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Liquidator refused access to Google email account by High Court

by **Jill Callanan**

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SJK Wholesale Limited (In Liquidation) v Companies Act 2014 [2020] IEHC 196

Introduction

In a recent decision, the Irish High Court refused to grant a liquidator access to a Google email account.

The court ruled that Irish insolvency law did not permit a court to order Google Ireland to grant the liquidator access to the email account in circumstances where the email account was created in the name of an individual rather than the company itself.

The decision is of interest to liquidators in two respects. First, it establishes the limits of a liquidator's entitlement to certain information in respect of a company over the course of a liquidation. Second, it demonstrates how courts are continuing to give significant weight to privacy rights of individuals in light of GDPR.

Application for access to email account

The decision concerned an application brought on behalf of the liquidator, appointed over a car dealership company (SJK Wholeslale Limited) against Google Ireland. The liquidator sought access to a 'gmail' email account, the contents of which the liquidator alleged contained certain financial information of the company. Google Ireland refused to comply with the liquidator's request for access to this email account as the account had been opened in the name of an individual (albeit one of the directors of the company) rather than the company itself. As the email account belonged to an individual, Google Ireland argued that there was a lack of a valid legal basis in Irish insolvency law that would permit it to grant the liquidator access to the account without the consent of the individual who created the account.

The liquidator sought an order from the High Court obliging Google Ireland to grant him access to the email account by virtue of provisions of the Companies Act 2014 (sections 596 and 627). These provisions set out the liquidator's right to possess certain financial information of the company (section 596) and any and all property in the possession of the company (section 627).

The liquidator's argument was that although not expressly stated in the Companies Act 2014, the implication of these provisions (considered separately or in conjunction with each other) was that **any** person or entity in possession of such documents was obliged to hand over such material to the liquidator. It was argued on behalf of the liquidator that the effect of these provisions was that any privacy rights enjoyed by the account holder of the email account were inferior to the liquidator's right to receive financial information in respect of the company in liquidation.

The decision

Ultimately the court refused to grant the relief sought by the liquidator. It held that it lacked the appropriate legal basis to make the order in the terms sought by the liquidator. Crucially the court was of the view it lacked the necessary power to order that **any** person or company in possession of financial information of

the company in liquidation was obliged to hand it over to the liquidator.

This was because another provision of the Companies Act 2014 (section 673) specifically identified five categories of persons that were obliged to deliver such information to the liquidator (a contributor, trustee, banker, receiver or agent). The court held that as the legislator had limited the delivery to the liquidator of such information to those persons, it lacked the power to hold that Google Ireland, which does not fall into any of those categories, was obliged to deliver such possession to the liquidator.

Conclusion

The decision suggests that whilst liquidators enjoy powers to access certain company records under the Companies Act 2014, that those powers are not unlimited. Close attention to the corporate insolvency provisions of the Companies Act 2014 must be considered to determine the extent of those powers, particularly if the exercise of those powers impacts on the rights of other individuals.

The team at LK Shields has extensive experience in advising liquidators, companies entering liquidation and creditors of companies in liquidation. If you require further information please contact Jill Callanan (jcallanan@lkshields.ie) or Redmond Arigho (rarigho@lkshields.ie).

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