File and Error: Court of Appeal Considers Power of High Court to Remove CRO Filings

An Irish company formed and registered under the Companies Act 2014 (the "**2014 Act**") must ensure that any statutory filings submitted to the Companies Registration Office (the "**CRO**") are fully, accurately and properly completed. This responsibility also extends to company officers and CRO forms contain a certificate that must be signed by a current officer of the company to certify that the content of the form is correct. However, as the CRO accepts documents that are, on the face of them in order, in good faith, some errors can and do go undetected prior to registration.

Revision of financial statements

A company's financial statements can, for example, be a casualty of undetected error but helpfully the 2014 Act, for the first time, provides a statutory basis for the revision of defective statutory financial statements even after their delivery to the CRO.

The CRO may for instance update its records following receipt of a relevant filing from a company utilising section 366 of the 2014 Act which allows the preparation and filing by a company of revised financial statements or a revised directors' report in respect of a prior year where it appears that the document filed did not comply with the requirements of the 2014 Act or, where applicable, Article 4 of the IAS Regulation.

The case

This procedure and the question of the jurisdiction of the High Court to order the removal of documents from the register of companies was considered by the Court of Appeal for the first time in *Wee Care Limited v Companies Registration Office*[1]. Here, the appellant, being a small company entitled to file abridged accounts with the CRO pursuant to section 352 of the 2014 Act, sought to reverse the High Court's refusal to sanction the company's replacement of full financial statements filed in error with a set of abridged financial statements.

Questions before the court

The Court of Appeal was asked to consider whether, subject to section 366 of the 2014 Act or because of an inherent jurisdiction, the High Court did in fact have jurisdiction to order the CRO to replace the full financial statements with the abridged financial statements. Mr Justice Haughton emphasised that section 352 of the 2014 Act was an optional "empowering provision" which allows the directors of a small company to voluntarily elect to file abridged accounts. The Court also determined that the availability of Section 366 of the 2014 Act as a means of voluntarily revising non-compliant financial statements was only extended to directors, not the courts and that the fact that the appellant had not availed of the opportunity to file abridged accounts did not in any way render the full financial statements which had been filed, defective in themselves. It was also confirmed that section 366 permits the revision of incorrect information rather than its complete removal from the register of companies. Accordingly, it was found that the High Court was correct in not ordering the Registrar of Companies to replace the company's full financial statements with abridged financial statements.

Turning to the question of whether the superior courts had instead an inherent jurisdiction to rectify the register of companies, Mr Justice Haughton, influenced by the corrective orders made by Laffoy J in the unreported cases of Air France Aircraft Leasing Limited v Registrar of Companies[2] and 3V Transaction Services Limited v Registrar[3] of Companies , stated that it was "at least arguable that, owing to the nature of its judicial function and constitutional role, the High Court has an inherent jurisdiction to intervene". He did however acknowledge that the facts of such cases were quite different from the case in question as they involved erroneous filings and a potentially prejudicial outcome for the applicants. In any case, Mr Justice Haughton held that it was not necessary to make a definitive ruling on this question as the error in filing complete, as opposed to abridged accounts, did not seriously or significantly prejudice the commercial interests of the appellant in such a way as to justify intervention, even if such an inherent jurisdiction to rectify exists. There was nothing wrong per se with the financial statements filed. The case did not meet the threshold that would permit the High Court to exercise any inherent jurisdiction to rectify that it may have. Accordingly the appeal was dismissed.

The take-away

This case demonstrates the need for great care to be taken by directors and their agents in ensuring that documents filed with the CRO, and consequently in the public domain, are fully, accurately and properly completed in the manner required or permitted. While rectification of mistakes and omissions in submissions filed with the CRO may be available in some specific situations, the Court of Appeal judgment in this case indicates that should an inherent jurisdiction to rectify exist, it is one to be used sparingly and with a view to remedying great injustice.

1 [2020] IECA 266.
2 (HC, 30 April 2007)
3 (HC, 28 January 2008)

Key Contacts

Ursula McMahon
Professional Support Lawyer
E: ursula.mcmahon@matheson.com
T: 01 232 2331

Cillian Dervan
Solicitor
E: cillian.dervan@matheson.com
T: 01 232 3795