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The Court of Appeal

27th September, 1989

Before: J.M. Collins, Esq., Q.C., (President)  
Sir Godfray Le Quesne, Q.C.,  
E.A. Machin, Esq., Q.C.

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Ex parte application of Douglas John Woolley,  
praying the Court to set aside the decision  
of the Royal Court (Samedi Division) of the  
28th July, 1989, whereby that Court refused  
Mr. Woolley's application, under Article 38(A)  
of the Loi (1861) sur les Sociétés à responsabilité  
limitée, to reinstate Salvors International Limited,  
which had been dissolved, in accordance with the  
provisions of the said Article on the  
29th December, 1983.

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The applicant on his own behalf.

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**JUDGMENT**

THE PRESIDENT: This is an appeal against the judgment of the Royal Court (Samedi Division) of the 28th July of this year whereby a representation made ex parte by Mr. Douglas Woolley for an order setting aside the dissolution of a company known as Salvors International Limited and reinstating that company was refused. From that refusal Mr. Woolley now appeals.

It was in July of 1974 that Mr. Woolley instituted proceedings against two companies, one of which was Salvors International Limited. The Royal Court at that time, in 1974, ordered that Mr. Woolley should pay £500 by way of security for costs. No such payment was made and the action lay dormant for some fourteen years until Mr. Woolley made an application for revocation of that Order, having made no such payment in the meanwhile, and in consequence applied that the action should become active so that the defendants should be required to answer the action within twenty-one days.

That application was dismissed by the Royal Court on the 17th November, 1988. In consequence of the matter having been brought to the attention of the Court on Mr. Woolley's application he was then called on to show cause why the action should not be dismissed for want of prosecution, having regard to the lapse of time and the fact that both defendant companies had ceased to exist.

Salvors International Limited had in fact been removed from the Register of Companies on the 29th December, 1983, and no allegation has been made that the application of the provisions of the 1861 Law under which that removal took place was defective in form at the time that it was effected. That company had been incorporated on the 4th May, 1972 on the application of three founder members.

On the 15th December, 1988, the Royal Court, by an Order further to that of the 17th November, dismissed the action by virtue of Rule 6/20 paragraph (1) of the Royal Court Rules as amended. Mr. Woolley then appealed to this Court in April, 1989, against the decisions of the 17th November, 1988, and the 15th December, 1988, to which I have referred, when this Court dismissed the appeal in relation to the dismissal of the action, that is to say the order made by the Royal Court on the 15th December and that action having met that fate, no order of the Court was necessary on the other applications and in particular on the application to set aside the order with regard to security for costs.

The dissolution of a defunct company is provided for by Article 38A of the Loi (1861) sur les Sociétés à responsabilité limitée. In the case of companies dissolved under this law certain classes of persons may apply to

the Royal Court to annul the dissolution and restore the existence of the company after proof that at the time of the dissolution the company was carrying out operations and functioning in some way. On receiving such an application the Court may, if it judges it equitable, annul the act dissolving the company and thereafter the company reappears as if it had never been dissolved.

In order for such a course to be taken, first of all the person making the application has to be a member or creditor of the company. Secondly, he has to satisfy the Court that at the time of the dissolution of the company it was in fact carrying out operations or functions. Thirdly, the Court has to be satisfied that it is equitable to make the order setting aside the dissolution.

In this case Mr. Woolley, the appellant, has not satisfied me that he is a creditor of the company and thus within the class of persons entitled to make such an application. The mere fact that he has asserted, and in the proceedings which have met the fate which I have described alleged, that he had a contract with the company made in 1972, would not in my judgment produce the situation that he can properly be regarded at the time he comes to make this application as a creditor of the company.

Furthermore, there is no evidence which satisfies me that the company, at the time of its dissolution, was carrying on operations, or was functioning. The appellant, Mr. Woolley, has asserted that the existence of the contract upon which he relies - and relied in those proceedings - would be sufficient to amount to an operation or functioning of the company at the date of dissolution. I find that there is no substance in that contention.

Finally, in any event the Court has to consider it equitable to annul the act dissolving the society in order that it should take that course. Having regard to the history of the proceedings which Mr. Woolley instituted against the company and the fate which those proceedings suffered, it could not in my judgment be said to be 'equitable' to annul the act by which the company was dissolved. Accordingly, I would dismiss this appeal.

LE QUESNE, J.A: I agree.

MACHIN, J.A: I agree.

Authorities

Loi (1861) sur les sociétés à responsabilité limitée.