

Group Briefing

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Can a director or member of a company represent the company in court?

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

Can a director or member of a company represent the company in court? No, except in exceptional circumstances.

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Unlike natural persons, who can represent themselves as litigants in person, directors or members of a company who are not qualified lawyers do not enjoy a right of audience in court and therefore cannot represent the company. This is so even where the company is a single member company or has only one director.

This rule is commonly referred to as the 'rule in Battle' as it was laid down in a 1969 case, *Battle v Irish Art Promotion Centre Limited*. The Supreme Court reaffirmed the rule recently in *Allied Irish Bank plc v Aqua Fresh Fish Limited*, dismissing the argument that it is unconstitutional.

RIGHTS OF AUDIENCE

Only three categories of people have a right of audience in court: (1) parties to the proceedings; (2) their solicitors; and (3) counsel briefed by a solicitor. This limitation on the right of audience is deemed necessary for the effective administration of justice and in the public interest.

Natural persons may appear before a court in person or may be represented

by a solicitor or barrister. They cannot, however, be represented by a third party who is not a qualified lawyer.

By contrast, a company is an artificial person with a separate legal personality from its shareholders, directors and management. On incorporation, the members discard their own personae for the personae of the company so that they can avail of the many advantages which incorporation has to offer. But in doing so, they give up the right of audience which they would have had as individuals. As an artificial person, the company cannot represent itself, and nor can it speak through a representative of some kind. It can only be represented by a qualified lawyer.

This means that if a company does not instruct lawyers, it cannot, except in exceptional circumstances, pursue or defend a claim in court. The courts are regularly confronted with cases where there are simply no funds to provide for legal representation. In these circumstances, the only viable option is for members of the company to personally put the company in funds. Though, as has previously been

acknowledged by the courts, this is “far from ideal”, it represents the current law.

LIMITED STATUTORY EXCEPTION

The Companies Act 2014 provides for a very limited exception to this rule. Where a company is charged with an indictable offence, it may appoint a representative to appear on its behalf before the court.

EXCEPTIONAL CIRCUMSTANCES

Separately, the court may allow a person who is not a lawyer to represent a company in “exceptional circumstances”. While the Supreme Court has not given any guidance as to what might be considered to be an ‘exceptional circumstance’, it has stated that the following do not of themselves meet the threshold:

- » lack of funds to instruct lawyers;
- » having a good arguable defence to the legal proceedings;
- » the fact that the business conducted by the company is supposedly unique; or

- » the fact that the person seeking to represent the company is the principal shareholder and director of the company.

In considering whether to make an exception, the court will look at the nature of the claim, the type of proceedings and whether what is sought is a right to represent the company at hearing only (by means of oral and written submissions) or to effectively represent the company as the ‘solicitor on record’ both pre-trial and at hearing. In the latter case, the court will have regard to the fact that the absence of a qualified solicitor may make the pre-trial part of the proceedings more difficult and costly for the other party.

The court may also look at whether or not the person seeking to represent the company is themselves a party to the proceedings or someone who may be joined to the proceedings. If so, they will be able to make all arguments and adduce all evidence relevant to the issues before the court, which may include arguments and evidence for the benefit of the company.

A MATTER OF COURTESY

Occasionally, the court may allow a lay person to appear on behalf of a company as a “matter of courtesy” or “in the interests of justice”. For example, though a director or member of a company is not entitled as a matter of law to represent the company at the hearing of a winding up petition, the courts have previously listened to the views of a director or member to avoid any injustice.

IMPLICATIONS

Where possible, all companies defending litigation before the Irish courts should retain legal representation. Except in exceptional circumstances or as a matter of courtesy, companies in civil litigation cannot be represented by a director, secretary, shareholder or other officer of the company. Without legal representation, a claim against a company will go undefended, putting the company at a significant risk.

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