



Shareholder Disputes

Blackrock Hospital Limited v Sheehan & others

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Shareholder disputes are often a common and unavoidable part of the commercial world and can arise in a variety of circumstances. If these disputes are not dealt with in the right manner, they have the potential to damage relationships between shareholders and disrupt efficient decision making within the company. This was recently evidenced in [Blackrock Hospital Limited v Sheehan and others](#) [2017] IEHC 387, when a dispute arose between the shareholders of Blackrock Hospital and the court was asked to construe certain provisions of the shareholders agreement.

Issue

Blackrock Hospital Limited (“BHL”), the owner of the premises known as the Blackrock Clinic, asked the court to determine whether, having regard to the Shareholders’ Agreement dated 28 March 2006 (“the Agreement”) and the provisions of BHL’s constitution, BHL and each of the respondents must execute a deed of adherence before BHL could proceed to register a family transfer of shares. This question was posed in the context of two transfers. BHL’s view was that the Agreement required that deeds of adherence for the two proposed transfers had to be executed by all parties, but certain of the shareholders disagreed and asserted that only the transferee was required to execute the deeds of adherence.

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The court also addressed the question as to whether there is a legal obligation on all the parties to execute a deed of adherence in respect of a valid family transfer.

The dispute centered on the wording used in clause 8.4 of the Agreement and the Schedule to which it referred. While the wording of the clause specified that the transferee must sign the deed of adherence (and there was no express provision that it be signed by any other party), it was clear from the Schedule that it envisaged the shareholders and other parties to the Agreement also signing it.

Principles of Interpretation

The court, as a primary means of interpretation, sought to establish what the intent of the parties was based on the wording of the Agreement. The court referred to MacKechnie J in the Supreme Court decision of *Marlan Holmes Ltd v Walsh and another* [2012] IESC 23 to the effect that when parties to a contract have committed their responsibilities in written form, the court must assume they intended to give effect to their obligations in that way.

The court also noted that where the words within a contract are ambiguous, that ambiguity will be resolved by applying the interpretation which would produce a more commercially reasonable result, relying on Lord Reid in *L Schuler AG v Wickman Machine Tools Sales* [1974] AC 235 and more recently Lord Clarke in *Rainy Sky v Kookmin Bank* [2011] 1 WLR 2900.

Decision

The court held that when the clauses were construed alongside one another, the clear intention of the parties to the agreement was that the deed of adherence should be executed not only by the transferee, but by all the parties to the Agreement. This ensured that the transferee enjoyed both the benefits and the burdens deriving from the Agreement. In addition, the court found that there was no conflict between the wording of clause 8.4 of the Agreement and the Schedule and the maxim *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other) had no application, or alternatively must yield to the broader principles of interpretation which require the court to ascertain the intention of the parties from the words they use and from consideration of the entire agreement.

The court ultimately concluded that BHL and each of the respondents had a legal obligation under the Agreement to execute a deed of adherence in respect of a valid family transfer of shares.

Conclusion

This case highlights the importance of having a shareholders agreement in place in the first instance. Anticipating and providing for disputes in a shareholders agreement (or in a company's constitutional document) can save a great deal of time, money and damage. In addition, even where the provisions in these agreements are explicit and precise, disputes can arise. The courts, in such circumstances will seek to interpret the provisions of the agreement using the ordinary rules

of contract law, i.e. by reference to the real intention of the parties or if that is not clear with a construction most consistent with business common sense.

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