Corporate
Case Law Update
Rosling King LLP

In Sebry v Companies House and another [2015], the High Court held that the Registrar of Companies owes a duty of care when entering information about a company on the Companies Register.

Background

The claim was brought by Mr Sebry who was the managing director of a company known as Taylor and Sons Limited (the "Company"). The Company had suffered a loss due to Companies House incorrectly registering the Company as being in liquidation when it was not.

On 28 January 2009, a winding up order was made against a company called Taylor and Son Limited ("TSL"). Despite its similar name ("Taylor and Son Limited" as opposed to "Taylor and Sons Limited"), TSL was unrelated to the Company. The company number of TSL did not appear on the winding up order or in any covering letter sent to Companies House by the Official Receiver of TSL for registration.

In error, the winding up order was registered by Companies House against the Company, rather than TSL.

Though Companies House corrected the error shortly after its discovery, the correction did not fully rectify the position. A number of people had seen that the Company was registered as being in liquidation and this fact was spread by word of mouth. Furthermore, Companies House had not corrected the position in its subscription updates - the Daily Directory Update, the Daily Liquidation Update and the Time Critical Daily Update - whose customers included credit reference agencies Experian, Dun & Bradstreet and Equifax. As a result, many of the creditors and suppliers of the Company acted on the reported liquidation without themselves ever seeing the original entry at Companies House.

Due to the loss in confidence in the Company by creditors and other parties, the Company went into Administration on 9 April 2009. The Administrators assigned the Company's cause of action against the Registrar of Companies and Companies House (the "Defendants") to Mr Sebry who stepped into the shoes of the Company and brought a claim for the losses suffered by the Company as a result of the actions of Companies House.

The Decision

It was conceded by the Defendants that had Companies House's internal policy been followed, the winding up order would have been rejected until sufficient information had been supplied by the Official Receiver, including the number of the company against which the winding up order had been made. On the facts, the Court found that "… the reason why the Company went into administration in April 2009 was the error made by the Defendants".

Having considered the issue of causation, the Court turned to the question of whether a common law duty of care was owed by the Defendants. The court referred to the approach outlined by Lord Bingham in Customs & Excise v Barclays Bank plc [2006] in making this assessment. It considered the following questions, in sequence:

(1) whether there had been an assumption of responsibility by the Defendants;

(2) whether the three stage test in Caparo Industries v. Dickman [1990] could be satisfied; and

(3) whether any duty is sustainable by analogy with other decided cases so as to represent an incremental development of the law.

With regards to the first limb of the approach laid down in Customs & Excise, the Court found that there was a "… relationship between the Company and Companies House… which was a 'special one'", giving rise to the finding that responsibility had been assumed by the Defendants.

The Court then considered whether a duty of care had arisen by reference to Caparo. Having considered the evidence before it, the Court noted that the relevant limbs to the test were proximity and whether it was fair, just and reasonable to impose a duty. The Court found, on the facts, that there was "… no proper ground in this case on which to conclude that it would not be fair, just and reasonable to impose a duty to avoid foreseeable harm to a sufficiently proximate victim". The Caparo test was therefore satisfied.

Finally, the Court drew analogy to the decision in Ministry of Housing and Local Government v Sharp [1970], finding that this decision would support the conclusion that a duty of care was owed by the Defendants and that this decision could be relied upon, having been rightly decided at the highest level on more than one occasion.

The Court was satisfied that a duty of care was owed by the Defendants when registering a winding up order against a company.

Commentary

Though the Defendants were found to owe a duty of care to ensure that a winding up order is not registered against the wrong company, the Court noted that this finding "… does not impose a duty to verify information supplied by a third party such as an Insolvency Practitioner, but only to ensure that the information is accurately recorded on the Register".

It remains to be seen whether the Defendants will appeal this decision; nevertheless, it is likely to lead to a far greater degree of scrutiny of applications submitted to Companies House for registration. It may also lead to an increase in fees payable to Companies House as the Registrar moves to cover off further liabilities arising under similar circumstances.

All documentation lodged at Companies House should be checked carefully to ensure it is completed correctly. The decision of the High Court illustrates the potentially disastrous consequences which can ensue from an act of carelessness. Errors discovered on the Register should be notified to Companies House as soon as possible.

For further information, please contact James Walton or the Partner with whom you usually

deal.