

[1980–87 Gib LR 291]

**IN THE MATTER OF INTERNATIONAL INVESTMENTS  
LIMITED (IN LIQUIDATION)**

SUPREME COURT (Alcantara, A.J.): April 10th, 1985

*Companies—liquidators—remuneration—provisional liquidators—court to fix remuneration if necessary to calculate on basis other than commission or percentage—may award lump sum payment on basis of results obtained, taking account of quantity and complexity of work—inappropriate to calculate on basis of time*

The liquidator of a company applied to the court to fix the remuneration payable to his predecessor, the provisional liquidator, in respect of services rendered by him in the liquidation process.

The company's operations and assets were frozen and a petition filed for its winding up. R was appointed by the court as provisional liquidator and was, on multiple occasions, authorized by the court to incur costs and expenses in the liquidation process. After three months, G was appointed as official liquidator. The question arose as to the correct amount of remuneration which should be paid to R in respect of the three months in which he had acted as provisional liquidator.

G submitted that (a) remuneration by percentage or commission of the money recovered would not be appropriate because the work completed by R had been of considerable complexity, in that it had been necessary for him to trace assets which were not held in the name of the company; and (b) this was therefore an exceptional case in which the court should fix the remuneration payable to the provisional liquidator instead of the Committee of Inspection or creditors.

R submitted that (a) the remuneration to which he was entitled should be calculated according to the amount of time spent working on the liquidation and on this basis he was entitled to £38,821.46 (of which £23,601.46 has already been paid to him); and (b) this was a reasonable figure and the expenses and costs incurred were *bona fide* and in the best interests of the company and its creditors.

**Held**, fixing the amount of remuneration to which R was entitled:

In the exercise of its ultimate power to fix remuneration, the court determined that the fair amount payable to R would be a lump sum of £10,000. The figure was calculated on the basis of the results obtained by R and took account of the quantity and complexity of work completed, through consideration of the documents which had been filed in court in

respect of the liquidation, in particular the statement of affairs. It would have been unfair to R to calculate the amount of remuneration to which he was entitled according to a percentage of the amount of money realized and distributed amongst creditors as, in the present case, very little was going to be realized or distributed. He would not, therefore, be adequately compensated if his remuneration were calculated on this basis. It was also inappropriate to calculate remuneration on the basis of time as it was impossible to work out exactly how much time had legitimately been spent working on the liquidation and the value of this time. Although under both the Companies Ordinance (*cap.* 30) and the Companies (Winding-up) Rules 1929, it was common practice for either the Committee of Inspection or the creditors to fix the amount of remuneration to be paid to the liquidator, it was appropriate in this case for the court to fix remuneration, as the need for it to be fixed otherwise than on a percentage or commission basis was exceptional (paras. 10–15; para. 18).

**Cases cited:**

- (1) *Amalgamated Syndicates Ltd., In re*, [1901] 2 Ch. 181; (1901), 70 L.J. Ch. 726; 84 L.T. 864; 17 T.L.R. 486, considered.
- (2) *Carton Ltd., Re*, [1923] All E.R. Rep. 622; (1923), 128 L.T. 629; 39 T.L.R. 194, considered.

**Legislation construed:**

Companies Ordinance (Laws of Gibraltar, *cap.* 30), s.174(2): The relevant terms of this sub-section are set out at para. 7.

s.220(1): The relevant terms of this sub-section are set out at para. 7.

Companies (Winding-up) Rules 1929 (19 & 20 Geo. V, c.23), s.157: The relevant terms of this section are set out at para. 8.

*P.J. Isola* for the applicant;

*P.R. Caruana* for the provisional liquidator.

1 **ALCANTARA, A.J.:** I have before me an application by the liquidator of International Investment Ltd. for “an order fixing the remuneration to be paid to Mr. Revill as liquidator of the company up to September 24th, 1984, in such sum as to this court shall seem fit.”

2 The application is supported by an affidavit of the present liquidator, Mr. Galliano, exhibiting an account rendered by Mr. Revill amounting to £29,105 in respect of fees and some small disbursements together with a schedule of disbursements amounting to £9,716.46. By order of this court, £3,885 was paid on account. There have been two further payments since then: £9,716.46 in respect of the disbursements shown in the schedule, and £10,000 on account of fees due to the liquidator. If my mathematics are correct, there is a balance claimed to be outstanding of £15,220. In his affidavit, Mr. Galliano deposes that the work performed by Mr. Revill has been of considerable complexity and difficulty and that remuneration by

percentage or commission would not be adequate. He expresses no views on what would be adequate remuneration and does not comment on whether the claim by Mr. Revill is reasonable or not. There is also an affidavit by Mr. Revill deposing that what he is claiming is reasonable and that the expenses and disbursements were *bona fide* incurred in the best interests of the company and its creditors

3 I think that a short history of this company is called for. Mr. Isola, counsel for the applicant, informs me that this is a complex liquidation because of the tracing of assets which are not in the name of the company. There is litigation at present in Ireland and in Houston (Texas). In the end, most of the assets will be spent in professional fees. Mr. Caruana for Mr. Revill, in turn, says that this was a straightforward case of fraud and that there will be no creditors.

4 The company was an investment company which obtained a banking licence in Gibraltar in 1983. It received money from people who wanted their money invested, I am told, to the tune of £9m. The company placed the money or investments in the name of other persons or companies outside the jurisdiction. The matter came to a head on April 6th, 1984, when, pursuant to s.53 of the Banking Ordinance (*cap.* 8), the Banking Commissioner gave directions freezing the assets and operation of the company. A petition for the winding up of the company was presented to the court on June 14th, 1984. On June 19th, 1984, Mr. Revill was appointed by the court to be the provisional liquidator and was authorized to spend £3,885 in preparing the statement of affairs, *etc.*

5 On July 3rd, 1984, the court made another order, para. 4 of which read: "That the provisional liquidator be authorized to incur all costs and expenses necessary in the proper and reasonable performance of his duties and exercise of his powers as liquidator." In that same order there was another paragraph authorizing the provisional liquidator to engage the service of a Mr. Vincent for two months, at the rate of £1,500 per month. On July 27th, 1984, the winding-up order was made and on the application of the Official Receiver, Mr. Revill was appointed liquidator with the powers and duties of the Official Receiver.

6 By order dated August 6th, 1984, the liquidator was authorized, *inter alia*, to commence legal proceedings in Ireland, the United States, the Isle of Man and the United Kingdom, and solicitors were appointed to assist him in the performance of his duties. After Mr. Revill had presented his report to the first meeting of creditors, there was some dispute and it was agreed that Mr. Galliano, the present liquidator, should be appointed in his stead. This was done by order of the court dated September 24th, 1984. In that same order the court sanctioned the appointment of the Committee of Inspection.

7 The total term of office of Mr. Revill, both as provisional liquidator and as liquidator was, from June 19th, 1984 to September 24th, 1984, just over three months. For that period of time, he is claiming a total of £38,821.46. The question posed is, can I or should I authorize payment? I have been referred by counsel to ss. 174(2) and 220(1) of the Companies Ordinance (*cap.* 30) and to r.157 of the Companies (Winding-up) Rules 1929. It would be useful to see what they say. Section 174(2) of the Companies Ordinance reads: “Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct . . .” Section 220(1) of the Companies Ordinance (*cap.* 30) is to the following effect: “The Committee of Inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.”

8 Lastly, r.157 of the Companies (Winding-up) Rules 1929, which apply to Gibraltar, is in the following terms:

“(1) The remuneration of a Liquidator, unless the Court shall otherwise order, shall be fixed by the Committee of Inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and the other put on the amount distributed in dividend.

(2) If the Board of Trade are of the opinion that the remuneration of a Liquidator as fixed by the Committee of Inspection is unnecessarily large, the Board of Trade may apply to the Court, and thereupon the court shall fix the amount of the remuneration of the Liquidator.

(3) If there is no Committee of Inspection the remuneration of the Liquidator shall, unless the Court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realizations and distributions by the Official Receiver as Liquidator.

(4) This Rule shall only apply to a liquidator appointed in a winding-up by the Court.”

9 My understanding of the law is that, generally, the remuneration of a liquidator must be fixed by the Committee of Inspection and it must be on a percentage or commission basis. The reason for this is that the Committee of Inspection is in a position to appreciate and assess the work done or to be done. Even when there is no Committee of Inspection the percentage or commission basis still applies.

10 In the case before me, there is in existence a Committee of Inspection. True, it came into existence on the same day as the liquidator was replaced, but that is no reason why they might not fix the percentage or

commission of the liquidator in the normal course of events. However, regardless of the powers of the Committee of Inspection, the court has a residuary or ultimate power to fix remuneration either by percentage or otherwise in an appropriate case.

11 Is this an appropriate case? It is appropriate in the sense that the court would be justified, because of its exceptional nature, to fix the remuneration of the liquidator otherwise than on a percentage basis. I have found a passage in *Palmer's Company Law*, 20th ed., at 750 (1959) which is very helpful. It is to be found in the chapter dealing with voluntary liquidation but I consider it to be of general application. It reads as follows:

“Where an application to the court is made for the purpose of fixing the remuneration, the court considers the circumstances of the particular case and determines what, in those circumstances, is fair remuneration to pay. The present practice, in the absence of special circumstances, is to be guided by the scale of fees fixed for the remuneration of trustees in bankruptcy. Where the company is insolvent, there is an obvious advantage in getting the court to fix the remuneration, for thereby all questions as to the propriety of the amount are avoided. Occasionally the court has ordered a meeting of creditors to be convened to consider the remuneration of the liquidator.”

12 In my opinion, the real question to be determined in the present occasion is whether any special circumstances have been proved to have existed which would render the adoption of a scale based on a percentage of realizations and distributions unfair to the former liquidator. The answer is “Yes.” Very little is going to be realized and still less distributed and the liquidator would not be adequately compensated on a percentage basis, however high the scale.

13 The liquidator, in the case before me, is claiming on what is called a time basis. 1,500 hours are being charged at various rates, from £40 per hour in respect of work done by the partners of the firm of chartered accountants, of which the liquidator is one, to £9 per hour in respect of clerical assistance. I queried the rate of the clerical assistant and I was informed that £9 per hour is not what the clerical assistant earns but the rate which accountants charge to clients in respect of work done by the clerical assistant. The figure of £9 includes not only pay but such other factors as insurance, office expenses and profit. This is what P.O. Lawrence, J. had to say in *Re Carton Ltd.* (2) in relation to the time basis ([1923] All E.R. Rep. at 627):

“Experience has shown that the time occupied by a liquidator and his clerks affords a most unreliable test by which to measure the remuneration. Even the best accountant may spend hours over unproductive work, let alone his more or less efficient staff of clerks.

Moreover, it is quite impossible to check charges based on such a system and to gauge the value of odd hours said to have been spent on the affairs of the company. The court has long since come to the conclusion that the proper method to adopt, whenever it is practicable, is to assess the remuneration according to the results attained.”

14 In *In re Amalgamated Syndicates Ltd.* (1), it was held that the court would not sanction an alleged practice of accountants to charge for all letters written, irrespective of their character, as having taken half an hour of the principal’s time (charged for at a certain rate) in the preparation.

15 In assessing the remuneration to the liquidator, I do not intend to follow the time basis. I also consider it unreliable. I will come to my own conclusion as to what is “fair remuneration” by looking at all the documents filed in court, particularly the statement of affairs and bearing in mind the work that had to be done. In other words “assess the remuneration according to results obtained.” This means awarding a lump sum. Let me say at once that I am not overjoyed in adopting this course, which I only do as I am satisfied that a percentage would be inadequate, and a time basis unreliable. The safer course would be to order that the question of remuneration should be considered by a meeting of creditors. Having read what transpired at the meeting of creditors, however, I think that the best course, in the circumstances, is for me to fix the sum to be paid. There are decided cases where liquidators have been remunerated by a lump sum.

16 At para. 5 of his affidavit, Mr. Revill deposes as follows: “The said Schedule of expenses is an accurate statement of expenses and disbursements incurred by me in the *bona fide* discharge of my duties as liquidator and in the best interest of the company and its creditors.”

17 Only the question of remuneration is before me for adjudication. Expenses and disbursements are not in issue in the present proceedings. In fact, they have been paid already by the present liquidator apart from a small amount of £577. By remaining silent I do not want to be taken as approving all expenses and disbursements. As I have said, the matter is not before me. I am neither approving nor disapproving them. All I need say is that I note that over £6,000 was spent in going to Dublin and Houston. Liquidators in future should be well advised to seek prior authority from the court, or at least approval at a meeting of creditors or the consent of the Committee of Inspection before undertaking expenses of such an extraordinary nature. It might well be that there may have been potent and compelling reasons in this case for such expense.

18 I have come to the conclusion that the fair remuneration to Mr. Revill in this case is the sum of £10,000 for three months’ work, taking into account the complexity and amount of the work. In fact, £10,000 has