



Neutral Citation Number: [2020] EWHC 186 (Ch)

Case No: CR-2020-MAN-000027

Company No: 06166864

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY & COMPANIES LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West, Manchester, M60 9DJ

Date: Tuesday 4 February 2020

Before :

MR JUSTICE SNOWDEN

VICE-CHANCELLOR OF THE COUNTY PALATINE OF LANCASTER

**IN THE MATTER OF CARTER MOORE
SOLICITORS LIMITED**

**AND IN THE MATTER OF THE INSOLVENCY
ACT 1986**

Written submissions were received from Begbies Traynor

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE SNOWDEN

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The facts

1. In this matter, a Notice of Intention to appoint administrators (the “NOI”) was filed at Court by Begbies Traynor (Central) LLP (“BT”) on behalf of the directors of Carter Moore Solicitors Limited (the “Company”). The filing was made electronically using the CE-filing system at the Business and Property Courts in Manchester at 09.05 hrs on Monday 13 January 2020, and was allocated case number CR-2020-MAN-000027.
2. The directors of the Company subsequently resolved to appoint two partners of BT as administrators of the Company (the “Administrators”). A Notice of Appointment of Administrators by the directors of the Company (the “NOA”) was subsequently CE-filed by BT at the Court in Manchester at 14.17 hrs on Friday 24 January 2020. It was in the correct form and was accompanied by all of the relevant documents required by paragraph 29 of Schedule B1 of the Insolvency Act 1986 and Rule 3.24 of the Insolvency (England and Wales) Rules 2016. In particular, the NOA contained identification details for the Company immediately below the heading. The NOA also contained the standard form wording that,

“The administrator’s appointment will take effect at the date and time specified below as the date and time when this notice and the accompanying documents are filed at Court.”

3. However, when the CE-filing was made at 14.17 hrs, the wrong “drop down box” was inadvertently selected in the CE-filing system by the member of staff at BT. The option of “New Case” was chosen instead of “Existing Case”. This had the practical result that a larger fee was required to be paid than was actually due: i.e. the fee paid was that for a new case rather than a filing in an existing case. It also meant that the NOA was filed without the CE-system connecting it to case number CR-2020-MAN-000027. That case number was, however, apparent from a copy of the NOI that was filed together with the NOA.
4. At 16.04 hrs on Friday 24 January 2020, an email was sent to BT by a Court clerk via the CE-system. That email stated that,

“[the] filings ... submitted on 24-01-20 02:17 PM, have been rejected by the clerk for the following reason(s): Other.”

The email also contained the following comment from the Court clerk,

“You need to re-submit the Notice of Appointment in the existing proceedings. Kind regards [name and telephone extension].”

5. Immediately upon receiving the e-mail, BT re-submitted the NOA by CE-file at 16.07 hrs using the correct drop-down box and existing case reference.
6. At 09.42 hrs the following Monday morning, 27 January 2020, an email was sent to BT through the CE-file email system advising that,

“the filings filed in CR-2020-MAN-000027 have been accepted by the clerk on 24-01-20 04:07 PM. You can view this filing here.”

The literal meaning of the wording of that email, which was generated automatically by the CE-filing system, would suggest that a decision to accept the filing had been made at 16.07 hrs on Friday 24 January 2020. In fact, however, the design of the CE-system is such that the decision to accept the filing was actually made by the Court clerk after the weekend. The email was then sent as a result at 09.42 hrs on the morning of Monday, 27 January 2020.

7. The NOA which was then shown on the CE-file was sealed by the Court clerk and endorsed with the date 27 January 2020 and the time of 10.00 hrs. The reason for the selection of that date was that the clerk took the view that the NOA had only been correctly filed after the Manchester Court office had closed to the public at 16.00 hours on Friday 24 January 2020. The clerk took the view that, in accordance with guidance suggested by ICC Judge Burton in Re SJ Henderson & Co Ltd [2019] EWHC 2742 (Ch), the NOA should be treated as having been filed and accepted by the Court at the first point in time at which the Court office was next open to the public, which was 10.00 hrs on Monday 27 January 2020.

The issue

8. These facts, together with the date and time endorsed on the NOA by the Court clerk, potentially raised a number of questions, including whether it is possible for the directors of a company to CE-file a notice of appointment of administrators outside court hours at all; and whether, if the NOA was correctly dated, the appointment of the Administrators complied with the requirements of paragraph 28(2) of Schedule B1 to the Insolvency Act 1986. That paragraph provides that an appointment of administrators by the directors under paragraph 22 of Schedule B1 may not be made after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1). On one interpretation of paragraph 28(2), the first day of the period of ten business days in this case was Monday 13 January 2020, so that although an appointment on Friday 24 January 2020 would be effective, an appointment taking effect on Monday 27 January 2020 would not have been effective, unless the court could exercise a discretion to validate it in some way.
9. In these circumstances, and following a communication from me after the matter had been brought to my attention by the Court staff, the Administrators have sought a determination as to whether their appointment was valid, and if so, at what date and time the appointment took effect; and (if appropriate) an order requiring the NOA to be endorsed by the Court with a different time and date.
10. I should make clear that this case is not subject to the new Court practice in relation to out-of-hours appointments of administrators which was announced by The Chancellor on 30 January 2020. That practice is designed to ensure that in a case of an out-of-hours filing by CE-file in the future (at least until a rule change is made which clarifies the position), a High Court Judge will make a determination on the papers or after hearing submissions as to the validity and correct date and time which should be endorsed upon the notice of appointment of administrators. Although the NOA in this

case has already been endorsed with a date and time, I have followed a similar process in dealing with the Administrators' application as might be adopted in such a case.

11. I should also make it clear, for obvious reasons, that wherever possible and until the position is clarified by a rule change, practitioners should attempt to avoid CE-filing a notice of appointment of administrators out of Court hours.

Analysis

12. In this case, it is important to note, first, that there was full compliance with the requirements of Schedule B1 of the Insolvency Act and rule 3.24 of the Insolvency Rules when the NOA was originally filed. In particular, there is no requirement in either Schedule B1 or rule 3.24 that the filing of a notice of appointment of administrators should identify that the notice relates to an existing case. The only requirement in the Act or Rules is that the notice should identify the company which is the subject of the appointment.
13. The requirement to identify whether a CE-filing relates to an existing case or a new case derives from CPR PD 51O (the Electronic Working Pilot Scheme), paragraph 2.3(c). That requirement exists for obvious reasons. In the case of a notice of appointment of administrators, it enables the notice to be electronically filed in the same place on the system as the notice of intention to appoint in respect of the same company. It also enables the CE-system to determine the correct fee to be charged.
14. However, it seems to me that the selection of the wrong drop down box when the first filing of the NOA was made in this case can properly be regarded as a simple error of procedure made whilst using the CE-filing system. As such, it is potentially curable by the court using the power in CPR PD 51O paragraph 5.3. The relevant parts of that paragraph provide,
 - “(1) Submission of any document using Electronic Working will generate an automated notification acknowledging that the document has been submitted and is being reviewed by the Court prior to being accepted (the “Acceptance”).
 - (2) The court may make an order to remedy an error of procedure made while using Electronic Working, in accordance with CPR 3.10(b). When the court makes such an order, a document filing will not fail Acceptance because of the error of procedure made.”
15. CPR 3.10(b) provides,
 - “Where there has been an error of procedure such as a failure to comply with a rule or practice direction
 - (b) the court may make an order to remedy the error.”
16. In considering whether to exercise this power in the instant case, I consider that it is appropriate to have regard to the fact that the first filing of the NOA was made during

court hours; that the filing complied in all respect with the Insolvency Act and Rules; that the only error was the selection of the wrong drop-down box on the CE-filing system; that this was obviously inadvertent and not an attempt to pay a lesser fee than was due (it in fact resulted in a larger fee being charged than would have been charged for a filing in an existing case); the existing case number was apparent from the NOI which was filed together with the NOA; and when the filing error was brought to the attention of BT by the Court clerk, it was corrected within 3 minutes by a second CE-filing which was itself made only 7 minutes after the Court office had closed to the public.

17. In my judgment, these factors make this an obvious case to exercise the power under CPR PD 51O para 5.3(2) and CPR 3.10(b) to make an order to remedy the error of procedure. There is no suggestion that there would be any possible prejudice to any interested party if I were to exercise my power in this respect; but to refuse to do so would, in my view, be a triumph of form over substance.
18. My order will therefore have the effect that the original filing at 14.17 hrs on Friday 24 January 2020 will not have failed Acceptance, and must be treated as having been validly made within Court opening hours. The other potential issues relating to out-of-hours appointments by CE-filing, to which I have alluded above, therefore do not arise for decision.
19. Accordingly, I shall make an order under CPR PD 51O para 5.3(2) and CPR 3.10(b) declaring that the NOA should be treated as having been validly filed at Court at 14.17 hrs on Friday 24 January 2020; and ordering and directing the NOA to be endorsed as having been filed and accepted by the Court at that time and date.
20. I also have a power to make a declaration in a situation in which that would serve a useful purpose: see e.g. GEMA v Spark Energy [2018] EWHC 2522 (Ch), referring to Rolls-Royce v Unite The Union [2010] 1 WLR 318 and FSA v Rourke [2002] CP Rep 14. I consider that this is such a case, in which clarification of the validity and timing of the Administrators' appointment would be desirable. I shall therefore also declare that as a consequence of my order under CPR PD 51O para 5.3(2) and CPR 3.10(b), the appointment of the Administrators took effect at 14.17 hrs on Friday 24 January 2020.