

Neutral Citation No. [2016] NICH 3

Ref: **BUR9869**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **01/02/2016**

2015/109742

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION (COMPANIES)
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**IN THE MATTER OF THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989
IN THE MATTER OF FERNHILL PROPERTIES (NI) LIMITED
(IN ADMINISTRATION)
IN THE MATTER OF COLLEGE COURT CENTRAL MANAGEMENT
COMPANY LIMITED**

BETWEEN:

ANDREW DOLLIVER

and

**JOSEPH LUKE CHARLETON
AS JOINT ADMIISTRATORS OF FERNHILL PROPERTIES (NI) LIMITED**

Plaintiffs

and

**GARETH GRAHAM
(AS A FORMER DIRECTOR OF COLLEGE COURT CENTRAL MANAGEMENT
COMPANY LIMITED) and ADAM DICKSON (AS A FORMER DIRECTOR OF
COLLEGE COURT CENTRAL MANAGEMENT COMPANY LIMITED)**

Defendants

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BURGESS J

[1] By summons dated 19 November 2015, the plaintiffs sought determination of a number of questions relating to the appointment of a Sonia Millar as a director of the above management company pursuant to a resolution at a general meeting of the management company held on 2 November 2015 at the Wellington Park Hotel,

Malone Road, Belfast. Further reliefs were sought by way of an injunction preventing the defendants from interfering with the operation and management of the company and seeking documentation in relation to its affairs to be delivered up to Ms Millar.

[2] Whilst long and detailed affidavits have been filed in this matter, and whilst the court had the benefit of skeleton arguments and representations at the hearing, I believe that the question for the court to determine can in fact be expressed in very simple terms, namely:

“Was an envelope enclosing the Notice issued on behalf of the plaintiffs convening the meeting of the company to give effect to the above resolutions, left at the desk in the reception area of premises at ‘Oyster House’, 12 Wellington Place, Belfast, BT1 6GE”.

[3] That address had been given by the then directors of the company in its returns to the Companies Office Registry. In the event the company occupied only part of the premises at Oyster House, but this specific part of the premises was not in any way designated to the Registry. I am therefore satisfied that if I were to find that the envelope was left at the front desk of the premises, then it would be validly served.

[4] While stated in short form, it is quite clear that there has been, and continues to be, a high level of antipathy between the parties in this case, with the view of the directors of the company (and indeed others within the group of which the company forms part) believing that both the appointment and the carrying out of the duties of the administrators were unnecessary, had not been validly exercised and that many of the grounds for seeking to replace them as directors with Ms Millar were spurious.

[5] Nevertheless, the task of this court is to set all of this personal antipathy to one side save where it may inform the weight that the court can place on the averments of any party – that is whether or not the representations may be coloured by the objectives and views of the maker of those averments.

[6] However, in this case the envelope in question was delivered by a Mr Gordon Horner who is employed by a firm which provides a delivery service. This firm and Mr Horner have no connection with any of the parties, and nothing has been shown to me that would in any way allow me to believe that he was other than a person simply going about his day to day duties.

[7] I surmise that the plaintiffs foreseeing some potential difficulty being raised as to any step in relation to the affairs of the company if they or any of their employees or representatives were to be involved in any part of the procedure, including the delivery of the notice, decided to use a delivery service.

[8] There is a level of agreement as to the actions of Mr Horner on that day. There is no dispute:

- (a) that he attended at Oyster House:
- (b) that he spoke to the person at the front desk who advised that he could not accept the letter; and
- (c) that a representative of the company came to the front desk and gave Mr Horner similar advice – that he could not accept the letter.

[9] I also determine, beyond a reasonable doubt, that Mr Horner then sought instructions as to what he should do in the very difficult situation in which he found himself. I am satisfied that he returned to give effect to those instructions, which were to leave the envelope at the front desk. Given that it was addressed specifically to the directors of the company at Oyster House, I believe that he had every reasonable expectation that in leaving it there it would arrive at its final destination. In addition, I am entirely satisfied that the representative who came to the desk would have brought it to the attention of others in the company that an attempt had been made to deliver an envelope.

[10] The decision for the court is whether on the balance of probabilities, Mr Horner came back into the building and, as he said he did, left the envelope at the front desk. As I have stated, Mr Horner has “no axe to grind” in this matter. He has no interest, personal or otherwise, in the outcome of these proceedings. He is someone who was employed to deliver an envelope, who went through the various steps about which there is agreement and then continues to say that on instructions he returned and left it at the front desk. I am satisfied beyond any reasonable doubt, that that is exactly what he did and if the envelope did not arrive at its final destination it was the result of action or inaction in relation to it after it had been left at the front desk. It appears he may well have placed it with other correspondence at the front desk as a result of, and again there is no dispute about this, other post which had been delivered by Royal Mail around that time.

[11] Therefore the answer to this question is that the notice was served in accordance with the provisions of the legislation, the course of action adopted by the plaintiffs as to the procedures to be followed in relation to the calling of the meeting.

[12] Therefore I determine that the envelope containing the Notice convening the meeting was left at the front desk, and that in doing so it complied with the provisions of the Companies Order given that the address of the premises was in the general terms to which I have referred, with no specificity as to which part of Oyster House represented the registered office of the company. If it had, then delivery would have been required not to the front desk but to that particular part of the building so identified. This was in the hands of the directors of the company but they chose not to do so. That was their choice. In addition an instruction to a member of staff to accept receipt of an envelope, which is what Mr Horner attempted to do, would have averted this whole dispute.