

Neutral Citation Number: [2020] EWHC 231 (Ch)

Case No: CR-2020-000317

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY & COMPANIES LIST (ChD)**

7 Rolls Building  
Fetter Lane, London  
EC4A 1NL

Date: 7 February 2020

**Before:**

**MR JUSTICE ZACAROLI**

**IN THE MATTER OF STATEBOURNE (CRYOGENIC) LIMITED**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Written submissions received from **Womble Bond Dickinson (UK) LLP Solicitors** for the  
**Directors of Statebourne (Cryogenic) Limited**

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**APPROVED JUDGMENT**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

MR JUSTICE ZACAROLI

**Mr Justice Zacaroli:**

1. The solicitors for the directors of the company, Statebourne (Cryogenic) Limited (the “Company”) filed a notice of intention to appoint administrators, pursuant to Rule 3.23 of the Insolvency Rules 2016 on 17 January 2020. The notice was filed by CE-file. It was headed “Business and Property Courts in Newcastle” but, for some reason was processed by the Business and Property Courts staff in London. It was endorsed as having been filed at 11:20 on 17 January 2020.
2. On 31 January 2020, at 14:54 the directors’ solicitors attempted to file a notice of appointment of administrators of the Company by CE-file under Rule 3.24. This notice was also headed “Business and Property Courts in Newcastle”. At 16:36 the directors’ solicitors received an email from the court in the following terms:

“This is a notice to inform you that the filings ... submitted on 31-01-2020 02:54 PM, have been rejected by the Clerk for the following reason (2): Other. Clerk’s comments: Please NOTE that your application has been headed with the incorrect court name, so please check and amend accordingly.”.
3. It appears that the notice of appointment was automatically directed to the Business and Property Court in London (which, notwithstanding that the notice of intention to appoint had been headed in the name of the Business and Property Court in Newcastle, had been the court that had processed that earlier notice).
4. On receipt of that email from the court, the directors’ solicitors sought to file a further notice of appointment of administrators by CE-file, headed “Business and Property Courts of England and Wales” at 17:26 on 31 January 2020. That was endorsed by the court staff as having been filed at 10:00 on 3 February 2020 (it having been filed outside court hours on the Friday, and therefore processed by court staff only on the Monday morning).
5. This matter has been referred to me by the administrative staff at the court, pursuant to practice in relation to out-of-hours appointments of administrators which was announced by The Chancellor on 30 January 2020. That practice is designed to ensure that in a case of an out-of-hours filing by CE-file in the future (at least until a rule change is made which clarifies the position), a High Court Judge will make a determination on the papers or after hearing submissions as to the validity and correct date and time which should be endorsed upon the notice of appointment of administrators.

6. I have had the benefit of a very recent judgment of Snowden J in *Carter More Solicitors Limited* [2020] EWHC 186 (Ch) in which a similar (but not identical) issue arose. In that case, the directors of a company had sought to file a notice of appointment within court hours but had inadvertently selected the wrong “drop-down-box” on CE-file. Snowden J first noted that there had been full compliance with the requirements of Schedule B1 of the Insolvency Act and rule 3.24 of the Insolvency Rules when the notice of appointment was originally filed, as there is no requirement in either Schedule B1 or rule 3.24 that the filing of a notice of appointment of administrators should identify that the notice relates to an existing case. In those circumstances, he concluded that the defect could be waived pursuant to the CPR. At [13] to [15] of his judgment, he said:

“13. The requirement to identify whether a CE-filing relates to an existing case or a new case derives from CPR PD 51O (the Electronic Working Pilot Scheme), paragraph 2.3(c). That requirement exists for obvious reasons. In the case of a notice of appointment of administrators, it enables the notice to be electronically filed in the same place on the system as the notice of intention to appoint in respect of the same company. It also enables the CE-system to determine the correct fee to be charged.

14. However, it seems to me that the selection of the wrong drop down box when the first filing of the NOA was made in this case can properly be regarded as a simple error of procedure made whilst using the CE-filing system. As such, it is potentially curable by the court using the power in CPR PD 51O paragraph 5.3. The relevant parts of that paragraph provide,

“(1) Submission of any document using Electronic Working will generate an automated notification acknowledging that the document has been submitted and is being reviewed by the Court prior to being accepted (the “Acceptance”).

(2) The court may make an order to remedy an error of procedure made while using Electronic Working, in accordance with CPR 3.10(b). When the court makes such an order, a document filing will not fail Acceptance because of the error of procedure made.”

15. CPR 3.10(b) provides, “Where there has been an error of procedure such as a failure to comply with a rule or practice direction ....

(b) the court may make an order to remedy the error.”

7. In my judgment, the same solution, for similar reasons, applies in this case. There is no requirement in Schedule B1 or Rule 3.24 that the notice of appointment must specify a particular court centre within the Business and Property Courts. Assuming (without deciding) that the CE-filing of the notice of appointment at 14:54 on 31 January 2020 was defective, by reason of the notice being headed in the Newcastle Business and Property Court, I am satisfied that it constitutes an error of procedure which can be waived pursuant to CPR 3.10(b). Accordingly, I have directed that the notice of appointment is to be treated as having been filed at 14:54 on 31 January 2020 and that it is to be endorsed as filed and accepted by the Court at that date and time.
8. There is, however, a further potential defect raised by this application, arising from the fact that the notice of intention to appoint was filed on 17 January 2020 and the notice of appointment was dated and filed on 31 January 2020. Paragraph 28(2) of Schedule B1 provides that an appointment may not be made “after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1)”.
9. The filing of the notice of appointment on 31 January 2020 would be within the ten-day period required by Paragraph 28(2) only if the period began the day after the date on which the notice of intention to appoint administrators was filed.
10. In *Re Keyworker Homes (North West) Limited* [2019] EWHC 3499 (Ch), HHJ Hodge QC determined that Paragraph 28(2) was to be construed “expansively” so that it required ten clear business days, that period beginning on the first working day after the date on which the notice of intention to appoint was filed.
11. I have difficulty with that construction of Paragraph 28(2), given that it expressly states that the period begins on the date on which the notice of intention to appoint is filed. HHJ Hodge QC relied on two earlier authorities.
12. In the first of them, *Euromaster Ltd* [2012] EWHC 2356 (Ch), Norris J held that non-compliance with the requirement to file within a ten-day period, while being an irregularity, did not cause the appointment to be a nullity that incurably invalidated the appointment.
13. In the second of them, *JCAM Commercial Ltd v Davis Haulage Ltd* [2017] EWCA Civ 267, the Court of Appeal concluded that in order to give a notice of intention to appoint an administration under paragraph 26 of Schedule B1 to the Insolvency Act 1986, the person giving notice had to propose or intend unconditionally to make such an appointment.

14. In neither case was there any decision concerning the interpretation of the time period required by Rule 28(2). I do not consider that either of the decisions supports the interpretation of that Rule favoured by HHJ Hodge. In light of the express wording of the Rule, I conclude that the period of ten days commences on the date on which the notice of intention to appoint is filed with the court. Accordingly, the notice of appointment in this case, even though treated as filed and accepted as filed on 31 January 2020, was a day out of time.
  
15. Nevertheless, I am satisfied, for the reasons identified by Norris J in *Re Keyworker Homes* that such a defect is an irregularity, within Rule 12.64 of the Insolvency Rules 2016. Moreover, it has not caused substantial injustice. It is a defect, therefore, which does not invalidate the administration proceedings. For that reason I have made an order that, notwithstanding that the notice of appointment was filed one day after the expiry of the time period provided by paragraph 28(2) of Schedule B1 to the Insolvency Act 1986, the Administrators are validly in office and shall continue to be so. I have also made an order that pursuant to paragraph 104 of Schedule B1 to the Insolvency Act 1986 no prior act of the Administrators shall be invalidated by reason of that defect.