued, and I am not surprised because on the face of them, there is no substance to any of them. Nor was any attempt to make any argument about the COMI of CVSNI which was the main reason why the matter had been referred back by Gillen LJ to Master Kelly originally. Instead, the appellants decided to rely on a new novel argument raised for the first time on the eve of the appeal.

The Appeal

[10] The appeal was listed for hearing before me on 16 September 2016. An affidavit was filed that day by Mr Quinn (an unsworn affidavit having been filed the day before) making the case that any indebtedness of CVSNI had been discharged in full as of 20 May 2016 "in full and complete compliance with the law" and that as CVSNI's debt to the Bank had been "repaid" the making of a winding up Order was otiose. Mr Blackwood Hall of the Bank subsequently swore an affidavit in which he said that this averment of the appellants was untrue and that the outstanding debt due by CVSNI to the bank remained in the sum of £4,701,581.16 exclusive of interest and other debts or costs owed on the part of CVSNI. The appellants served a notice on Mr Hall in respect of his affidavit sworn on 22 September 2016 requiring him to attend for cross-examination. He attended at short notice on 30 September 2016.

[11] The court's attention had been drawn by Mr Dunlop for the respondent to proceedings in the Republic of Ireland to enforce guarantees against the appellants given to the Bank in respect of CVSNI. As I have noted in those proceedings they had argued that although they were Republic of Ireland residents proceedings ought to have been instituted in Northern Ireland. Not surprisingly such an argument, which was almost the reverse of the argument being run in this court, was rejected and leave to appeal was refused by the Court of Appeal.

[12] The evidence before this court is that neither of the appellants has any money. There are outstanding unsatisfied judgments for £500,000 in respect of guarantees given by the appellants. Counsel who appeared for the appellants made it clear that he was not prepared to advance any argument based on what was contained in Mr Quinn's affidavit of 16 September 2016. In response Mr Quinn complained of a complete loss of confidence in counsel. There was no solicitor present from the instructing solicitors, but instead there was a clerk attending counsel. In the circumstances Mr Quinn decided to dismiss his entire legal team. This was most unfortunate as Mr Quinn then felt unable to go on for two reasons. Firstly, he wanted to instruct other legal advisers because he had a legal aid certificate and secondly he wanted his wife to be present and she was in Cork on some other legal business. Reluctantly I agreed to one final adjournment of one week to allow him to try and instruct another legal team. It also gave his wife an opportunity to appear for the appeal. When the case was listed one week later, he asked for a further adjournment to allow him to instruct solicitors and counsel and I gave him a final one week peremptory adjournment. I suggested that if he was unable to find a firm of solicitors willing to act, then he should seek assistance from the pro-bono unit of the Bar Library.

[13] I note that it is incumbent upon counsel to promote fearlessly and by all proper and lawful means the client's best interest: see paragraph 886 of Volume 66 of the Laws of Halsbury. A barrister must not knowingly and recklessly mislead or attempt to mislead the court. I can well understand counsel's refusal to endorse the case now made by the appellants in the affidavit of Mr Quinn. However, counsel can still fulfil his obligations to the court and to his client by making clear that the case that he was making was being done so on his client's clear instructions. Instead, the inevitable consequence of counsel dismissing the affidavit out of hand, was the "sacking" of the legal team even though there was a legal aid certificate and any costs had by that stage been incurred. It left the court in the most unsatisfactory position of dealing with personal litigants, when those personal litigants had a full legal aid certificate. Further, not only was that day lost, but two further days of valuable court time that could have been devoted to other cases that deserved to be heard, was lost.

[14] The defence which the appellants decided to run had nothing to do with COMI. The Master's judgment is both clear and correct on this issue. What the appellants wanted to do was to run a defence that because the Bank had been given a note from them promising to pay the full amount of the debt owed by CVSNI, the

bank not having returned this "promissory note", was no longer a creditor of CVSNI. I asked Mr Quinn whether the fact that neither he nor his wife had any assets, (and this was not in dispute) to meet the debt was a relevant consideration. Apparently it was not. Mr Blackwood Hall explained under oath that the debt of nearly £5m remained due and owing to the Bank not having been extinguished by the promise to pay on behalf of the appellants.

[15] The appellants' argument in so far as I was able to understand it, appeared to be based on a misunderstanding of the Memorandum and Articles Association. It was quite clear that Mr Quinn had no idea of the purpose of a Memorandum and did not understand what the objects of a company were. It was quite obvious that the appellants' grasp of basic legal principles was non-existent. Furthermore, they had no problem in making a case which was hopelessly flawed and which was doomed to fail. Like a drowning man, Mr Quinn (and his wife) were prepared to grab anything in the hope that it would keep him (and his wife) afloat. But the defence he has chosen to run has no substance and is devoid of merit. CVSNI owes the bank just over £4.7m. This case proved, if further proof was required that the view of the Supreme Court in the Republic of Ireland that the Quinns have "completely inaccurate views as to what the law is" is entirely correct.

[16] Given that the appellants are self-representing, I did look at whether or not they had any "COMI" argument or whether there were any arguments open to them. I am satisfied that they have no defence in law to this application. The Master's judgment is a model of clarity and her conclusion is unimpeachable.

Conclusion

[17] The appellants are in desperate financial straits and appear quite prepared to grasp at straws. Their understanding of the law is "completely erroneous". When the legal aid budget is under such pressure, it is scarcely credible that the appellants should receive legal aid both for the hearing before the Master and for this appeal. Any case made by the appellants is without merit for the reasons which I and the Master have given. It is difficult not to wonder just how much the legal aid authorities knew about the litigation in the Republic of Ireland or indeed of the basis upon which they were appealing. There is force in what the respondent says in its skeleton argument; (apart from the comment that the appellants are from the Republic of Ireland which is irrelevant)

> "The present Appeal is an abuse of process and is very unclear as to the basis upon which the Legal Services Commission of Northern Ireland granted legal aid to citizens of the Republic of Ireland to challenge the Winding Up of a Company. It is particularly so when the company was placed in administration in 2011 on foot of Michael Quinn's own application in which he swore a Declaration entirely antithetical to the case no advanced."

[18] This criticism is compounded by the decision of the appellants to proceed with an appeal which was ultimately founded on the worthless promise that they would pay the amount of nearly some £5m outstanding to the bank when they had no money or assets to do so. A worthless promise to pay a debt can never extinguish it. The effect of all this is that 18 months have been allowed to pass since Master Kelly made her Order on the basis that the appellants were appealing it. Further, substantial costs have been incurred by the Bank in defending a hopeless appeal and the Legal Services Commission in funding one. I direct that this judgment be brought to the attention of the Legal Services Commission as I find it difficult to accept that it has been aware of all material facts.