AN CHUIDEACHTA DHÍSCAOILTE - BÁS NÓ ATH-FHÁS?

BENEDICT Ó FLOINN*

Deir Courtney ina *Law of Private Companies*, "[o]nce [a] company is struck off, it ceases to have any legal existence."[1] Labhraíonn McCann i dtéarmaí níos láidre fós: "[j]ust as the company can no longer sue after dissolution, similarly all personal rights of action against the company are lost."[2] Ag brath ar an bprionsabal seo, deirtear go minic sa chúirt nach bhfuil cead ag gearánaí, atá ag cur an dlí ar chuideachta a dhíscaoiltear i rith na cúise, na h-imeachtaí a chur chun cinn go n-athcláraítear í.

I. CEIST CHASTA?

Tá sé soléir, áfach, go bhfuil an tuairim seo ró-shimplí. Tá cuma na fírinne uirthi sa mhéid is a dhéantar macnamh ar dhíscaoileadh a tharlaíonn de thoradh foirceannadh i.e. de thoradh alt 273 (4) nó (5) d'Acht na gCuideachtaí, 1963. Aithníodh an díscaoileadh seo mar rud atá críochnaitheach agus dochloíte. Chun ainm na cuideachta a chur ar ais ar Chlár na gCuideachtaí sa chás seo, baintear úsáid as alt 310 d'Acht 1963. Foráiltear leis an alt seo:

> Nuair a bheidh cuideachta díscaoilte, féadfaidh an chúirt ... má dhéanann leachtaitheoir, nó aon duine eile a bhfeicfear don chúirt go bhfuil leas aige ann, iarratas chuige sin, ordú a dhéanamh, ar cibé téarmaí is cuí leis an gcúirt, á dhéarbhú go raibh an díscaoileadh ar neamhní agus air sin féadfar

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1 Alt 18.122.

2 (1990) *Gazette of the Incorporated Law Society* 125 ag 127.

> cibé imeachtaí a chur ar siúl a d'fhéadfaí a chur ar siúl dá mba nár díscaoileadh an chuideachta.

Agus tagairt ann do "leachtaitheoir", glactar go mbaineann an t-alt le díscaoileadh a tharlaíonn tar éis foirceannadh.[3] Mar a dúirt O'Neill Brmh. in *In re Framus Limited and Amantiss Limited*:

> ... s. 310 ... deals with the situation where a dissolution occurs following a winding-up in a voluntary liquidation, or a court liquidation. Necessarily, in these circumstances there will be no question of the company having, since dissolution, conducted trading or business operations. If acts were done in the name of the company following dissolution in these circumstances it is hard to imagine how they could have a lawful character and hence, as a matter of principle, retroactive validation could not ensue automatically on a declaration under section 310, that the dissolution was void. The use of the phrase in section 310: 'And thereupon such proceedings may be taken as might have been taken if the company had not been dissolved' would seem intended to have the effect of enabling from that point, namely when the declaration is made, the company to sue or be sued.[4]

Is rud spéisiúil é go n-úsáidtear an focal "automatically" sa sliocht seo - ag múscailt an smaoinimh go bhfuil an chúirt in ann, fiú nuair a fhaigheann cuideachta 'bás' de thoradh foirceannadh, gníomhartha na cuideachta a

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[3] Tá téarmaí an ailt seo leathan go leor chun foriarratas a dhéanamh i gcás cuideachta atá bainte den chlár trí mhainneachtain eile seachas foirceannadh : *In re Townreach* [1995] Ch. 28 ag 41 agus Gower, *Principles of Modern Company Law* (6ú eag.) lch. 848 *et seq.*

[4] [2000] 2 I.L.R.M. 177 ag 193.

dhaingniú go siarghabhálach faoi alt 310. Ba chóir a admháil, áfach, go bhfuil na fasaigh Shasanacha go hiomlán i gcoinne an léirithe seo. Sa chás *In re Philip Powis Limited*, dúirt An Ridire John Knox, ag lua bhreithiúnas Megaw L.J. i *Foster Yates & Thom Limited v. H.W. Edgehill Equipment Limited*:[5]

> '... when a corporate body is dissolved as a result of a voluntary winding up, any action which is pending at the date of dissolution ceases, not temporarily and provisionally, but absolutely and for all time. If the company is brought back to life again under s. 352, the cause of action is still there. It can, subject to any question of limitation, be pursued by fresh proceedings. If both parties to the abortive action consent, no doubt the pleadings, discovery, et cetera which had taken place in the abortive action before the dissolution could be treated as having been steps taken in the in the new action. But that would be a matter of consent ...'

> ... that is a highly significant decision ... in that it analyses the nature of abatement through voluntary liquidation followed by dissolution of one of the parties to the proceedings. The appropriateness of the word 'abatement' was indeed questioned by Megaw L.J. because of the very different results which ... ensued when a company was dissolved after a completed voluntary winding up from those which ensued when a human litigant died or went bankrupt ... but the fact that the same term is used for human and corporate parties which cease to exist during the pendency of proceedings should not be allowed to hide the

[5] (1978) 122 S.J. 60.

> fact that the results of the two are radically different. Where there is a corporate party which is dissolved the proceedings come to a permanent end on dissolution and do not go into abeyance or its equivalent. In my view, once one reaches that conclusion, it would need very explicit statutory authority to allow the court subsequently to restore to life that which had come to a permanent end.[6]

II. NÍOS CASTA FÓS?

Má tá cuma na fírinne ar thuairim Courtney agus McCann chomh fada is atá cuideachta fhoirceannta i gceist áfach, níl an scéal amhlaidh maidir le cuideachta díscaoilte ag Cláraitheoir na gCuideachtaí faoi chumhacht eile san Acht. Tarlaíonn díscaoileadh faoi alt 12 d'Acht na gCuideachtaí (Leasú), 1982 (mar atá leasaithe ag alt 46, d'Acht na gCuideachtaí (Leasú) (Uimh. 2), 1999) i gcás nach dtabharfaidh cuideachta na tuairiscí bliantúla a cheanglaítear uirthi le halt 125 nó 126 d'Acht 1963 nó trí mhainneachtain eile (féach, mar shampla, alt 12A d'Acht 1982, alt 43 (15) nó 47 agus 48 d'Acht na gCuideachtaí (Leasú) (Uimh. 2), 1999 nó alt 882(3) den Taxes Consolidation Act, 1997) nó más cuideachta mharbh í (alt 311 de Acht 1963).

Sa chomhthéacs seo, bíonn sé i bhfad níos deacra a rá go bhfuil deireadh iomlán leis an gcuideachta. Mar shampla, de bhun alt 12B(2) d'Acht 1982 agus 311(7) d'Acht 1963, ní dhéanfaidh na forálacha a bhaineann leis an díscaoileadh seo aon dochar do chumhacht na cúirte cuideachta ar baineadh a hainm de Chlár na gCuideachtaí a fhoirceannadh. Ina theannta sin, mairfidh dliteanas gach stiúrthóra, oifigigh agus comhalta de chuid na cuideachta, agus féadfar é a chur i bhfeidhm, amhlaidh is nach raibh an chuideachta díscaoilte: alt 12B(1) d'Acht 1982 agus alt 311(6) d'Acht 1963. Tá fianaise eile ann go bhfuil beatha éigin ann, mar tá cead ag an

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[6] [1997] 2 B.C.L.C. 481 ag 492.

gCláraitheoir an chuideachta a athchlárú laistigh de 12 mhí ón díscaoileadh, gan ath-chorprú nó ordú cúirte ar bith: alt 12C agus 12D d'Acht 1982. (Féach alt 311A freisin.)

Gan aon fhianaise eile, déarfaí gurb éiscachtaí reachtúla iad seo: sampla eile den canóin fhorléirithe *expressio unius exclusio alterius*. Ach níos spéisiúla fós, nuair a chuirtear an chuideachta ar ais ar Chlár na gCuideachtaí faoi alt 12B (3) d'Acht 1982, ciallaíonn na focail "measfar an chuideachta a bheith ar marthain ionann is nach mbeifí tar éis a hainm a bhaint den chlár":

> [that] all acts done in the name or on behalf of the company during the period between its dissolution and the restoration of its name to the register [are retrospectively validated] and that the words 'and the court may by order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off' are not expository qualifying the scope of the preceding general words but are complementary only to those general words so as to enable the Court to achieve to the fullest extent consistent with justice the 'as you were' position of the company.[7]

D'ainneoin na miondifríochta seo agus cé nach bhfuil stádas na cuideachta díscaoilte socraithe go fóill in Eirinn, beidh an dlíthí daonna faoi bhrú ón gcúirt chun an chuideachta a chur ar ais ar an gClár chomh luath agus is feidir tar éis a díscaoilte. Ar aon nós, tá gá praiticúil leis an gcéim seo a thógaint sula bhforghníomhaíonn breithiúnas mar, faoi alt 28, den Acht Maoine Stáit, 1954:

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[7] O'Neill Brmh. i *In re Framus Limited and Amantiss Limited* [2000] 2 I.L.R.M. 177 ag 190.

> (a) láithreach ar an díscaoileadh ... tiocfaidh an Stát chun bheith agus beidh sé ina úinéir, faoi réir aon eirí nó muirear a bhí ar an talamh díreach roimh an díscaoileadh sin ina uinéir ar an talamh go léir a bhí dílsithe sa chomhlacht corpraithe sin, nó ar iontaobhas dó, díreach roimh a dhíscaoileadh (seachas talamh a bhí ag an gcomhlacht corpraithe sin ar iontaobhas do dhuine eile),
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> (b) láithreach ar an díscaoileadh ... tiocfaidh an Stát chun a bheith agus beidh sé ina uinéir ar an maoin phearsanta[8] go léir (agus ábhair i gcaingean d'áireamh ach gan airnéisí réadacha d'áireamh) a bhí dílsithe sa chomhlucht corpraithe sin, nó ar iontaobhas dó, díreach roimh a dhíscaoileadh (seachas maoin phearsanta a bhí ag an gcomhlucht corpraithe sin ar iontaobhas do dhuine eile).

III. NÓS IMEACHTA

Braitheann nós imeachta an fhoriarratais athclárúithe ar an gcumhacht a úsáidtear ar an gcéad dul síos. Foráiltear le h-alt 12B d'Acht 1982:

> (9) Without prejudice to section 2(1) of the Principal Act where such an application is made by any other person, in the case of an application under this section that is made by a creditor of the company or the registrar of companies, 'the court' for the purposes of this section means the Circuit Court.[9]

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[8] De réir alt 29, beidh an maoin phearsanta go léir dílsithe don Aire Airgeadais.

[9] Níl tiontú oifigiúil ar an Acht 1999 (ag leasú na hAchta 1982) ar fáil, d'ainneoin bhreithiúnas na Cúirte Uachtaraí in *O Beoláin v. Fahy* [2001]

Ciallaíonn an t-alt seo go bhfuil rogha ag páirtí dul os comhair na hArd Chúirte nó na Cúirte Cuarda i gcomhair fhoriarratas creidiúnaithe nó os comhair an Chláraitheora agus na hArd Chúirte i ngach cás eile: *Re Deauville Communications Worldwide Limited*.[10] Agus duine (nach creidiúnaí é) i mbun cúise nuair a díscaoiltar cuideachta, cuirtear an-chostas breise air de bharr an dualgas an Ard-Chúirt a úsáid. De réir Rialacha na nUas-Chúirteanna, is trí achainí a dhéanfar iarratais go ndearbhófaí díscaoileadh a bheith ar neamhní faoi alt 310 *agus* iarratais go gcuirfí ainm cuideachta ar ais ar an gclár faoi alt 311(8) Acht 1963 nó 12(6) d'Acht 1982. Don té atá i mbun imeachtaí, b'fhearr i bhfad go n-úsáidfí fógra foriarratais (i.e. foriarratas sna h-imeachtaí ar feitheamh) ná achainní (atá ina toghairm thionscnaimh).

Caithfear fógra a thabhairt don Chláraitheoir, do na Coimisinéirí Ioncaim agus don Aire Airgeadais ach, seachas sin, níl an Chúirt fabhrach d'aighneachtaí ó mhórán dhlíthithe. Dúirt O'Neill Brmh. i *In re Framus agus eile*:

> I tend to be reinforced in [my] conclusion by a consideration of the alternative proposition namely that for validity to accrue to transactions which took place during dissolution a specific order or direction would be required under the latter part of subs. (6). In most cases of companies who were struck off the register under s. 12(3) that would necessitate a host of parties to be heard on an application such as the present one to restore the name of a company to the register or alternatively would lead to much separate litigation in order to determine the validity of all such transactions.[11]

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2 I.R. 279.

[10] Neamh-tuariscithe, An Cúirt Uachtarach, 15 Márta 2002.

[11] [2000] 2 I.L.R.M. 177 ag 191.

Ar an dul céanna, diúltaítear cead chun fógra tríú páirtí a éisiúint i gcaingean mar seo. Dúirt Harman Brmh. i *In re Portafram Limited*:

> Such applications [faoi alt 653 d'Acht na gCuideachtaí, 1985, atá ar aon dul le alt 12B(3) d'Acht 1982 in Eirinn] are ... proceedings which do not, on the face of them, lead to the determination of any issue at all. They are a curious form of quasi-administrative proceedings whereby the Court, on being satisfied of various matters, exercises a power given by Parliament to resuscitate, by restoration to the register, a company which is then, by Act of Parliament, deemed to have continued to exist at all times.[12]

Ní chiallaíonn sé sin, áfach, go bhfuil an chúirt slamchúiseach agus an chumhacht reachtúil seo á cur i bhfeidhm aici. Mar shampla, ní raibh sannaí féich ó chuideachta dhíscaoilte in ann a rá gurb éagóir á imirt air (mar is gá faoin alt 12(6)): *Re Timbiqui Gold Mines Limited*).[13] Ina theannta leis seo, caithfidh an Chúirt éisteacht a thabhairt do gach oifigeach má tá seans ar bith ann go mbainfear úsáid as alt 12B(4) d'Acht 1982 lena bhforáiltear:

> (4) An alternative order may, if the Court considers it appropriate that it should do so, include a provision that, as respects a debt or liability incurred by, or on behalf of, the company during the period when it stood struck off the register, the officers of the company or such one or more of them as is or are specified in the order shall be liable for the

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[12] [1986] B.C.L.C. 532 ag 534.

[13] [1961] 1 All ER 865.

> whole or a part (as the court thinks just) of the debt or liability.

De ghnáth, ní foláir na tuairiscí bliantúla a chomhlánú nó muna bhfuil an t-achainíoch in ann an dualgas sin a chomhlíonadh, féadfaidh an Chúirt ordú a dhéanamh faoi alt 12B(6) d'Acht 1982. Freisin, íocfaidh an t-achainíoch costais an Phríomh-Aturnae Stáit agus na gComisinéirí Ioncaim: *Re Haltone (Cork) Limited*.[14]

IV. An Chúirt Chuarda

Chun proiseais na Cúirte Cuarda a úsáid, is gá a bheith i do chreidiúnaí. Ní shainmhínitear an focal seo san Acht agus úsáidtear é gan aon aidiacht ná coinníoll leis. Má dhéantar comparáid le halt 215, táimid in ann a rá nach gclúdaíonn an focal 'creidiúnaí' na creidiúnaithe atá teagmhasach nó ionchasach mar níl aon tagairt sainraite ann dóibh. De ghnáth, is éan "creidiúnaí" an té a bhfuil fiacha leachtaithe, láithreacha dlite[15] dó: *Re Fitness Centre (South East) Limited*.[16] Caithfidh fiacha a bheith dlite ag an am a díscaoileadh an chuideachta. I *Re Deauville Communications Worldwide Limited*,[17] tugadh brí leathan don téarma seo. Bréagnaíonn an breithiúnas seo ag an bhealach a glacadh i gcásanna eile. Mar shampla, nuair a fiarfraíodh stádas na gCoimisinéirí Ioncaim mar creidiúnaithe le deanaí, níor imigh an Chúirt Uachtarach níos faide ná "...(a)ssuming that the Revenue Commissioners are properly described as a "creditor" of a person who is in default in the payment of tax ..."[18]

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[14] [1996] I.R. 32.

[15] *Re A Debtor (No. 2 of 1977) ex p The Debtor v. Goacher* [1979] 1 All E.R. 870.

[16] [1986] B.C.L.C. 518.

[17] Neamh-tuariscithe, An Chúirt Uachtarach, 15 Márta 2002.

[18] *Dunnes Stores Ireland Company agus eile v. Gerard Ryan agus eile*, Neamh-tuariscithe, An Chúirt Uachtarach, 1 Feabhra 2002 ag 29. Féach

Cuir i gcás go sásaítear an coinníoll seo, foráiltear le hOrdú 53, de Rialacha na Cúirte Cuarda (2001) go bhféadfar gach iarratas faoi Acht 1982 a thionscnamh trí fhógra tionscnaimh foriarratais bunaithe ar mhionnscríbhinn. Seirbheáiltear an fógra le post réamhíoctha cláraithe. Ar aon leis an Ard-Chúirt, caithfear cloí le focail na n-alt - ach tugann na rialacha nua seo bealach níos tapúla agus níos saoire[19] don iarratasóir chun cabhair na cúirte a iarraidh.

V. Conclúid

D'ainneoin na gceimeanna chun sruthlíne a chur ar athbheochan na gcuideachtaí, músclaíonn an chuideachta dhíscaoilte cruacheisteanna do bhreithiúna agus do abhcóidí ar aon. Tugann na ceisteanna seo deis chun an dlí-eolaíocht a fhorbairt má úsáidtear bunphrionsabal an tógálaí: cinnteacht na dúshraithe. Má chuirtear an éascaíocht chun tosaigh, afach, ní fada go mbeidh na breithiúna féin ar choimrí an tsí-gaoithe.

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freisin *Re Belmont and Co. Limited* [1952] Ch. 10.

[19] Má tá tréimhse an 'fast-track' rithe: alt 311 d'Acht 1963 agus alt 12C agus 12D Acht 1982 mar a leasaítear.