

THE HIGH COURT

[2020] IEHC 478

[2020 95 COS]

BETWEEN

CARROLL RYAN PHARMACIES LTD

PLAINTIFFS

AND

COMPANIES ACT

DEFENDANTS

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 28th day of July, 2022

1. The Applicant is the liquidator of Carroll Ryan Pharmacies Limited ('the Company'). By Notice of Motion dated the 1st of November 2021, the Liquidator seeks the following Orders;

“A declaration or order pursuant to section 671(1) of the Companies Act summoning Michael Carroll of 13 An Chuir, Monard, Tipperary, before this Honourable Court at such time and place as this Honourable Court shall deem appropriate for the purpose of the said Michael Carroll being examined in relation to such matters as this Honourable Court shall deem fit;

Further, and if the Court considers appropriate, an order pursuant to section 671(3) and/or (5) of the Companies Act 2014 requiring the said Michael Carroll to provide,

before any such examination pursuant to section 671(1) takes place, full particulars by way of a sworn written statement of the affairs of the Company;

A declaration or order pursuant to section 671(1) of the Companies Act 2014 summoning Darragh Carroll of Carroll 14 An Chuir, Monard, Tipperary, before this Honourable Court at such time and place as this Honourable Court shall deem appropriate for the purpose of the said Darragh Carroll being examined in relation to such matters as this Honourable Court shall deem fit;

Further, and if the Court considers appropriate, an order pursuant to section 671(3) and/or (5) of the Companies Act 2014 requiring the said Darragh Carroll to provide, before any such examination pursuant to section 671(1) takes place, full particulars by way of a sworn written statement of the affairs of the company;

Further or other relief; and

Costs”

2. In his grounding affidavit, the Liquidator sets out certain relevant facts. I summarise these as follows;

1. The Liquidator was appointed to the Company by Order of this Court of the 30th of March 2020.

2. The Company had traded from its incorporation on the 18th of November 2010 until it was placed in liquidation. As far as the Liquidator was aware, the business of the Company was as a dispensing chemist.

3. At the time of the liquidation of the Company, the Respondents to the current motion were the directors of the Company.

4. The Order winding up the Company required the Respondents to deliver a Statement of Affairs in respect of the Company. As of the date of this motion, that had not been done.

5. Letters from the Liquidator's office to the Respondents seeking the Statement of Affairs and seeking the books and records of the Company went unanswered.

6. On the 23rd of November 2020 I made an Order directing that the books and records be delivered by the Respondents to the Liquidator. I refused to make an Order directing the delivery of a Statement of Affairs, as an Order was already in place requiring this to be done. Notwithstanding this Order, the books and records were not delivered to the Liquidator.

3. The grounding Affidavit of the Liquidator concludes;

“19. It is my considerable surprise no response has been received to any of my offices’ or my solicitors’ correspondence to the directors. It is further disappointing that the Respondents have chosen to ignore the Court Order requiring them to file statement of affairs and to further ignore a second Court Order requiring them to deliver up to me the Company’s books and records. In carrying out my duties it has come to my attention that the directors have, in the past, been directors of other Companies that have petitioned for Examinership and are also familiar with the Liquidation process (given they have been directors of other Companies which have been placed into liquidation). As such, I do not believe that the Respondents are unfamiliar with the process of preparing a statement of affairs or the requirement to deliver up to a Liquidator company books and records. I also say that cannot attribute the various lockdowns in the economy over the last 12 months to the inability to comply with the Court Orders

referred to in this Affidavit, given that, as dispensing chemists the Respondents operated one of the few businesses which were, in fact, never required to close.

20. I say that it is imperative that I obtain visibility on the Company's financial position and obtain sufficient information to allow me to identify, secure and realise any assets which may appear to be owned by the Company and to furthermore obtain sufficient documentation to allow me to fully investigate the affairs of the Company to allow me to form an opinion in relation to the manner in which the Company was ran in the periods prior to Liquidation. I say however this quite simply impossible where there is, and has been from the date of liquidation, zero engagement on the part of the respondents."

The Liquidator's grounding Affidavit also sets out concerns about the operation of the Company, by reference to the audited accounts of the Company filed with the CRO.

4. The Respondents attended before the Court of the 29th of November 2021, when the current application was listed. On foot of this appearance, the long overdue Statement of Affairs and the books and records of the Company were to have been delivered by the Respondents to the Liquidator on or before the 13th of December 2021. In his supplemental Affidavit sworn in support of this Motion, the Liquidator avers that the information and documentation so provided "raises more questions than it answers..." and that the examination of the Respondents remains a necessity. Of particular concern is the nature of the business of the Company. The Liquidator, in his grounding Affidavit, believed that the Company operated as a dispensing chemist (understandably, given its name). However, in the aftermath of the Court hearing on the 29th of November 2021, the position taken by the first Respondent on this

issue is summarised by the Liquidator, and is set out at paragraph 11 of his second Affidavit as follows;

“The position of the first named respondent, seems, (from his email) to be as follows:

- *The Company was just a payroll processor*
- *It never had any turnover*
- *It did not operate a purchase or sales ledger*
- *It never traded in the normal sense*
- *It had no assets or liabilities”*

In the following paragraph, the Liquidator describes this as (at best) "an insouciant attempt..." to downplay the Liquidator's concerns about the operation of the company.

5. In his second Affidavit, the Liquidator exhibits an email of the 25th of January 2022 which sets out assertions made by the Respondents, his current queries to the Respondents and the replies of the first Respondent (presumably on behalf of both Respondents). There are eleven headings to the email, though several of the headings give rise to more than one query. In some cases, the replies of the Respondents can only be described as evasive. In others, the position taken by the Respondents give rise to further legitimate questions. I am satisfied that the topics raised by the liquidator are matters upon which he is entitled to be fully informed.

6. To give just one example, at Item 5 of the email the Liquidator sets out the position of the Respondents that;

"The Company never had a 'Turnover' as such."

The Liquidator then posed a number of questions, including whether the Company invoiced the entities to which it was providing payroll services, why this was not done (if no such invoicing took place) and whether legal advice was taken about charging for these services.

The response was;

"There was no real necessity to create all this paperwork. No legal advise was taken."

7. A central part of the business of any company is the raising of invoices for its services. The position taken by the Respondents in response to this basic line of inquiry by the Liquidator requires further explanation, to put it mildly.

8. It would not be helpful to analyse each and every one of the outstanding topics set out in the January email which the Liquidator wishes to explore with the Respondents. I am satisfied that the Respondents should be required to be examined about the affairs of the Company. I will deal with the precise form of the Order when the matter is next before me. My initial view on the relief sought at paragraph 2 of the Notice of Motion is to refuse it, as this in large measure repeats earlier orders or undertakings. I will address these issues when the matter is next before me.

9. There are two remaining matters. The first of these is the position on this motion taken by the Respondents. No replying Affidavit was filed by either Respondent. I was addressed by the first Respondent, on behalf of both. While a certain amount of these submissions amounted to evidence, upon which I cannot rely, the essence of what the Respondents had to say was that all queries of the Liquidator had been fully answered, that any competent accountant could have understood the way in which the Company operated, and that the Liquidator's questions were "childish". I do not agree with these submissions and consider that the outstanding lines

of inquiry contained in the January 2022 email are legitimate and justified. When I put it to the first Respondent that his interests were best served by answering questions in a structured setting where a judge could supervise the process, his response was "Fine, so".

10. The second matter is evidence given by the Liquidator about the restriction of the Respondents from acting as directors, imposed on them in a separate liquidation. I have not taken this into account in deciding this Motion. The fact that a person has been so restricted does not necessarily mean that the Court should incline towards their examination on oath in relation to the affairs of a wholly different entity.

11. I will list this Motion for mention on the 11th of October at 10 am in order to deal with all outstanding matters, to include the costs of the Motion and the precise form of the Order.