



Recent development of Cypriot caselaw regarding the service of court documents of a company in administration

A significant decision was issued recently by the Cyprus Supreme Court, which clarifies and resolves, for the first time, the ambiguity that existed on who has the power to represent a company that is under administration. The decision concerned the civil appeal no. E349/2016 “Aqua Sol Hotels Public Company Ltd v. Piraeus Bank (Cyprus) Ltd”.

Specifically, it was clarified that in order for the receiver or administrator to be considered to have been informed about an action against a company in administration, the action must be served either to the company’s representative (i.e. the receiver or administrator thereof) or to the company’s registered office, and not to any director of the board of directors.

First Instance Judgment

- i) In action no. 1352/2015, Piraeus Bank (Cyprus) Ltd, as plaintiff, filed an action against the company in administration, Aqua Sol Hotels Public Company Ltd, which was served to one of the directors of the latter's board of directors.

- ii) The company in administration failed to file a memorandum of appearance in the said action which resulted in a ruling in absentia against them by the Court.
- iii) In the said judgment, upon the instructions of the board of directors of the company in administration, an application to set aside the judgment was filed, which was rejected by the Court.
- iv) The administrator/receiver of the company in administration, who was informed about the judgment in absentia, after its issuance, proceeded on behalf of the company in administration to the filing of an application to set aside the said judgment, citing as a ground the obligation of the plaintiff to serve the action either to himself, as the administrator/receiver of the defendant company in administration and its sole representative, or to the company's registered office, and not to the members of its board of directors.

The first instance Court rejected the application to set aside the judgment, on the ground that the service of the action to a director of the board of directors of the company in administration does not imply a lack of knowledge of the procedure by the administrator/receiver.

Supreme Court – Court of Appeal Judgment

The correctness of the first instance judgment to the full extent thereof was challenged by an appeal to the Supreme Court on behalf of the administrator/receiver, on the ground, inter alia, that as the appellant company was under administration during the material time, its administrator/receiver was its sole representative, i.e. the only responsible person who could represent the company in the action, and therefore, he was the only person to whom the action should be served. On the said appeal, the Supreme Court ruled that:

- i) The administrator/receiver, upon his appointment because of a floating charge bond over all of the assets of the company in administration, receives under his control those assets. As expected, this will result in the diminishment of the power of action over the assets of the company by itself and/or its directors, so that in essence, the directors of the company do not have, after such an appointment, any control over its commercial activity.
- ii) The action, which was filed against the company in management and directly affected its property, directly and exclusively concerned the representative, administrator/receiver thereof. Therefore, the Bank/respondent should have served the action to the administrator/receiver of the appellant company in administration or to the registered office of the latter and not to one of the directors thereof.

- iii) In light of the above, the Supreme Court decided to set aside the first instance judgment, due to the failure of the respondents to serve the action to the administrator/receiver or the registered office of the company, which resulted in the lack of knowledge of the procedure by the administrator/receiver, as an act suffering from a fundamental defect, without further ado, as a debt owed to justice.

Summary

This decision is extremely important for the Cypriot legal order since with its issuance, a precedent was created which will act as guide for future proceedings before the courts of first instance. Ultimately, the Supreme Court clarified and resolved for the first time, the ambiguity that existed regarding who has the power to represent a company that is under administration in the initiation of legal proceedings and/or the defence in judicial proceedings, i.e. the administrator/receiver of the company and not the board of directors thereof.

Our law firm, Hadjianastassiou, Ioannides LLC, represented the administrator/receiver of the appellant company in the appeal no. E349/2016 between Messrs. Aqua Sol Hotels Public Company Ltd v. Piraeus Bank (Cyprus) Ltd.

The original decision can be found at this [link](#).

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