



THE COURT OF APPEAL
Civil

Appeal Number: 2019/049

UNAPPROVED JUDGMENT

Whelan J.
Haughton J.
Collins J.

IN THE MATTER OF SECTION 738 OF THE COMPANIES ACTS, 2014
AND
IN THE MATTER OF EMERALD CONTRACT CLEANERS LIMITED
PREVIOUSLY EMERALD CONTRACT CLEANERS (IRELAND) LIMITED

BETWEEN/

JOHN SHERIDAN

APPELLANT

- AND -

EMERALD CONTRACT CLEANERS LIMITED
(ORIGINALLY EMERALD CONTRACT CLEANERS (IRELAND) LIMITED
AND HELEN SHERIDAN

RESPONDENTS

JUDGMENT of Ms. Justice Máire Whelan delivered on the 29th day of April 2022

1. This is an appeal against the judgment and orders of Mr. Justice McDonald made in the High Court on the 16th January, 2019 dismissing the appellant's application for an order pursuant to s. 738 of the Companies Acts, 2014 for the restoration of a struck off company, Emerald Contract Cleaners Limited (CRO no. 22322) (the defunct company) to the Register of Companies. The appellant was ordered to pay the costs of the respondents

and the Revenue Commissioners. The application and this appeal represent a further step in an ongoing claim which has been repeatedly advanced by the appellant over the past quarter century in respect of the cleaning business established and operated by his late paternal uncle James Valentine Sheridan through Emerald Contract Cleaners (Ireland) Limited (no.148369).

2. The appellant brought the said application as a purported creditor of the defunct company. I am satisfied that for the reasons hereinafter outlined this appeal ought to be dismissed, no valid basis having been identified by the appellant to interfere with the judgment and orders of the High Court under appeal.

Background

3. The defunct company was incorporated in or about the 5th February, 1965. It was incorporated under the name Emerald Contract Cleaners (Ireland) Limited, CRO No. 22322. There were two shareholders of the said company namely, the appellant's father Patrick Francis Sheridan who died *circa* the late 1996/early 1997 and "James V. Sheridan". At issue is the true identity of the "James V. Sheridan" appearing in the CRO documentation concerning both the defunct and trading companies. The appellant contends that "James V. Sheridan" appearing in CRO documentation in respect of the defunct and trading companies is one and the same as his deceased teenage brother James (otherwise "Seamus") Vincent Sheridan who was born on the 16th May, 1952 and who died, aged 19, following an accident in New York on the 20th December, 1971. James Vincent Sheridan was blind.

4. The evidence before the High court suggests that the appellant's father Patrick Francis Sheridan married his mother Pauline on or about the 27th December, 1951. Several

years later the couple moved to New York State to join Patrick's brother James Valentine Sheridan who was at that time residing in New York State.

5. The respondents contend that the "James V. Sheridan" referred to is not the appellant's deceased teenage brother but rather James Valentine Sheridan, the appellant's uncle, a businessman who ran cleaning companies in both New York and Ireland. The said James Valentine Sheridan was born on the 15th February, 1928. He died, aged 80, on the 2nd September, 2008. The second named respondent, Helen Bernadette Sheridan is his widow. She was born on the 31st December, 1934. James Valentine Sheridan and the second respondent resided at 229 Seapark Road, Malahide, County Dublin which was at all material times beneficially owned by them. Significantly, the latter address appears throughout the years in filings with the CRO as the address of "James V. Sheridan" in connection with both the defunct and trading companies. Additionally, it is contended by the respondents, that an address which for a time comprised the registered office of the defunct company (22322), namely 5/7 Whitehall Road West, Crumlin, Dublin 12 was purchased by James Valentine Sheridan and was at all material times beneficially owned by him and that his deceased teenage nephew, James Vincent Sheridan, never had any beneficial interest in either property. There was no evidence adduced by the appellant to suggest that his deceased teenage brother ever had any beneficial interest in either property. Neither does the appellant contradict the claims that the aforementioned properties were beneficially owned by James Valentine Sheridan and his wife. Where documentation filed with the CRO refer to "James Vincent Sheridan" the respondents indicate that same was an error not detected at the time by James Vincent Sheridan. They suggest the error arose by reason of a mistake on the part of a professional party. The respondents emphasise that nowhere did James Valentine Sheridan ever sign any relevant document using the name "James Vincent Sheridan".

Creditor

6. The appellant in his grounding affidavit deposes to having brought the application to restore as a purported creditor of the defunct company. He initially brought the application in the context of administering the estate of his late mother Pauline Sheridan. She was born on the 29th June, 1928 and died on the 27th August, 2016. The appellant was her sole executor and a grant of probate issued to him on the 31st January, 2017. Following the death of her husband, Pauline Sheridan on 4th June 1997 extracted a grant of letters of administration in the estate of her late son James Vincent which stated that the estate was valued at IR£11.00. In the course of these proceedings the appellant obtained a grant *de bonis non* of the unadministered estate of James Vincent Sheridan on the 9th May, 2018.

Previous Application to restore the defunct company to the register

7. A petition was brought by Pauline Sheridan, the appellant's mother, with the active involvement of the appellant, in 2000 in her capacity as the legal personal representative of her late son James Vincent Sheridan to have the defunct company restored to the register. An order restoring the defunct company to the register made *ex parte* in the High Court in February 2001 was subsequently set aside by consent in late 2001. The history of that litigation and the appellant's involvement in same is considered more fully below.

James Valentine Sheridan

8. Whereas James Valentine Sheridan is now deceased, averments in an affidavit sworn by him on the 6th December, 2001 are highly significant. It grounded a successful application by him to Ms. Justice Carroll in the High Court wherein, with the consent of Pauline Sheridan, it was ordered that the earlier order of the 19th February, 2001 be vacated

and the petition of Pauline Sheridan be dismissed. The court ordered, *inter alia*, that the defunct company Emerald Contract Cleaners Limited (22322) remain struck off the Register of Companies. In the said affidavit he deposed as follows concerning his sister-in-law Pauline Sheridan: -

“It appears that she has done a search in the Companies Office and found a dissolved company, which is the subject to this petition, that has a name similar to that of the principal family operating company. There are two similarly named companies. One company is called Emerald Contract Cleaners Limited with companies’ registration office number 22322, which is the subject of this petition (hereinafter called the “defunct company”) and the other is called Emerald Contract Cleaners (Ireland) Limited with companies registration office number 148369 (hereinafter called the “trading company”). The companies exchanged names by way of name changes on at least one occasion. This company, the defunct company has not traded since 1989 or thereabouts. The other company, the trading company, is and has been continuously in business in a substantial way and is the real target of the petitioner’s attack. Following the order to restore the defunct company to the register, she believes she has gained control of the defunct company, and can use it as a means to attack the trading company and try to convert its assets to her own use.” (para. 3)

1950s to 1970s

9. In his affidavit James Valentine Sheridan further deposes: -

“6. In the late 1950’s I emigrated to Poughkeepsie, New York and established an industrial and home cleaning service there. I refer to a copy of the Certificate of Registration dated 28th January, 1959 whereby I assumed the name Emerald

Industrial and Home Cleaning Service for the business. Sometime afterwards my mother asked me to allow my brother, the said Patrick F. Sheridan, to join me and we both carried on the cleaning service in Poughkeepsie, New York State until the early 1970's. I returned to Ireland in or around 1972 and went into business with another brother Anthony Sheridan in a company called Sheridan Motors (Dublin) Limited. That company was not a success and I decided to set up a contract cleaning business in Dublin on my own. I wanted it called Emerald Contract Cleaners (Ireland) Limited to distinguish it from the American operation. I instructed my then accountants ... Fintan P. Flannelly & Co. ... to form a new company and retained them to look after all the paperwork including the preparation of quotations contracts invoices, all the accounts, bookkeeping, payroll, PAYE, taxes and the preparation and approval for all documentation for a signature. The new company duly appeared. I was of the view that the accountants had incorporated a new company named Emerald Contract Cleaners (Ireland) Limited. How this happened or what actually happened is unclear to me as I had left the matter totally to Fintan P. Flannelly & Co. From an examination of the records of the Companies Registration Office it would appear as though no company was in fact incorporated under this name in or about this time, and that I commenced trading under an existing company of the same name which has been incorporated on the instructions of my said brother Patrick F. Sheridan on the 5th February, 1965. It had lain dormant and never traded. This is the defunct company.”

10. It would appear that in the annual returns filed for the defunct Company for the year ended 31st December, 1977 “James Vincent Sheridan” (emphasis added) is named in the particulars of directors and the secretary of the defunct company which is the subject

matter of this application. James Valentine Sheridan deposes that he signed the said annual returns as James V. Sheridan "...as I normally did. The second Christian name "Vincent" was incorrect and had been inserted by the accountants, a minor mistake which was continued on in the particulars of directors and secretary in most of the returns thereafter. The error is not repeated in the particulars of shareholders, which show me as James V. Sheridan of 229 Seapark Road, Malahide, County Dublin. The defunct company changed its name to Emerald Contract Cleaners Limited in 1979 and ceased to trade in or about 1989."

11. James Valentine Sheridan further deposes at para. 9:

"The defunct company was properly struck off the Register of Companies on the 19th April, 1999 for failure to file annual returns. It had not traded since 1989 and had no liabilities or assets and no persons were adversely affected by its removal from the Register of Companies."

Pauline Sheridan

12. In her 2000 application to restore the defunct company, Mrs. Pauline Sheridan, who was administratrix of the estate of her deceased son James Vincent since the 4th June, 1997 brought the application as a litigant in person purporting to be a member/shareholder of the defunct company under the Companies Acts, 1963 – 1990. At para. 15 of his affidavit the late James Valentine Sheridan deposed concerning that application:

"... Pauline Elizabeth Sheridan .. alleged that her son James Vincent Sheridan Junior deceased who died in 1971 was a director and shareholder of the defunct company. This is completely untrue and has no foundation. The said James Vincent Sheridan Junior died in 1971 at the age of 19. He was tragically killed in a road traffic accident. He was blind from birth. He was a lovely person and I was

very fond of him. The defunct company did not commence business until 1975, four years after his unfortunate death. The error in the annual returns of the company on which the petitioner relies would have this unfortunate young man starting to be a director of the company four years after his death and continuing as such and as a director of several other companies for many years thereafter, during all of which time he lived at my address. The said James Vincent Sheridan deceased was never a director or shareholder of the defunct company. He never made any contribution to the defunct company or to its business. The affairs of the defunct company were entirely managed and conducted by my family and myself.”

He further deposed –

“22. I say that the said Pauline Elizabeth Sheridan and her said two sons are motivated by an obsessive vendetta and sustained campaign of harassment against me and my family and with the intent to cause as much harm and hardship as they can. Over the years they have deliberately caused great distress and anxiety to my wife, myself and my family and I and they have incurred a great loss of time and expense as a result of same.”

Stance of Pauline Sheridan in the 2002 Application

13. Far from contesting the above averments, the appellant’s mother on the 30th of October 2002, represented by solicitor and counsel, consented through her counsel to the order which she had previously obtained *ex parte* on 19 February 2001, restoring the defunct company to the register, being vacated as more fully considered hereafter.

Judgment of the High Court July 1996

14. In light of the tenor of the Notice of Appeal, it is necessary to briefly consider aspects of a judgment delivered in the High Court on appeal from the Circuit Court in July 1996 which makes explicit reference both to claims concerning the defunct company which the appellant continues to attempt to pursue and to certain conduct of the appellant. The 1996 judgment is considered solely in the context of the grounds of appeal and insofar as is necessary to test the veracity of key assertions advanced before the High Court and pursued in this appeal. **Grounds 1 and 2** of the notice of appeal contend that the trial judge relied on the said judgment “which has issues”. These are identified, *inter alia*, as including that one party to the litigation was not represented at the 1996 appeal hearing and “evidence was not heard from Mr. Flannelly”. It was further contended at **Ground 2** of the Notice of Appeal that the said judgment should not have been relied upon by the trial judge as “there was an ongoing garda investigation underway from 1995 through to 1999 as initiated by the Company Registration Office. Detective Michael Bolton was brought in to ... court and immediately asked to leave on hearing that there was an ongoing garda investigation.” The appellant contends that the 1996 judgment “contains many issues”. The appellant alleges also that -

- (a) “... a garda investigation had not concluded regarding allegations as initiated by the Company Registration Office and
- (b) ... and the applicant were unaware of the true identity of the ownership of monies being transferred to both of these companies until the applicant introduced himself as the enduring power of attorney to Mr. Flannelly in 2015, who was unaware that James Vincent Sheridan was being misrepresented by his uncle James

Valentine Sheridan. Subsequently, Mr. Flannelly gave the applicant an affidavit in 2017 supporting the application for the restoration of the company as a creditor.”

15. As stated above, the appellant John Sheridan was not a party to the proceedings the subject matter of the 1996 judgment however, he was actively involved in them including as a witness. With regard to the “ongoing garda investigation” alleged in this appeal it appears clear that any such investigation came to nothing and was primarily instigated either by the appellant himself or at his behest. No coherent basis for impugning the relevant findings or determinations in the said judgment has been identified by the appellant in the context of the garda investigation in question. With regard to a contention that one party was not represented in the said proceedings that fact *per se* does not undermine the validity of the findings of the said court relevant to the issues in this appeal. The 1996 judgment was delivered in the context of an appeal from the decision and orders made in the Circuit Court in 1994 where both sides were represented by counsel. Both sides participated fully in the proceedings before the High Court and called several witnesses. The appeal was heard on the 17th, 18th and 23rd July, 1996.

The 1996 judgment and the claim against the defunct company

16. Issues concerning the beneficial ownership of the above entitled company constituted a significant aspect in the 1996 appeal. The judgment notes at p. 5, *inter alia*, that: -

The respondent “gave evidence ... and also called as witnesses ... John Sheridan, and (under subpoena) Detective Sergeant Michael Bolton of the Fraud Squad, Mr. Edward Brennan of the Revenue Commissioners Special Enquiry Unit and Mr. James Sheridan...”

17. The court noted that the appellant’s family had emigrated to the United States in or about 1956. The court noted that the brothers Patrick Francis Sheridan and James

Valentine Sheridan “.. moved into the contract cleaning business. They set up their own company in the United States. They obtained a large contract from IBM, the International computer company, at their premises in Poughkeepsie.”. The judge found, concerning the defunct company, that “in the year 1965 [Patrick Francis Sheridan] set up a company in Dublin which he hoped would be a branch of the United States company. This was a shelf company and did not take on any active business.” The judgment continued to note that -

“In or about the year 1972 [Patrick Francis Sheridan’s] brother James Valentine Sheridan, returned to Dublin. He took over the shelf company set up by his brother and has made a considerable success in the contract cleaning business. ...It appears that in the 1980’s Patrick Francis Sheridan returned to Ireland full time.” (p. 6-7)

The court heard evidence from three different witnesses, Patrick Francis Sheridan, James Valentine Sheridan and Mr. Heeney, a solicitor, to the effect that Patrick Francis Sheridan played no part whatsoever in the Irish contract cleaning business which was being run by his brother James Valentine Sheridan through the trading company and that he did not draw any income from that business. Neither had he invested in it.

Appellant’s Relationship with Father

18. The judge observed concerning the appellant at page 9,”... It is clear from the evidence of ... John Sheridan who gave evidence before me, that he is extremely embittered towards his father.”

19. I pause to observe that the appellant’s father the said Patrick Francis Sheridan was apparently deceased by the time Pauline Sheridan extracted the grant of letters of administration to the estate of their son James Vincent Sheridan on the 4th June, 1997. It appears that the High Court judgment was delivered some months prior to his death.

20. The earlier litigation, affidavits, judgment and orders undermine the reliability of the appellant's assertions in a number of material respects. For instance, in an affidavit sworn on the 11th April, 2017 the appellant deposes that: -

“My late father, Patrick Francis Sheridan, informed me in his final days that he as the administrator of the estate of my late brother, James Vincent Sheridan, in the US had transferred the whole of my brother's estate to Emerald Contract Cleaners (IRE) Limited. This in effect means that my father took my brother's estate in the United States and unknowingly channelled it through Emerald Contract Cleaners (Ireland) Limited CRO 148369 believing it to be Emerald Contract Cleaners (IRE) Limited CRO 22322 which he founded in 1965.

14. I say he informed me that in or around 1974/1975 my late uncle had lodged false documents with the Company Registration Office, impersonating both my late brother James Vincent Sheridan and my late father, and in effect, the company was unlawfully taken by him.”

Beyond such bare assertions not a single shred of evidence is offered to support that claim. It is incomprehensible that such assertions were not disclosed to the High Court in the 2001 Petition brought by the appellant's mother to restore the defunct company or to oppose the setting aside of the said restoration in 2002. I am satisfied that the appellant was actively aware of the said court applications.

21. In the High Court judgment delivered in July 1996 the judge noted at p. 12 that, *inter alia*, the appellant –

“... believed to the point of obsession, ... secondly that a family business has been stolen by ... Mr. James Sheridan with [Patrick Francis Sheridan's] connivance and

that they should get this business back. This allegation is complicated by the belief that one half of this business was owned by their deceased brother.....”

The judgment of the High Court of July, 1996 continued –

“There was no real evidence before this court which could substantiate any of these allegations. It is clear that in this situation Mrs. Sheridan is urged on by her sons in a type of vendetta or witch hunt against ... [James Valentine Sheridan]. I was extremely unimpressed by the evidence of ..., John Sheridan. It is clear that this young man resents not having been given a life of luxury on a plate He received a good upbringing and a good education in the United States. He is now an adult and it appears to me that he should rely on his own resources to provide himself with a living rather than conducting a vendetta ...I was particularly unimpressed by his methods of approach to the Revenue Commissioners where, by making misrepresentations, he obtained information in regard to his uncle’s company which should never have been given to him by the Revenue Commissioners in the first place. ...It is clear that ..., John Sheridan, has been reading some law but he has become completely confused in regard to the law both as to the Succession Act, 1965 and as to the structure of companies and the general law pertaining to them I do not believe that the claims of [John Sheridan] have any basis in fact. However, in order to try to lay some ghosts to rest, I will refer in some detail to both claims – both as regards the concealment of money and as regards the transfer of the company.” (p. 12)

2112210

22. A feature of the appellant’s case before the High Court, apparently buttressed by a belated affidavit of Fintan Flannelly, is that a sum of money IR£2,112,210 was transferred

“in the name of James Vincent Sheridan ... from AIB Manhattan New York to AIB bank account of the companies (CRO 22322 and CRO 148369) at both Crumlin Cross in Dublin 12 and AIB in Rathgar, Dublin 6 along with smaller transfers...” Significantly, the High Court in July 1996 considered this specific allegation and held as follows:-

“[John Sheridan] also produced to the court a document which he had obtained from the Revenue Commissioners in connection with VAT payable by Emerald Contract Cleaners, the company owned and run by Mr. James [Valentine] Sheridan. In the first place, as I have already stated, John Sheridan had no right whatsoever to obtain this document from the Revenue Commissioners. However, he points to a figure 2112210 which appears on the document and alleges that this shows a sum of money paid into the VAT account of the company in order to benefit James [Valentine] Sheridan. He alleges that this sum was paid in by Mr. Patrick Sheridan with the intention of recovering it at a later stage. Apart from the inherent unlikelihood of anyone paying an unnecessary sum of over IR£2M to the VAT authorities, there is no evidence whatsoever to indicate that this money came from Patrick Sheridan or, indeed, that the figure represents money at all.” (p. 12)

23. Crucially, the judge noted that a witness, Mr. Edward Brennan from the Revenue Commissioners’ Special Inquiry Unit had been called and observed regarding his evidence; “He was shown the document in the witness box and explained that at the request of and [John Sheridan] he had investigated the matter and that the figure 2112210 did not represent money at all but was a fictional figure used by the Revenue Commissioners as a method of checking their computer programs. It did not indicate that any money whatsoever had been paid into the Emerald Contract Cleaners’ VAT account. It is clear therefore, that this entire edifice of accusation has been built on fiction. ... It appears to me that this investigation by the Fraud Squad is a complete waste of public money.” (p. 12)

24. The High Court judge in 1996, having reviewed the evidence of Mr. James Valentine Sheridan, stated "... I accept his evidence that Mr. Patrick Sheridan had no real involvement in his contract cleaning business in Ireland." The judge noted that that evidence was –

“confirmed by that of his accountant, Mr. Keogh, who stated that Mr. James Sheridan is a businessman (of a type which is not uncommon) who is able to run his business with considerable ability but who does not do any paperwork and leaves all such matters to his accountant. Mr. Keogh’s evidence is that Mr. Patrick Sheridan never had any involvement in the company during the time that he has been accountant.” (p. 15)

25. The High Court then looked at the proposition being advanced, inter alia by John Sheridan, that Mr. James Valentine Sheridan had stolen “the family business” from Mr. Patrick Francis Sheridan and his family and further that the said family business was “originally half owned by the deceased’s eldest son of Mr. and Mrs. Patrick Sheridan.”

26. In regard to those propositions the court made the following observations: -

“...The first of these was Emerald Contract Cleaners (IRL) Limited which was incorporated on the 5th February, 1965. The share capital of this company was £3,000 consisting of 3,000 £1.00 ordinary shares. Two subscriber shares were issued, one to Mr. T. Finbarr O’Reilly, solicitor and the other to Mr. Brendan Fagan, law clerk. This was clearly a shelf company set up by Mr. [Patrick Francis] Sheridan through his solicitor. The accountants of the company are given as F.P. Flannelly & Co., and the address for the company is given as 57, St. Agnes Park, Crumlin which was the old family home of [Patrick Francis Sheridan’s] parents. The 1966 returns of the company give the same information. The 1967 returns of

the company give the same shareholders but list as directors Patrick Francis Sheridan at 57 St. Agnes Park, Crumlin and James Sheridan of 229 Seapark Road, Malahide. The company secretary is listed as James V. Sheridan and the document is signed in this way. James V. Sheridan is also listed as a director of Sheridan Motors Limited. The list of members of the company contain certain erasures and corrections which again give rise to suspicion ... but appear to me to be simply an error in regard to the list of shareholders which was then corrected. The 1969, 1970 and 1971 returns are exactly the same as those in 1968 and it appears to me that all these returns were made up retrospectively, probably at the time when Mr. James Sheridan returned to Ireland and started an active contract cleaning business in this country. The main confusion appears to have arisen because the eldest son of Mr. and Mrs. Patrick Sheridan who was killed in a traffic accident in 1971 was named James Vincent Sheridan. Mr. Patrick Sheridan's brother is named James Valentine Sheridan and therefore both parties are James V. Sheridan. However, it is clear that at the death of James Vincent Sheridan (the son) in 1971 he was not a shareholder in the company and had no interest in the company and therefore it would have been impossible for [the Legal Personal Representative] ... to inherit any part of this company through the operations of s. 68 of the Succession Act, 1965." (p. 15-16)

27. The Judge thereafter continued –

“The returns for 1972 are the same as previously but at this time a change of address of one of the directors is filed. This is given for some reason that I do not understand as James Vincent Sheridan of 229 Seapark Road, Malahide. It is quite unclear as to why this change of address was filed as the Malahide address was already given in the 1967 returns and it is also not clear to me why the name

Vincent is used instead of Valentine. It is clear that it was James Valentine Sheridan who did in fact live at 229 Seapark Road, Malahide and that was intended and James Vincent Sheridan was by 1972 already deceased. The accountant at the time was Mr. Flannelly who unfortunately did not give evidence before this court.”

The judge then carefully goes through events in the decades subsequent to the death of James Vincent Sheridan on the 20th December, 1971 involving both the defunct and trading companies observing: -

“In the 1974 returns for the company the shareholders have changed and are now listed as Patrick F. Sheridan at the Crumlin address and James V. Sheridan at the Malahide address holding one share each. The directors remain the same. In 1975 the returns show the company as having 3,000 shares issued, 2,999 of which are held by James V. Sheridan and 1 by Patrick F. Sheridan. This appears to me to reflect the development of the company as being run by Mr. James Valentine Sheridan and basically belonging to him although his brother, the respondent in the present proceedings, continues to hold one share. In these returns the directors are listed as Patrick Francis Sheridan and James Vincent Sheridan and the company secretary is listed as James Vincent Sheridan. The returns were signed by James V. Sheridan. I must assume that returns were made to the Companies Office in regard to this company’s subsequent to 1981 but none of them were handed in in evidence until the returns for the year 1994. This return comes under the new computerised system operated in the Companies Office and by this time the company accountant was Mr. David Keogh who gave evidence in the proceedings of having brought all the company’s returns up to date when he was appointed accountant. In the 1994 return, the directors are listed as James Alextive Sheridan and Helen Bernadette Sheridan. The company secretary is listed as James Sheridan and the shareholders

as James Sheridan holding 2,999 shares and Patrick Sheridan holding 1 share. It is clear from the evidence in the proceedings that Helen Bernadette Sheridan is the wife of James Valentine Sheridan. No one was able to explain to the court where the name Alextive came from and I can only assume it was a misreading for Valentine of some kind. This is the last return put in of the original company and both Mr. Keogh and Mr. Heney, solicitor, gave evidence that that company then went out of business.” (p. 16-17)

28. The judge then considered the evidence given by the solicitor Mr. Heney and Mr. James Valentine Sheridan noting that both had:–

“... in evidence said that the reason for the ending of the old company was that there was an outstanding claim for damages by an employee against the company and it was felt wise to let that company cease trading and run it down. However, there does not appear to have been any liquidation or winding up of the company. A new company again called Emerald Contract Cleaners (IRL) Limited was incorporated on the 10th August, 1989. I was handed in the 1995 returns of that company which list the directors as Helen Bernadette Sheridan and James Vincent Sheridan. James Sheridan is listed as the company secretary and a nominal capital of IR£10,001 shares is given with two shares issued, one to Helen Sheridan one to James Sheridan.” (p. 17 -18)

29. The court noted that in regard to the defunct company, No. 22322, part of a return of the said company had been exhibited in an affidavit of Eamonn Keenan Solicitor which had been sworn on the 21st February, 1994. The affidavit grounded an application for third party discovery against Emerald Contract Cleaners Limited, the trading company, and the document was referred to as arising “from a search carried out in the Companies Office”. The judge observed: -

“... It is clearly part of a return which so far as I can gather, dates from between 1981 and 1994. In this document the particulars of the directors of the company are given as Patrick Francis Sheridan, James Vincent Sheridan and Helen Sheridan. The home address of all three is given as 229 Seapark Road, Malahide, County Dublin which is, of course, the home address of Mr. James Valentine Sheridan and his wife Helen.” (p. 18)

The judge noted: –

“Perhaps the most important piece of information which is given in this document is that the date of birth of James Vincent Sheridan, director, is given as the 15th February, 1928. This is very clearly the date of birth of James Valentine Sheridan and certainly cannot be the date of birth of James Vincent Sheridan, the son of the applicant and the respondent, who was in fact born on the 16th May, 1952. The document is signed James Sheridan and Helen Sheridan.” (p. 18)

The judge then opines: –

“Looking at this documentation as a whole it seems to me most likely that the first set of company returns of the old company which were handed into me were all filed at the same time probably when James Valentine Sheridan came home to Ireland and activated the company. They all are exactly similar and they all carry the same corrected errors and I cannot believe that there is anything sinister to be inferred from these corrected errors.” (p. 18-19)

30. The judge continued -

“The name James Vincent Sheridan does not appear on any of the documents until the change of address document of 1972. From then onwards the name James Vincent Sheridan has appeared on very many of the company returns both in the

old company and also in the new company but it is clear from the document exhibited in Mr. Keenan's affidavit that the James Vincent Sheridan referred to is not the son of Patrick Francis Sheridan since the date of birth is clearly that of James Valentine Sheridan and this same date of birth appears in the documents filed in connection with the new company set up in 1989. I have no explanation as to why the name James Vincent rather than James Valentine appears on these documents and it seems likely that the only person who could explain this would be the original accountant, Mr. Flannelly, who did not give evidence before this court, although I understand he did give evidence before the Circuit Court. His evidence does not, however, appear to have dealt with this particular matter. As a matter of mere assumption, I would think it likely that in the first 1972 document the name James Vincent was used in error and that it was simply copied from one document to the other as year followed year and indeed even copied from the old company documents into the new company documents. From the evidence of both Mr. Keogh and Mr. James Sheridan it is clear that Mr. James Sheridan takes no interest in accounts, documents, company records etc. and leaves all these matters to his accountant. Mr. Keogh is the new accountant, as the new accountant, had no reason to suspect that the name was wrongly listed and presumably simply copied it. On no occasion in any of the documents did Mr. James Valentine Sheridan sign his name as James Vincent Sheridan. He always signed either as James Sheridan or more commonly, as James V. Sheridan." (p. 19)

30. In conclusions in regard to this aspect and issue the judge observed: -

"It is very unfortunate that this mistake of name has given rise to such a high degree of suspicion on the part of ...and ... and [John Sheridan] ... As far as is concerned I can understand that the early tragic death of ... James Vincent

Sheridan ... must have affected ... greatly ... The same reasoning cannot to anything like the same extent apply to ... [John Sheridan].

Neither can I accept the accusation that Mr. James Valentine Sheridan stole the ... business from Mr. Patrick Francis Sheridan when he returned to Ireland in the early 1970's and that this company should with all its assets be returned to the family of Mr. Patrick Sheridan. It is true that Mr James [Valentine] Sheridan made use of the company which was set up by his brother in 1965 but at the time when he took it on and activated it, it was worth nothing and had never carried on any business. Any monies which have been made through this company were made entirely by the efforts of Mr. James Sheridan and it is clear that he is the beneficial owner of the company which is in fact reflected in the shareholding of 2,999 shares by him and 1 share by his brother.” (p. 19-20)

31. One further point of relevance arises from the said judgment which is again illustrative of the fraught nature of the relationship between the appellant, John Sheridan, and his late father Patrick Francis Sheridan. It concerns a judgment in the sum of IR£7,000 suffered by the appellant's father Patrick Francis Sheridan. The judge observes: -

“This arose from the fact that [Patrick Francis Sheridan] went guarantor for his son, John, for the purchase of an expensive motor vehicle which John purchased when he was residing in Ireland. Subsequently John returned to the United States. Prior to his return he sold the motor vehicle but did not discharge the loan to the finance company. He took the proceeds of sale with him to the United States where he used it to set up a business. This left [Patrick Francis Sheridan] to pay the debt as guarantor. While, as far as I understand the matter, he made some payments, he was unable to discharge the debt and the finance company registered a judgment mortgage on his share of [a property]”. (p. 11)

The 2000 petition

32. Notwithstanding the very clear evidence of Mr. Edward Brennan of the Revenue Commissioners Special Inquiry Unit given before the High Court in July 1996 that the figure “2112210” did not represent money at all but was a fictional figure “used by the Revenue Commissioners as a method of checking their computer programs” and further that “it did not indicate that any money whatsoever had been paid into the Emerald Contract Cleaners VAT account.” and the finding of the High Court judge “that this entire edifice of accusation has been built on fiction,” following the conclusion of High Court proceedings and subsequent to the death of Patrick Francis Sheridan, on the 4th June, 1997 Pauline Sheridan extracted a grant of letters of administration intestate in the estate of her deceased son James Vincent Sheridan who had died over a quarter of a century previously in Cobbleskill, New York on the 20th December, 1971. All the indications are that John Sheridan, the appellant in this appeal, was actively involved in all litigation steps undertaken by her thereafter. She entered into an enduring power of attorney of which the said John Sheridan was the donee on the 20th June, 2008.

The 2001 Order

33. In proceedings 2000/302COS, the appellant’s mother Pauline Elizabeth Sheridan in her purported capacity as a member of the defunct company Emerald Contract Cleaners Limited COS 22322 brought a petition for the restoration of the said company to the Register the application being made within 20 year period prescribed under the provisions of the Companies Act, 1963 – 1990. On the 19th February, 2001 Carroll J. in the High Court ordered the said company be restored to the Register of Companies. She further deemed the hearing of the said motion to be the hearing of the petition and dispensed with

any advertisement of the hearing thereof. Neither James Valentine Sheridan nor his wife Helen Bernadette Sheridan (the second-named respondent to this appeal) were aware of the making of the said order for some time thereafter. It appears that between the making of the said order in the High Court on the 19th February, 2001 restoring the defunct company to the register and a subsequent order which was consented to on the 30th October, 2002 by Pauline Elizabeth Sheridan vacating same, the said Pauline Sheridan and some of her children including *inter alia* the appellant herein held themselves out as directors and/shareholders and/or agents of the said defunct company CRO 22322 and/or of the trading company.

Motion to vacate order to restore defunct company

34. On the 6th December, 2001 some several months following the making of the restoration order in the High Court James Valentine Sheridan caused a motion to be issued seeking, *inter alia*, orders (1) vacating the order of the 19th February, 2001 restoring Emerald Contract Cleaners Limited (CRO 22322) to the Register of Companies which had been made by Ms. Justice Carroll on the 19th February, 2001. (2) dismissing the petition of Pauline Sheridan on foot of which the said order had been made.

The 2002 Order - Vacating the 2001 Order and Dismissing the Petition

35. The affidavit of James Valentine Sheridan grounding the application to set aside the order restoring the defunct company to the Register and dismissing the petition has been quoted extensively above. The curial part of the 2002 order is important. It recites that the court had read *inter alia* the notice of motion, the order dated the 19th February, 2001, the judgment of Ms. Justice McGuinness in the High Court, an affidavit of James Valentine Sheridan filed on the 6th December, 2001 and the affidavit of Pauline Elizabeth Sheridan filed on the 15th February, 2002 and the exhibits to the said affidavits. The order recites

that “By Consent on the 30th day of October, 2002 IT WAS ORDERED that the order dated the 19th February, 2001 be vacated And IT WAS ORDERED that the Petition of the first named respondent be dismissed.” (emphasis added)

36. It is clear from the face of the order that Pauline Elizabeth Sheridan was on the 5th November, 2002 represented by both solicitor and counsel before the High Court. The order recites “...and on hearing what was offered by Counsel for the Applicant Counsel for the first named Respondent and Counsel for the second named Respondent the Court Doth Declare that all documents filed in the Companies Office subsequent to the 19th February 2002 are null and void and have no legal effect”. That was subsequently amended by order of the court to delete “19th February, 2002” and substitute the date “19th February 2001” by order of Ms. Justice Carroll made on the 26th July, 2004. The High Court further declared “that Emerald Contract Cleaners Limited remain struck off the Register of Companies”. It was further ordered that a copy of the said order be filed with the Registrar of Companies and be placed on the file of Emerald Contract Cleaners Limited. The Registrar of Companies obtained an order to recover costs against Pauline Elizabeth Sheridan.

37. One might have imagined that that was the end of the claim but it was not to be.

38. Pauline Sheridan herself did not pursue any further claim seeking the restoration of the defunct company during her lifetime, nor could she. She appears to have executed an enduring power of attorney on the 20th June, 2008 in favour of the appellant. Nothing turns on that fact. She died on the 27th August, 2016. John Sheridan, the appellant, is her sole executor. He extracted a Grant of Probate to her estate on the 31st January, 2017. This event appears to have sparked off a fresh round of litigation.

The 2017 Application

39. The originating notice of motion in the within proceedings issued out of the Central Office of the High Court on or about the 1st April, 2017. Over a year later the appellant extracted a grant of letters of administration in respect of the unadministered estate of his late brother James Vincent Sheridan who had, as stated aforesaid, died on the 20th December, 1971. The said grant accordingly issued over 46 years following his death. At this point the Inland Revenue affidavit asserts the estate to have a net value of €2,898,406 a remarkable change from the position initially adopted when the first grant was extracted by Pauline Sheridan on the 4th June, 1997 at which time the estate was stated to be worth IR£11 Punts. The said grant purports to establish a basis for the appellant characterising himself in his capacity as legal personal representative of both Pauline Sheridan and James Vincent Sheridan with the latter estate being characterised a creditor of the defunct company.

Mr. Fintan Flannelly – the Purported “new evidence”

40. Fintan Flannelly was at material times from the mid 1960s, so from over 55 years ago, the auditor of the defunct company. He was also auditor of the trading company operated by James Valentine Sheridan and his wife Helen Bernadette Sheridan. It is clear that relations between James Valentine Sheridan and Mr. Fintan Flannelly soured drastically at a certain point and he ceased to be auditor of the trading company and that all dealings between them ceased abruptly almost 30 years ago. In an affidavit sworn on the 26th July, 2017 Fintan Flannelly, whose date of birth, age, and state of health are unclear and who describes himself as “retired accountant” deposes to having been the statutory auditor of the defunct company and also the accountant of the first named respondent company Emerald Contract Cleaners Limited (CRO Registration No. 148369). He deposed that in 1973 he was introduced by Mr. Anthony Sheridan of Sheridan Motors to the latter’s “brother” as being named “Mr. James Vincent Sheridan”. Mr. Anthony

Sheridan was indeed a brother of James Valentine Sheridan and Patrick Francis Sheridan. It will be recalled that Fintan Flannelly purports to depose to an introduction that was made supposedly over 40 years prior to the date of his execution of the said affidavit in July, 2017. This averment presumably offers a belated, perhaps retrofitted, explanation for the repeated use of the name “James Vincent Sheridan” in the relevant Returns filed by him on behalf of the companies in the CRO. These assertions are first advanced almost nine years after the death of James Vincent Sheridan.

41. At para. 9 of the affidavit he deposes: -

“During that time I had very clear recall of very large sums of money back then, in the late 1980’s/early 90’s and in particular I saw a transfer of £2,122,210 in the name of James Vincent Sheridan being transferred from AIB Manhattan New York to the AIB Bank Account of the company’s (CRO 22322 and 148369) at both Crumlin Cross in Dublin 12 and AIB in Rathgar, Dublin 6 along with smaller transfers in the sums of £80,000 and £90,000.”

He does not identify the basis for his recollection of this very precise figure so many decades later nor the exact year or indeed the decade in which he purports to have seen the said transfer for a sum in excess of £2M. It will be recalled, and bears repetition, that over 21 years previously in the month of July 1996 Mr. Edward Brennan of the Revenue Commissioners Special Inquiry Unit gave evidence in the High Court that the said exact figure –

“2112210 did not represent money at all but was a fictional figure used by the Revenue Commissioners as a method of checking their computer programs. He did not indicate that any money whatsoever had been paid in to the Emerald Contract Cleaners VAT account.” (p. 12)

42. How Mr. Flannelly purported to discharge his duties as auditor or deal with this alleged “directors loan” in the context of auditing the accounts of the company in the relevant years is not clear. It was deposed that the Revenue Commissioners carried out –

“an extensive audit on Emerald Contract Cleaners (Ireland) Limited (CRO No. 148369) as he had identified these monies coming into the company bank account and I recall it being described as a director’s loan from James Vincent Sheridan. As the accountant auditor at that time I was still unaware that the man who introduced himself to me as James Vincent Sheridan was in fact James Valentine Sheridan.”

43. Mr. Flannelly swore a supplemental affidavit on the 5th June, 2018. He deposes: -

“I did see the sum of £2,112,210 on the Revenue case summary document dated 14th February, 1993”.

He acknowledges that the name of James Vincent Sheridan can be found in the bank records of the companies. With regard to the sundering of his relationship with James Valentine Sheridan he deposes –

“... I confirm my retainer as a statutory auditor to both companies was very abruptly terminated during the Revenue tax audit without explanation and a new firm of auditors were immediately appointed to replace me. Notwithstanding that my termination as auditor was contrary to the provisions of the then Companies Act, 1963 which required proper notice be afforded to me, I did not make an issue of this and I stepped aside but was most surprised by the suddenness of this decision in the circumstances that I had acted for many years and no reason was given.”

He deposes that he was not called by any party to give evidence before the High Court in 1996. He does not engage with the evidence given in the High Court by Edward Brennan of Revenue Special Inquiry – perhaps because he was not made aware of it? It is clear from the tenor of his affidavits that he continues to be disgruntled with the late Mr James Valentine Sheridan regarding the circumstances surrounding the termination of his tenure as auditor of the trading company.

The judgment under appeal

44. As the trial judge noted in his *ex tempore* judgment under appeal, the contentions advanced by the appellant are at fundamental variance with what is deposed to in the affidavit of Mr. Flannelly. At para. 13 *et seq.* of the grounding affidavit of the appellant sworn on the 11th April, 2017 it is deposed that Patrick Francis Sheridan, the appellant's father, informed him "in his final days" that as the administrator of the estate of James Vincent Sheridan he in effect "... took my brother's estate in the United States and unknowingly channelled it through Emerald Contract Cleaners (IRE) Limited CRO 148369 believing it to be Emerald Contract Cleaners (IRE) Limited CRO 22322 which he had founded in 1965." By contrast Fintan Flannelly in his affidavit deposes that he actually saw the transfer in the name of the deceased teenager Vincent James Sheridan in the sum of £2,112,210 IR punts.

45. It is noteworthy that the appellant offers no explanation or even a hypothesis as to how his blind teenage brother whose life was cut tragically short in a misfortunate accident in 1971 came to have assets of such magnitude in his beneficial ownership at the date of his death over 50 years ago.

46. The trial judge in the decision under appeal notes regarding the issue of identity: -

“... It appears from paragraph 4 [affidavit of Fintan Flannelly] ... that there was confusion between James Vincent Sheridan and James Valentine Sheridan and it may be the case that the reference to directors loans from James Vincent Sheridan was in truth and in fact a reference to loans from James Valentine Sheridan. That would make sense because Mr. James Valentine Sheridan was alive at the time. He had previously carried on business in the United States and the reference to directors loans would then be explicable but I do not think it would be appropriate to me to make any findings to that effect.” (p. 22, lines 16-23)

This is an entirely logical inference and accords with the assessment and observations made by the High Court Judge in 1996 and at least accords with a common-sense approach in circumstances where the date of birth of the company director/shareholder “James V. Sheridan” otherwise James Sheridan is throughout stated to be the 15th February, 1928 which was the date of birth of James Valentine Sheridan. Furthermore, it is noteworthy that the said James Valentine Sheridan had at no point ever signed himself “James Vincent Sheridan”. The error, as James Valentine Sheridan deposed to in his affidavit above referred to appears to have come about, as the High Court judge reasonably surmised in 1996, through a mistake by a professional party acting for the companies.

47. The trial judge accordingly, quite correctly in the decision under appeal took a conservative view observing: -

“Notwithstanding the concerns that I have just outlined, I think I should proceed on the assumption that there may conceivably be a case that the personal representatives of the late James Vincent Sheridan might have against the company no. 22322, however unlikely that may appear.” (p. 22, lines 23-26)

48. The trial judge noted that there were two bases relied upon for the application. In the first instance John Sheridan relied on his position as the legal personal representative of his late brother James Vincent Sheridan on foot of the Grant of Administration *de bonis non*. He had previously replaced his mother in that role as outlined above. The trial judge correctly noted “The first basis is essentially one on which the applicant contends he is entitled to be registered as a member of the company.” The second basis, his capacity as a representative of the estate of James Vincent Sheridan, was as a creditor. In the course of the hearing before the High Court on the second day namely the 16th January, 2019 it was clarified that the application was being pursued solely *qua* creditor pursuant to s. 738.

49. The trial judge in his determination noted the terms of the judgment of the High Court delivered in July 1996 and further the fact that the previous order made by Ms. Justice Carroll in the High Court in 2001 had, by consent, been vacated and the petition advanced by the appellant’s mother Pauline Sheridan, in which litigation John Sheridan, the appellant, was actively involved, was by consent ordered to be dismissed by Carroll J. in 2002. The trial judge correctly attached significant weight to the fact that the said petition was not simply struck out but was actually dismissed, observing, “.. and that is a final order determining those proceedings.” (p. 25, line 18)

Res judicata

50. The trial judge then considered the arguments advanced by counsel on behalf of the appellant that these circumstances did not give rise to *res judicata* it being contended that the previous Petition before the High Court culminating in the orders made by consent in late 2002 did not prevent the present application for restoration of the defunct company because (a) this application is brought by the appellant *qua* creditor rather than as a member or as a person entitled to be a member of the company and (b), it being contended that there was new evidence now before the High Court that was not before the court in

2002 – being the evidence of Mr. Flannelly. On behalf of the respondent it was contended that these arguments were of no avail and that the rule in *Henderson v. Henderson* (1843) 3 Hare 100 should prevail.

Is the Evidence of Mr. Flannelly “new” ?

51. Mr. Flannelly gave evidence before the Circuit Court in the month of July 1994 in litigation where, *inter alia*, ownership of the defunct and trading companies was in issue.

The High Court judge in July 1996 observed at p. 19 of the judgment: -

“... It seems likely that the only person who could explain this would be the original accountant, Mr. Flannelly, who did not give evidence before this court, although I understand he did give evidence before the Circuit Court. His evidence does not, however, appear to have dealt with this particular matter.”

52. It does appear that the CRO filings in relation to the defunct and trading companies bearing the name “James Vincent Sheridan” came into the possession of the appellant in the context of other litigation being pursued in the 1990s. Thus he had ready access to information concerning Mr. Flannelly and the latter’s involvement with the companies over the years from the documentation procured by him and also that had been obtained by him from the CRO at the latest in the mid 1990s. It would have been for the appellant who appears to have been actively managing and pursuing litigation on behalf of a third party to have taken steps to bring Mr. Flannelly before the High Court had he chosen to do so for the purposes of advancing the contentions he now wishes to pursue. Mr Flannelly was not asked any relevant questions about the entitlement of “James Vincent Sheridan” to an interest in either company when he gave evidence before the Circuit Court in 1994. It is entirely extraordinary that Mr. Flannelly overlooked to divulge to the circuit court, which at that time was investigating, *inter alia*, the extent to which Patrick Sheridan and/or his

brother James Valentine Sheridan's had a beneficial interest in either the defunct company or the trading company, all these events and alleged financial transactions, which now, 28 years later, he seems to recollect with unusual particularity.

"New" Evidence

53. Nowhere does the appellant demonstrate that the assertions contained in the affidavits of Fintan Flannelly sworn in this application could not have been obtained with reasonable diligence either by him or any other party either at the time of the hearing in the Circuit Court circa July 1994 or thereafter at the hearing before the High Court in the month of July 1996 or indeed subsequently in the proceedings 2000/302COS instituted by way of petition by Pauline Elizabeth Sheridan with the active assistance of the appellant pursuant to which the order of the High Court was obtained on the 19th February, 2001 that the name of the defunct company should be restored to the Register. It is clear that in those proceedings Pauline Elizabeth Sheridan was represented by a firm of solicitors Messrs. Glynn O'Cochlain as the order on its face demonstrates.

54. A further opportunity to obtain the said evidence of Mr Flannelly and put it before the court and assert its relevance presented in proceedings 2002/302COS brought by James Valentine Sheridan in which said proceedings Pauline Elizabeth Sheridan filed an affidavit on the 15th February, 2002. No step was taken to exhibit statements from or procure an affidavit of Fintan Flannelly making the assertions now being advanced. James Valentine Sheridan was alive and gave evidence before the High Court in 1996. It is not clear if Anthony Sheridan was also alive in 1996. If so he could have given evidence regarding the alleged 1973 meeting Mr Flannelly alludes to where it is claimed that Anthony Sheridan purported to pass his brother off as his deceased teenage nephew. This represents four distinct missed opportunities where the evidence in question could have been put before

the court and where it was of direct and obvious relevance to an issue concerning beneficial ownership of the defunct company or the trading company.

55. It is incumbent on the appellant to have satisfied the High Court at the hearing that the said evidence of Fintan Flannelly could not have been obtained with reasonable diligence on any of the four previous occasions, 1994, 1996, 2001 and 2002.

56. Denham J. in the Supreme Court in *Re Vantive Holdings* [2010] 2 I.R. 118 at p. 141, citing the English Court of Appeal Decision in *Barrow v. Bankside* [1996] 1 W.L.R. 257 which stated in the context of the principle in *Henderson v. Henderson*: -

“it is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed.”

That judgment was followed in this court in *Small v. The Governor and Company of the Bank of Ireland and Ors.* [2018] IECA 393.

57. In the latter judgment of this court the decision of the British House of Lords in *Arnold v. National Westminster Bank Plc.* [1991] 2 A.C. 93 was considered and in particular the partly *obiter* judgment of Lord Keith of Kinkel where he stated at p. 104: -

“Cause of action estoppel arises where the cause of action in the later proceedings is identical to that of the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. On such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of [a] new factual matter which could not have been found out by reasonable diligence

for use in the earlier proceedings does not, according to the law of England, permit the latter to be reopened.”

The judgment continues at p. 105 –

“Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to reopen that issue.”

58. As this court observed in *Small* at para 60 “it is now generally accepted, based on the dictum of Lord Keith that, in relation to issues not determined in the earlier litigation, *Henderson v. Henderson* offers:

“... The possibility that cause of action estoppel may not apply in its full rigour where the earlier decision did not in terms decide, because they were not raised, points which might have been vital to the existence or non-existence of a cause of action (p. 105).

61. The judgment of Lord Keith suggests that where the first decision has determined the relevant point, the issue will differ as between cause of action estoppel and issue estoppel:

‘... There is room for the view that the underlying principles upon which estoppel is based, public policy and justice, have greater force in cause of action estoppel, the subject matter of the two proceedings being identical, than they do in issue estoppel where the subject matter is different.’”

59. The judgment of Lord Sumption in *Virgin Atlantic v. Zodiac and Ors.* [2013] UKSC 46 [2014] A.C. 160 distils the key findings in the earlier *Arnold* House of Lords decision.

At para. 22 of his judgment he analyses *Arnold* as being authority for three distinct propositions: -

- “(1) Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action.
- (2) Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised.
- (3) Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which
 - (i) were not raised in the earlier proceedings or
 - (ii) were raised but unsuccessfully.

If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised.”

60. Of further relevance is the dictum of Lord Sumption where he notes: -

“The principle in *Henderson v Henderson* has always been thought to be directed against the abuse of process involved in seeking to raise in subsequent litigation points which could and should have been raised before. There is nothing controversial or new about this notion when it was expressed by Lord Kilbrandon in the *Yat Tung* case... The point has been taken up in a large number of subsequent decisions, but for present purposes it is enough to refer to the most

important of them, *Johnson v Gore-Wood & Co.* [2002] 2 AC 1, in which the House of Lords considered their effect. This appeal arose out of the application to strike out proceedings on the ground that the plaintiff's claim should have been made in an earlier action on the same subject matter brought by a company under his control. Lord Bingham of Cornhill took up the earlier suggestion of Lord Hailsham of St. Marylebone L.C. in *Vervaeke (Formerly Messina) v Smith* [1983] 1 AC 146, 157 that the principle in *Henderson v Henderson* was 'both a rule of public policy and an application of the law of *res judicata*'. As this court noted at para. 65 'in *Johnson v Gore-Wood* [2002] 2 AC 1 Lord Bingham had characterised the interrelationship between the rule of *Henderson v Henderson* and the law of *res Judicata* at p. 31 as follows:

'... *Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. The public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation. In the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional elements such as collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings would be much more obviously abusive,

and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is however wrong to hold that because the matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. This is to adopt too dogmatic an approach to what should in my opinion be a broad, merits based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.”

61. In this regard Lord Sumption observed at para. 25 of his judgment in *Virgin Atlantic*:-

“The focus in *Johnson v Gore-Wood* was inevitably on abuse of process because the parties to the two actions were different, and neither issue estoppel nor cause of action estoppel could therefore run ... *res judicata* and abuse of process are juridically very different. *Res judicata* is a rule of substantive law, while abuse of process is a concept which informs the exercise of the court’s procedural powers. In my view, they are distinct although overlapping legal principles with a common underlying purpose of limiting abusive and duplicative litigation. That perforce makes it necessary to qualify the absolute character of both causes of action estoppel and issue estoppel where the conduct is not abusive. As Lord Keith put it in *Arnold v National Westminster Bank* [1991] 2 AC 93 110G ‘.. Estoppel *per rem judicatam*, whether cause of action estoppel or issue estoppel, is essentially concerned with preventing abuse of process.”

As was further noted in the said judgment –

“67. ... the doctrine in *Henderson v Henderson* has acquired significant flexibility in recent decades and its principles inform the exercise of the procedural powers of the courts in this jurisdiction and has been endorsed by this court and the Supreme Court in several significant decisions.”

62. Hardiman J. in *A.A. v. The Medical Council* [2003] 4 I.R. 302 considered the rationale of the *Henderson* rule citing with approval the English decision in *Woodhouse v. Consignia Plc.* [2002] 1 W.L.R. 2558 where Brooke L.J. alluded to the public interest value in the efficient conduct of litigation stating at para. 55: -

“But at least as important is the general need, in the interests of justice, to protect the respondents from successive applications in such circumstances from oppression. The rationale of the rule in *Henderson v. Henderson*... is that in the absence of special circumstances, a party should bring their whole case before the courts so that all aspects of it may be decided (subject to appeal) once and for all, is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, the litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do.”

Decision

63. Having reviewed the analysis by the trial judge in the decision under appeal of the principle in *Henderson v. Henderson*, I am satisfied that he correctly and cautiously applied it having due regard to the jurisprudence including the Supreme Court decision in *Carroll v. Ryan* [2003] 1 I.R. 309. His conclusion at p. 20 of the Transcript that “the plea of *res judicata* applies, except in special cases, not only to the points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to

every point which properly belonged to the subject... litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”

64. The court then identified and evaluated the two reasons advanced for why the rule in *Henderson v. Henderson* ought not be applied in the instant case being firstly that new evidence had allegedly arisen and secondly the case was being advanced now by the personal representative of the estate of James Vincent Sheridan was materially different to the case made by the previous legal personal representative Pauline Sheridan since she had pursued the claim *qua* member of the company whereas the appellant was pursuing his claim *qua* creditor.

65. The contention that the information to be found in Mr. Flannelly’s evidence/statement and affidavits had only recently come to the attention of the appellant was decisively disposed of by the trial judge having duly considered:

- (1) That similar allegations were made in the course of the hearing in July 1996 and had been fully considered by the judge and rejected. McDonald J. observed; “... it is very clear that when one looks at that judgment that in fact the evidence of Mr. Flannelly was available in 1996. It hasn’t only recently become available and that’s clear from the judgment ... where she refers to the fact that although Mr. Flannelly did not give evidence in the proceedings before her which took the form of an appeal from the Circuit Court, he gave evidence in the proceedings in the Circuit Court itself and therefore Mr. Flannelly was available as a witness.”
- (2) The 1996 judgment of the High Court.
- (3) The fact that it was delivered in 1996 – over 25 years ago with no reasonable explanation for the excessive delays.
- (4) That the appellant himself had given evidence at the 1996 appeal hearing.

66. The trial judge correctly observed that nothing had been said in any of the papers before the court to explain why Mr. Flannelly's evidence could not with reasonable diligence have been obtained for the purpose of the 2000 petition proceedings and that the obligation lay on John Sheridan "... who is, in a sense, caught by the rule in *Henderson v Henderson* to show that the new evidence in which the party relies could not have been obtained by reasonable diligence when the first set of proceedings were launched, in this case the proceedings in the year 2000." (p. 21, lines 31-34)

67. The trial judge carefully analysed the contention that since John Sheridan, the appellant, was pursuing the claim as a creditor of the company unlike his late mother who had effectively pursued a similar application in 2001 as the legal personal representative of her deceased son James Vincent Sheridan that the claim was not captured by the rule in *Henderson v. Henderson*. The trial judge quite correctly rejected that contention on a principled basis: -

"I do not believe that this takes the present claim out of the rule in *Henderson v Henderson* for the simple reason that this claim as creditor could have been brought in 2000. It is clear from the [1996] judgment ... that the case was being made as long ago as 1996 that the late Pauline Sheridan and the applicant both believed that sums of money had been hidden away in the company formed in the 1980's. That I think is clear from the judgment of [1996]. It is also, as I said, perfectly clear that the evidence of Mr. Flannelly could have been obtained in the year 2000 and therefore, with reasonable diligence, a case could have been made in the year 2000 that the personal representative of the estate of the late James Vincent Sheridan was a creditor of the company and therefore entitled to pursue an application under what was then the Companies Act, 1963, for the restoration of the company." (p. 22, lines 5-17)

I am satisfied in all the circumstances that this application constitutes an impermissible collateral attack on the decision made by Ms. Justice Carroll on 30 October 2002, as amended on 5th November 2002.

68. The trial judge thereafter concluded, in my view entirely correctly, that firstly it was clear that the evidence of Mr. Flannelly could have been obtained with reasonable diligence in the 2000 petition. Secondly, it was clear that the claim *qua* creditor could have been made with reasonable diligence in the 2000 petition. In the circumstances he concluded “I must therefore conclude that the rule in *Henderson v. Henderson* applies and that the applicant is estopped from bringing this application at this time and I must therefore dismiss the present application.”

69. With regard to **Ground of Appeal 1** which concerns the hearing and judgment of July 1996 in the High Court it is indeed true that Mr. Flannelly did not give evidence. However, in my view it was entirely open to Mr. Sheridan who was, as is quite obvious from the 1996 judgment of the High Court, a driver behind the conduct of the said proceedings, to have Mr. Flannelly called as a witness had he wished to do so. There’s no suggestion that there was any impediment to doing so. It is not relevant that the respondent was not represented at the hearing of the 1996 appeal. Witnesses called included the appellant himself, Detective Sargent Michael Bolton, Edward Brennan and James Valentine Sheridan.

70. The argument that the 1996 judgment should not be relied upon by reason of some garda investigation being underway at the time is devoid of any merit. It is open to any party to make allegations. Indeed, the judge in the High Court was quite critical of the conduct of named individuals in regard to the manner in which certain aspects of the said allegations were pursued.

71. The evidence of Edward Brennan, the Revenue Commissioners' Special Inquiry Unit speaks for itself. The appellant has chosen to ignore it rather than dispute or contradict it – a stance which undermines his own position in this appeal. Of Mr Brennan's evidence the High Court judge in 1996 observed: -

“It ... appears to me that this investigation by the Fraud Squad is a complete waste of public money.” (p. 14 of judgment)

72. With regard **Ground of Appeal 2(B)** which contends that “Pauline Sheridan and the applicant were unaware of the true identity of the ownership of the monies being transferred to both these companies until the applicant introduced himself as the enduring power of attorney, to Mr. Flannelly in 2015 who, in turn, it is said was unaware that James Vincent Sheridan was being misrepresented by his uncle James Valentine Sheridan. Subsequently Mr. Flannelly gave the applicant an affidavit in 2017 supporting the application for the restoration of the company as a creditor.” The EPA was created in 2008.

73. Critically, it is very clear that the identity issue as between “James Vincent Sheridan” and “James Valentine Sheridan” was alive and being fully exploited in contentious litigation from the mid-1990s onwards and in particular from circa 1994. There is nothing to explain why Mr. Flannelly was not asked any relevant questions regarding any of these issues when he gave evidence before the Circuit Court in the year 1994. He had been the auditor and accountant for the two companies at various times in prior years. It was open to the appellant to raise and pursue all these allegations had he wished to do so. It appears that this line of questioning was not pursued at all in the Circuit Court and Mr Flannelly was not even called in the High Court in 1996. At that time Patrick Francis Sheridan, James Valentine Sheridan and, presumably Anthony Sheridan were all alive and could

have dealt with Mr Flannelly's new assertions which he had refrained from making when giving evidence in 1994.

74. Furthermore Mr Flannelly's current assertions could have been deployed in October 2002 when James Valentine Sheridan's application to vacate the order restoring the defunct company was consented to by Mrs Pauline Sheridan through her counsel before Carroll J. in the High Court. The appellant was an active driver in all of those various litigation steps on behalf of Pauline Sheridan.

75. The appellant, having failed to have Mr Flannelly give evidence of such matters when he was in the witness box in 1994, delayed until 2015 to take any active steps to ascertain what evidence Mr Flannelly might be in a position to give regarding those various issues, must live with the consequences. There was no impediment or obstacle in the appellant's path to engage with Mr. Flannelly particularly in the years 2000-2002 so that serious allegations could be put before the court on affidavit. After all, it would have been particularly important that such a step would have been taken in the two litigation opportunities that arose and which directly involved James Valentine Sheridan who is now deceased having died on the 2nd September 2008 and is not available to address new assertions being advanced that are at fundamental variance with the averments of James Valentine Sheridan in 2001 and also the very clear testimony of the Revenue Commissioners' Special Unit official Mr. Edward Brennan given in the High Court in July 1996.

76. In substance this is duplicative litigation contrary to the public interest and is subjecting the company and the second appellant, Helen Bernadette Sheridan, a widow who was born on the 31st December, 1934 to unnecessary ongoing litigation harassment. It will be recalled that when the initial application to vacate the improperly obtained order restoring the defunct company to the register was brought by her late husband in the year

2001 she was aged about 67. At the date of the hearing of this appeal she was aged 87 years. The appellant has identified no convincing reason why the whole of the case and all aspects of this claim were not brought before the court at the one time when all issues could have been conclusively decided for all time. Such successive suits are oppressive and constitute conduct which the rule in *Henderson v. Henderson* was framed to address in the interests of justice. The litigation conduct which the appellant has engaged in is contrary to the public interest. Companies such as the first respondent and individuals such as Mrs. Helen Bernadette Sheridan should not be subjected to ongoing repetitive litigation seemingly dragging on forever.

77. The appellant attaches weight to the fact that when James Valentine Sheridan brought an application in 2002 to vacate the orders obtained by Pauline Sheridan on the 19th February, 2001 restoring the defunct company to the Register, he sought, *inter alia*, the following relief: -

“Restraining the said Pauline Sheridan and her children from holding themselves out as directors or shareholders or agents of the defunct company or of the trading company.”

The court had refused that relief. The appellant appears to suggest that the refusal of that relief vests in him as one of the children of Pauline Sheridan some entitlement to a “free for all” of endless litigation against the trading company, Mrs. Helen Bernadette Sheridan and/or presumably her children and the beneficial owners of the trading company.

78. I further reject the contention advanced by the appellant that John Sheridan could not have applied for the restoration as a creditor by reason that he was not privy to the true identity and ownership of monies transferred to these companies until Mr. Flannelly in 2015 explained to him the financing of both these companies as well as his understanding

that the deceased James Vincent Sheridan was being in effect personated by James Valentine Sheridan, his uncle. None of these assertions are new. All are entirely contradicted by the judgment of July 1996.

79. The principle in *Henderson v. Henderson* requires that the exercise of the right of access to the courts, as enshrined in the Constitution and acknowledged by the European Convention on Human Rights, must in certain instances be balanced against the rights and interests of others in the public interest. The right to litigate is not unlimited and is subject to certain constraints based on public policy. Litigants such as the appellant must at a certain point in time accept the finality of a court's determination where an issue has been fully considered and determined upon and been the subject of an appeal. The appellant's stance of, first vicariously through the agency of Pauline Sheridan, and later directly, repeatedly and obsessively re litigating the core points that his uncle the late James Valentine Sheridan appropriated the identity of his deceased brother and thereby misappropriated vast assets alleged to have been held within the defunct company which in turn were acquired by the respondent company has now descended into a full scale deployment of devices such as purporting to bring this suit as a creditor, whereas the earlier application was brought by Pauline Sheridan as personal representative, which is calculated to facilitate the continued pursuance of a collateral attack aimed at undermining the earlier decisions - particularly the orders of the High Court made in October and November 2002.

80. The appellant offers no credible explanation as to why he refrained from raising any of these issues with Mr. Flannelly when he was a witness in the Circuit Court in connection with all of these matters in circumstances where the defunct company, its beneficial ownership and its assets were central issues and it was being actively contended that the defunct company and the trading company were effectively beneficially owned by

either the estate of the deceased James Vincent Sheridan or by his father Patrick Francis Sheridan.

Conclusions

81. The trial judge correctly exercised his discretion pursuant to *Henderson v. Henderson* principles. No basis has been identified for interference with same. The allegedly new evidence properly belonged to the earlier proceedings, and I am satisfied could, in the exercise of reasonable diligence, and should have been brought forward in either the 1994/1996 proceedings or the earlier petition instituted in 2000 seeking restoration of the defunct company to the register or laterally in the context of the 2002 Motion.

82. None of the grounds of appeal are made out and no reasonable explanation has been offered as to why the evidence which was readily procurable with reasonable diligence years before was not put before the court either (a) in 1994 before the Circuit Court or (b) in 1996 before the High Court or (c) in 2000 in the application before Ms. Justice Carroll or (d) in October and November 2002 where the order restoring the defunct company was on consent vacated and the petition of Pauline Sheridan was dismissed in circumstances where she was independently legally represented by a firm of solicitors and counsel. None of the grounds of appeal are made out and this appeal ought to be dismissed.

83. The trial judge was entitled to rely on the judgment of July 1996. The ongoing Garda investigation apparently came to nothing. **Ground 1** is not made out. The status of an investigation as “ongoing” did not in any way limit the right of the trial judge to consider and rely upon the comprehensive High Court judgment of July 1996, contrary to **Ground 2** and **Ground 2 (A)**.

84. The appellant was well aware of Mr Flannelly as of 1994 and he gave evidence before the Circuit Court in that year. All issues and allegations ought to have been brought forward and engaged with at that time. The 1996 High Court judgment entirely undermines the claim that the appellant or Pauline Sheridan were “unaware” of a claim that “James Vincent Sheridan was being misrepresented by his uncle James Valentine Sheridan” since that allegation was agitated before the High Court in 1996 – as the judgment clearly shows. Furthermore the said litigation involved allegations, which the High Court entirely rejected, that the true identity of the beneficial owner of monies claimed to be held in the company was the late James Vincent Sheridan. This entirely undermines **Ground 2 (B)** of the Appeal. Helen Sheridan was named as a respondent to this application and is entitled to oppose the application. There is no basis established to support a claim that “Justice McDonald’s court did not recognise the applicant as holding himself out as a shareholder director of both Emerald Contract Cleaners Ltd. (originally Emerald Contract Cleaners (Ireland) Ltd. and Emerald Contract Cleaners (Ireland) Ltd as ordered by Justice Carroll in 2002.” The said order does not have the effect contended for.

85. Insofar as **Ground 3** further contends, *inter alia*, that the appellant enjoys a continuing entitlement under the order of Carroll J. in the High Court in 2002 to hold himself out as directors or shareholders of either of the aforesaid companies nothing in the said Order, as amended, so provides. Helen Sheridan is the last Director of the company. Pauline Sheridan consented in open court in October 2003 through her counsel and with the benefit of legal advice to vacate the order restoring the defunct company to the register. No aspect of Ground 3 is made out.

86. The appellant was fully aware of Mr Flannelly from at the latest 1994. The principle in *Henderson v. Henderson* is fully engaged. It was an abuse of process by the appellant not to have put forward all aspects of the claim at the earliest opportunity. **Ground 4** of

the appeal is not made out. Given, *inter alia*, the passage of time, the repeated litigation regarding the same issues and the overall conduct of the appellant as well as the burdensome effect of the litigation on the respondents and the principles of public policy engaged, the trial judge properly exercised his discretion based on *Henderson v Henderson* and no basis has been identified for interfering with the orders made which are appealed against.

Costs

87. The appellant has entirely failed in the appeal and the respondents have been entirely successful. In all the circumstances my provisional view is that it is appropriate that the appellant do pay the respondents' costs of this appeal when taxed and ascertained. If the appellant contends for a different order he should notify the Court of Appeal office within 21 days of electronic delivery of this judgment. Thereafter a date will be fixed for oral argument on the issue of Costs. Unsuccessfully bringing such a costs application potentially exposes a party to the risk of costs in regard to any such further application.

88. Haughton J. and Collins J. assent to the above judgment.