

PAGEBOY

THE HIGH COURT

1983 No. 1565P



IN THE MATTER OF PAGEBOY COURIERS LIMITED
AND IN THE MATTER OF THE COMPANIES ACTS 1963-1982

JUDGMENT delivered by O'Hanlon, J., the 27th April 1983

Stephen Rabbette, as petitioning creditor, seeks an order in these proceedings for the compulsory winding-up of Pageboy Couriers Limited. He claims that the company is indebted to him in the sum of £5,000 for director's fees which it has failed to pay after demand duly made, and that it is unable to pay its debts.

The application is hotly contested by the Company, which disputes the entitlement of the Petitioner to the amount claimed by him or to any amount in respect of director's fees, and further denies the allegation that it is unable to pay its debts.

Proceedings were commenced by Mr. Rabbette by Summary Summons in the month of June, 1982, claiming payment of the amount he alleged was due to him by the Company, and an Appearance was entered to the proceedings at the beginning of July, 1982. A letter seeking

particulars of the claim was sent on the 20th July, 1982, in which the Plaintiff was asked to state when and by whom it was agreed that he should receive director's fees at the rate of £2,500 per annum. A reply was not received to that request for particulars until the present month, when, by letter dated the 8th April, 1983, the Petitioner's solicitors stated that their client's claim arose on foot of an oral agreement "made between our client and the managing director of Contactaphone Ltd., Donough O'Connor, in or about June 1980. This was later confirmed by the said Mr. O'Connor, our client, and Mr. Timothy Childs in or about January, 1981." (The company, Contactaphone Ltd., to which reference was made is a company holding a controlling interest in Pageboy Couriers Ltd.).

The Company say that no agreement to pay such fees, or any director's fees to the Petitioner was made at any general meeting of the Company or by any person having authority to bind the Company in this respect. It further contends that on the Petitioner's own statement of the terms of agreement he was only to receive such fees if and when the Company was making substantial profits, and that this situation has not arisen.

The Petitioner allowed the civil proceedings instituted by him in June 1982 to lie dormant after receiving the said notice for particulars of his claim and has not prosecuted them at any time since. Instead, he has brought the present Petition to wind up the Company in reliance upon the same claim which has at all times been disputed by the Company on the grounds already mentioned.

Mr. Cooke, for the Company, argued that proceedings to wind up a company should not be brought where the person claiming as petitioning creditor is well aware that the company has a substantial and reasonable defence to the claim which it wishes to plead, and on which it proposes to rely to defeat the entire claim brought against it. He relied, inter alia, on the decision of the English Court of Appeal in Stonegate Securities Limited .v. Gregory, (1980) 1 AER 241 where Buckley L.J., said, (at p. 243 of the report):-

"If the company in good faith and on substantial grounds disputes any liability in respect of the alleged debt, the petition will be dismissed or, if the matter is brought before a court before the petition is issued, its presentation will in normal circumstances be restrained. That is because a winding-up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed.

Ungoed-Thomas, J., put the matter thus in Mann .v. Goldstein, (1968) 2 AER 769 at 775:

'For my part, I would prefer to rest the jurisdiction directly on the comparatively simple proposition that a

'creditor's petition can only be presented by a creditor, that the winding-up jurisdiction is not for the purpose of deciding a disputed debt (that is, disputed on substantial and not insubstantial grounds) since, until a creditor is established as a creditor he is not entitled to present the petition and has no locus standi in the companies' court: and that, therefore, to invoke the winding-up jurisdiction when the debt is disputed (that is, on substantial grounds) or after it has become clear that it is so disputed is an abuse of the process of the court.'"

Having adopted that passage in its entirety, Buckley, L.J.,

concluded:-

"In my opinion a petition founded upon a debt which is disputed in good faith and on substantial grounds is demurrable for the reason that the petitioner is not a creditor of the company within the meaning of s. 224 (1) at all, and the question whether he is or is not a creditor of the company is not appropriate for adjudication in winding-up proceedings."

I accept the principles there enunciated as being applicable also when considering the propriety of proceeding by way of Petition for the winding-up of a company under the provisions of our own Companies Acts and when these principles are applied to the facts of the present case I am of opinion that Mr. Cooke's submission against the Petition is well-founded. The Petitioner's claim for director's fees has at all times been disputed by the Company since he first starte

proceedings for recovery of same almost a year ago, and without in any way attempting to prejudge the outcome of those proceedings it can be fairly stated that the claim appears to have been disputed in good faith and on substantial grounds.

Neither was I convinced by the evidence placed before the Court at the hearing of the Petition that the Company has been shown to be insolvent and unable to pay its debts. It is not without significance that the Revenue Commissioners, whose claim against the Company far exceeds that of any other claimant, have decided to adopt a neutral stance in relation to the Petition. If the evidence clearly indicated a condition of insolvency one would have expected them to lend their whole-hearted support to the Petition.

In these circumstances I propose to dismiss the present Petition for the winding-up of the company.

Approved.
R. J. O'Hanlon
 R.J. O'Hanlon
 27th April 1983

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NOTE:

Counsel for the Petitioner:-

Peter Kelly, B.L. (instructed by

Counsel for the Company:-

John Cooke, S.C. (with him

instructed by Dockrell, Shields and Farrell, solicitors.

Cases cited:-

Re Gold Hill Mines, (1882) 23 Ch D 210

Stonegate Securities Ltd. v. Gregory, (1980) 1 AER 241