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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	25/06/2024

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION (COMPANIES)

IN THE MATTER OF CLOUGHVALLEY STORES (NI) LTD – IN ADMINISTRATION

AND IN THE MATTER OF THE DIRECTORS DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002

Between:

MICHAEL QUINN

Respondent/Appellant

and

THE DEPARTMENT FOR THE ECONOMY

Applicant/Respondent

Mr Quinn appeared as a Litigant in Person
Mr McAteer (instructed by the Departmental Solicitor's Office) for the Respondent

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Before: McBride J and Kinney J

McBRIDE J (***delivering the judgment of the court***)

Introduction

[1] This is an application by Mr Michael Quinn for leave to appeal and an extension of time to appeal, the decision of Huddleston J dated 27 October 2023.

[2] Michael Quinn appeared as a litigant in person assisted by Bridget Quinn, acting as his McKenzie Friend. The Department for the Economy ("the Department") was represented by Mr McAteer of counsel. The court is grateful to all parties for the helpful way they made their submissions to the court.

Background

[3] Michael Quinn and Brigid Quinn were appointed as Directors of Cloughvalley Stores (NI) Ltd ("the company") on 6 June 1998. The company was incorporated on that date and operated in the business of a convenience store. It traded under the name "Quinn's Superstore."

[4] The company went into administration on 17 October 2011 and Thomas Keenan was appointed as the administrator. At the date of administration, the company had an estimated deficit of £5m approximately.

[5] The administrator, in accordance with his statutory duties, reported conduct which satisfied him that Michael and Brigid Quinn were unfit to be concerned in the management of the company. This information was passed to the Disqualification Unit of the Insolvency Service to investigate and to bring any necessary application which was deemed expedient in the public interest.

[6] The Department brought proceedings against Michael and Bridget Quinn, under Article 10 of the Company Directors Disqualification (Northern Ireland) Order 2002, seeking disqualification orders under Article 9, arising out of their conduct as directors of the company.

[7] The Department's case was grounded on the affidavit evidence of the administrator who provided two affidavits sworn respectively on 16 October 2013 and 12 October 2016. In addition, they relied on the affidavit evidence of Gary McCappin, senior examiner in the Disqualification Unit of the Insolvency Service and information obtained from Companies House, HMRC, the company's accountants/auditors and the company's bank.

[8] The Department submitted that both Michael and Bridget Quinn were unfit to be concerned with the management of a limited company on the grounds that the directors had:

(a) Caused and permitted the company to fail to pay £160,915.10 properly due to the Crown.

(b) Failed to co-operate fully with the administrator in that they failed to produce either a sworn statement of affairs for the company or a directors' questionnaire.

(c) They caused and permitted the company to misuse its bank account in that they tendered cheques without due regard for them being honoured on presentation.

(d) They caused and permitted the company to fail to file annual accounts for the years ended 31 December 2003 and 31 December 2005 to 31 December 2008

within the prescribed period and failed to file accounts for the year ended 31 December 2010 at all.

(e) They caused and permitted the company to fail to file annual returns for the periods ended 16 June 2003, 16 June 2004 and 16 June 2006 to 16 June 2011 inclusive within the prescribed periods.

[9] An additional ground was alleged against Michael Quinn alone, namely that he entered into the company's premises and caused criminal damage to company property on 12 March 2012.

[10] The respondent filed a replying affidavit on his own behalf and on behalf of Bridget Quinn sworn on 12 February 2016. This affidavit provides his response to the Department's case.

[11] There was considerable delay before the Department's application was heard. This arose because the court permitted the case to be adjourned whilst the Quinns pursued various legal challenges to the administration and liquidation of the company. They were however, ultimately unsuccessful in their challenges.

[12] The Quinns had the benefit of legal representation but unhappily, differences arose between the Quinns and their solicitors and on 16 December 2021 their solicitors successfully applied to come off record. Thereafter, the Quinns appeared as litigants in person. They did not attend any case management reviews. The Department however notified them of the outcome of each review.

[13] The case was listed for hearing on 27 February 2023. Prior to the hearing Mr Quinn was provided with the trial bundle both electronically and by hard copy. He also had the benefit of the Department's skeleton argument setting out the facts and legal principles upon which they intended to rely. Mr Quinn did not object when the matter was listed but late on 27 February 2023, he contacted the Department's solicitors to say that he was unable to attend the hearing due to his "bail conditions." He did not seek to contact the court or seek an adjournment of the hearing. The court converted the hearing to a hybrid hearing and delayed the start time to enable the Quinns to join remotely, if required. Neither Michael nor Bridget Quinn appeared either in person or remotely. The hearing proceeded in their absence and Master Kelly read all the affidavits and exhibits and heard oral submissions. On 14 June 2023 the Master ordered the disqualification of Michael Quinn for seven years and Bridget Quinn for six years. The Master also provided a detailed written judgment on the same date setting out the reasons for her decision.

[14] Mr Quinn appealed Master Kelly's decision to the Chancery judge by way of notice dated 5 July 2023, on the grounds that the Master had not permitted a fair hearing, in particular:

(i) she had not afforded him time to get new legal representation;

(ii) she had not taken into consideration a report by Bankcheck; and

(iii) had erred in making an order in his absence.

[15] His notice was supported by an affidavit sworn on 5 July 2023.

[16] The matter was listed for hearing on 27 October 2023 before the Chancery judge. The respondent did not attend the hearing and the hearing proceeded in his absence. The hearing took the form of a de novo hearing and the court read the affidavit evidence and then heard oral submissions from the Department. The court dismissed the appeal and affirmed the order of Master Kelly and condemned Mr Quinn in costs.

[17] By notice dated 8 December 2023, which was served on 13 December 2023, Mr Quinn sought leave to appeal the decision of Huddleston J out of time. This notice was supported by an affidavit sworn on 23 January 2024.

[18] Huddleston J considered the application for leave to appeal out of time on 20 February 2024. Mr Quinn did not attend before the court and Huddleston J made an order dated 20 February 2024 refusing to grant leave to appeal out of time. Mr Quinn now renews that application before this court.

[19] Mr Quinn further served a notice of appeal stamped 20 March 2024 purporting to appeal against Huddleston J's decision to refuse to extend time and to refuse permission to appeal. The grounds of appeal can be summarised as follows:

(i) The judge erred by not following a fair and transparent procedure and not giving Mr Quinn a proper opportunity to deal with the matter;

(ii) The judge erred in not allowing an expert who had provided the report to explain his report on the application to extend time/for permission to appeal;

(iii) The judge did not take into account that Master Kelly did not have that report before making her decision; and

(iv) That the Department was aware a report was being prepared but did not seek to adjourn the proceedings.

Consideration

(i) Statutory framework – requirement for leave and time limits for appeal

[20] Before an appeal could be initiated against Huddleston J's decision, leave was required either from the Chancery judge or the Court of Appeal in accordance with

section 35(2)(j) of the Judicature (Northern Ireland) Act 1978. Further, under Order 49(4) of the Rules of the Court of Judicature (Northern Ireland) 1980 the time limit for appealing Huddleston J's order dated 27 October 2023 was 28 days.

(ii) Application for leave and application to extend time

[21] Mr Quinn applied for leave to appeal before the Chancery judge. Leave was refused and he now renews the application for leave before this court. In accordance with Order 49(4) a notice of appeal ought to have been served on or before 30 November 2023. This has not been done and could not be done without leave being granted in the first place. Since Huddleston J issued his decision on 27 October 2023 the only step taken by Mr Quinn to advance his appeal was issuing a notice seeking leave to extend time dated 8 December 2023 which was served on 13 December 2023.

[22] The court has a discretion to extend time for appeal and there are no rigid rules regarding this. Nonetheless, the court generally has regard to the principles set out by Lowry LCJ in *Davis v Northern Ireland Carriers* [1979] NI 19 at para [19] in which he stated:

> "Where a time limit is imposed by statute it cannot be extended unless that or another statute contains a dispensing power. Where the time is imposed by rules of court which embody a dispensing power, such as that found in Order 64 rule 7 the court must exercise its discretion in each case and for that purpose the relevant principles are:
>
> (i) Whether the time is already sped: a court will, where the reason is a good one, look more favourably on an application made before the time is up;
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> (ii) When the time limit has expired, the extent to which the party applying is in default;
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> (iii) The effect on the opposite party of granting the application and, in particular, whether he can be compensated by costs;
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> (iv) Whether a hearing on the merits has taken place, or would be denied by refusing an extension;
>
> (v) Whether there is a point of substance (which, in effect, means a legal point of substance when

dealing with cases stated) to be made which could not otherwise be put forward;

(vi) Whether the point is of general and not merely particular significance.

To these I add the important principle:

(vii) That the rules of the court are there to be observed."

[23] Applying these principles in the present case, time for appeal is sped and no application was made before time expired.

[24] The default is one of several months as no notice of appeal has yet been served. Arguably, the extent to which Mr Quinn is in default, is essentially a period of 13 days, namely the delay from the date time expired, that is 30 November 2023 until the date he served his notice on 13 December 2023. Nonetheless, we consider this is a considerable delay and despite requests Mr Quinn has failed to provide any explanation for his delay in initiating appeal proceedings.

[25] The respondent submits that granting the application would adversely affect it as there have already been a plethora of unnecessary reviews and the need for them to correspond due to Mr Quinn's non-engagement before Master Kelly. As set out in the judgment of Master Kelly at para [8], Mr Quinn did not attend or participate in case management reviews and the Department notified them of the outcome of each review. The Department submits that Mr Quinn's failure to participate and his non-attendance at both the hearings before the Master Kelly and Huddleston J, has increased costs and wasted time. They submit that a further hearing would incur a third set of costs for the Department with little chance of recovery given the impecuniosity of Mr Quinn.

[26] We do not consider that costs have been increased by Mr Quinn's failure to attend at the original hearing as it was necessary for the Department to prosecute its case in the first instance. We accept additional costs were incurred in attending the appeal hearing. We further accept that if time is extended this will lead to a third hearing and of necessity the Department will incur further costs.

[27] We consider that there has been an extensive consideration of the merits of the case. We note that there has not just been one hearing but two hearings on the merits of the application for directors disqualification. The first hearing on the merits took place before Master Kelly and the second hearing took place before Huddleston J which was a de novo hearing. Both the Master and Huddleston J considered the factual evidence presented by all the parties and took into account all submissions made in respect of the facts and relevant legal principles before coming to their respective decisions.

[28] Mr Quinn has not provided any reasons for his non-attendance at the hearings and did not provide the court with any medical evidence, for example, to explain his inability to attend. In all the circumstances we are satisfied there was no procedural unfairness in the cases proceeding to hearing in his absence.

[29] We are satisfied having regard to the evidence in this case and the relevant legal principles that neither Master Kelly nor Huddleston J erred in law or fact in coming to their respective conclusions. We are further satisfied, on the basis of the evidence presented to this court that the five grounds upon which the application for orders for disqualification was made, were properly made out.

[30] Firstly, there was evidence that the continued trading of the company was financed by monies not being paid to the Crown. Mr Quinn submitted that he did not have access to company accounts or bank statements as Mr Des Kelly, an accountant engaged by the company, did not give him access to these documents. We are satisfied that this is not a defence, because as a director Mr Quinn had a personal responsibility to inform himself of the company's affairs and to supervise and control them. A director cannot shirk his responsibility by leaving it to others including professional persons.

[31] Secondly, we are satisfied that Mr Quinn, as a director, misused the company bank account by writing cheques which were dishonoured by the bank. In the period from 25 June 2011 to 21 October 2011 a total of 45 cheques totalling approximately £45,000 were dishonoured. Two were dishonoured on second presentation and one was dishonoured nine times on presentation. Although Mr Quinn submitted he did not have access to his bank accounts, and that they had failed to provide full details of them notwithstanding a Khanna subpoena, we note that the cheques which were dishonoured were presented before the administrator was appointed. There is no dispute that the cheques were signed by Mr Quinn, and in these circumstances, we are satisfied that he signed cheques without due regard to the prospect of these cheques being dishonoured which is evidence of misconduct rendering him unfit to be involved in the management of the company.

[32] Mr Quinn sought to rely on a report from Bankcheck to show that he had not misused the bank account. The report by Bankcheck is prepared by Mr Eddie Fitzpatrick and is dated 11 March 2024. The report was, therefore, not available until after the hearing before Huddleston J and, therefore, constitutes fresh evidence. Although this report was not before Huddleston J, he did have a letter from Bankcheck dated 8 October 2018.

[33] Mr McAteer formally objected to the admission of the Bankcheck report on the basis that it did not fulfil the necessary requirements for the admission of fresh evidence but did not object to the court reading the report.

[34] We have read the Bankcheck report, and we note that the report was commissioned to "determine whether the actions of Northern Bank had, in any way, a detrimental effect on the trading of Cloughvalley Stores (Northern Ireland) Ltd." The report outlines that there is some missing information. In relation to the issue of dishonoured cheques, the report covers the period 20 March 2008 to 9 May 2011 and accordingly does not cover the period the Department states cheques were dishonoured, namely 4 July 2011 to 21 October 2011. It, therefore, does not speak directly to the issue. The report however notes that the bank overdraft was limited to £30,000. Notwithstanding this the bank on some occasions honoured cheques which exceeded this overdraft.

[35] Mr Quinn submitted that the actions of the bank amounted to an implied higher overdraft facility and accordingly there were sufficient funds to cover the cheques which were dishonoured. We do not accept this submission. It was not supported by Mr Fitzpatrick in his report. Secondly, as a director, Mr Quinn had a personal responsibility to inform himself of the affairs of the company and to supervise and control them. The limit on the bank overdraft was £30,000. If Mr Quinn wished to write cheques based on a higher overdraft facility it was incumbent upon him to ensure that the higher overdraft facility was available to him. We are satisfied that his failure to do this and the fact that cheques were dishonoured upon second and subsequent occasions illustrate that he knew that he was signing cheques in circumstances where the company did not have sufficient funds to meet the debits.

[36] Mr Fitzpatrick, in his report accepts:

> "When a customer writes a cheque or an electronic payment is due, that the customer must have available funds to cover the debit. It goes without saying that cheques should not be written if the customer does not have the available funds to pay them."

[37] We are also satisfied that Mr Quinn failed to file returns and accounts on time and failed to file accounts on one occasion. This amounts to a persistent pattern of breaching statutory obligations and one which predated the company going into administration in 2011. Mr Quinn has not sought to deny these failures.

[38] It is not disputed by Mr Quinn that he failed to co-operate with the administrator, and he accepts he did not provide a sworn statement of affairs or Director's Questionnaire.

[39] Mr Quinn sought to attribute this default to an alleged lack of access to company records. We do not accept this explanation for the same reasons as Master Kelly set out at para [23] of her judgment.

[40] Without these documents the administrator was unable to:

(i) fully investigate the circumstances leading to the failure of the company;

(ii) form a complete picture of the affairs of the company;

(iii) ascertain how the company was financed and operated;

(iv) obtain an explanation for the company's deficiency;

(v) satisfy himself that all the company's assets had been accounted for; and

(vi) determine when the company became insolvent through genuine trading difficulties.

[41] We consider his failure to co-operate with the administrator amounts to serious misconduct. His co-operation was necessary to enable the administrator to undertake the role he was tasked to perform.

[42] The final ground for disqualification related to Mr Quinn's conduct in deliberately causing damage to company property. Mr Quinn pleaded guilty to this offence, and we consider this is conduct which falls below the standards of commercial morality and one which amounts to misconduct rendering him unfit to be involved in the affairs of a company.

[43] We are therefore satisfied that the allegations made by the Department were established and that the allegations both individually and taken collectively constituted misconduct, which rendered Mr Quinn unfit to be a director.

[44] Further, having regard to all these matters, we consider that the Master's imposition of a disqualification of seven years was one which was in line with the authorities, and we do not consider there is any merit in any application to reduce the period of disqualification.

[45] Accordingly, we are satisfied based on all the material before the court, including the new material provided by Mr Quinn that there is no merit in this appeal and nothing to be gained by a further hearing, save incurring further unnecessary costs and wasting time. We also consider that it would increase the stress under which Mr Quinn appears to be suffering. In addition, we consider there is no point of general significance and rules of court are there to be observed.

[46] Gillen J noted in *Benson v Morrow Retail Ltd* [2010] NIQB 140, that the central question for the court in determining whether to exercise its discretion to extend time is always whether in the particular circumstances of the case and in accordance with an overall desire to achieve justice, the discretion ought to be exercised in favour of the appellant.

[47] Having regard to all the factors in this case, we are satisfied that it is not necessary in the interests of justice to exercise the discretion to extend time and, accordingly, we refuse to do so.

[48] Mr Quinn expressed with much conviction to the court that he cared about this case and, in particular, the need to protect his good name and reputation. It is important to note that directors' disqualification proceedings involve consideration of a director's behaviour and conduct at the time he was a director. It, therefore, engages with the consideration of his conduct at a particular period of time. The main purpose is to be protective to the public. The intention of the court in granting an order for disqualification is not to discredit the character of the director, but rather, to protect the public. The proceedings are not intended to be personal, although they do have a restrictive effect. It further remains open to Mr Quinn to seek the leave of the court if in the future he wishes to act as a director of any company.

[49] We, therefore, dismiss the application; refuse leave to appeal; refuse to extend time for appeal and dismiss the appeal.

[50] We will hear the parties in respect of costs.