

SUPREME CT.

IN RE GUAR. PERM. BLDG. SOC.

[1988–90 Gib LR 165]

**IN THE MATTER OF THE GUARANTEED PERMANENT
BUILDING SOCIETY**

SUPREME COURT (Alcantara, A.J.): May 23rd, 1989

Building Societies—liquidators—powers and duties—application for directions—serving summons on Registrar of Building Societies seeking directions from court on Registrar of Building Societies helpful for court—enables court to obtain their assistance and that of Treasury Solicitor—Registrar’s decision not to attend proceedings may lead court to infer indifference towards granting of direction sought

Companies—liquidators—legal advice—payment of fees of liquidators’ solicitor implicit in solicitor’s appointment—not necessary for all solicitors’ bills to be taxed before payment, but Registrar in Bankruptcy to consider reasonableness of charges first—non-reasonable charges to be taxed by Taxing Master before payment

Companies—liquidators—powers and duties—application for directions—serving summons seeking directions from court on Official Receiver helpful for court—enables court to obtain their assistance and that of Treasury Solicitor—Official Receiver’s decision not to attend proceedings may lead court to infer indifference towards granting of direction sought

Companies—liquidators—resignation—no formal order confirming liquidator’s resignation necessary—liquidator has power to resign under Companies Ordinance, s.174(1)

Companies—liquidators—remuneration—court may order payment on time-spent basis when usual percentage basis produces unsatisfactory result—remuneration by lump sum (ideally to be fixed at time of liquidator’s appointment) preferred

The applicant sought the directions of the court in relation to the removal of a liquidator, and the payment of liquidators’ and solicitors’ fees.

The Registrar of Building Societies ordered the dissolution and winding up of the Society in May 1983, and appointed the applicant and B as joint liquidators, and Messrs. Triay & Triay as solicitors for the liquidators. The

applicant's co-liquidator wrote an undated letter to the Registrar, resigning his position.

The applicant submitted that orders should be made (a) confirming that B had ceased to be a liquidator; (b) that Triay & Triay's fees, being reasonable, should be paid out of the capital of the Society, and determining whether or not the fee note needed to be taxed; (c) that the liquidators should be remunerated on the basis of time spent on the liquidation and that their fee should be approved; and (d) that they should be remunerated on a time-spent basis for future work carried out.

Held, making the orders requested:

(1) While there was no need to make a formal order confirming B's removal as liquidator, as the Companies Ordinance, s.174(1), when read in conjunction with the Building Societies Ordinance, s.23(2), meant that his resignation had been effective, an order confirming that he had ceased to act as a liquidator would be made; it appeared that there was no need for the court to appoint a replacement (paras. 4–6).

(2) It was implicit in the appointment of a solicitor to the liquidators that his fees would be paid; no order was necessary for that. It was not necessary for all solicitors' bills or charges to be taxed before being paid by liquidators; the Registrar in Bankruptcy, however, was to consider whether solicitors' charges for assisting with liquidations were reasonable. If they were not, the solicitors would have to have their bill taxed by the Taxing Master before it could be paid. In the present case, the fee note was reasonable given the work done by the solicitors: the order sought authorizing the payment would therefore be made (paras. 8–11).

(3) While the primary method of assessing liquidators' remuneration was as a percentage of the amounts involved, this might well lead to an unsatisfactory result. Remuneration on the basis of time spent had been approved as a method of calculation for difficult cases by the Court of Appeal, and accordingly would be used here, both for the outstanding amount of £8,446.76 and for future charges. It would be helpful if the basis of liquidators' remuneration were to be fixed at the time of their appointment, the determination of a lump sum being the most straightforward way of doing this (paras. 14–15).

(4) The practice of serving a summons asking for directions on the Registrar of Building Societies (for the winding up of building societies) or on the Official Receiver (for the winding up of companies) was to be commended. It enabled the court to gain the assistance not only of the Registrar or the Official Receiver (as appropriate), but also that of the Treasury Solicitor, who might be appointed in all but the most straightforward cases. The Registrar's declining to attend the present hearing could lead the court to infer that he neither opposed nor favoured the directions sought (para. 2).

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Case cited:

- (1) *International Invs. Ltd., In re*, Supreme Ct., Case No. 1984 I No. 94, April 3rd, 1985; on appeal, C.A., Civil App. No. 4 of 1985, October 10th, 1985, unreported, applied.

Legislation construed:

Building Societies Ordinance (1984 Edition), s.23(2): The relevant terms of this sub-section are set out at para. 4.

s.24(2): "If . . . it appears that the society is unable to meet the claims of its members and that it would be for their benefit that it should be dissolved the registrar may, if he considers it expedient so to do, order that the society be dissolved, and shall direct in what manner the affairs of the society are to be wound up . . ."

Companies Ordinance (1984 Edition), s.174(1): The relevant terms of this sub-section are set out at para. 4.

s.174(2): The relevant terms of this sub-section are set out at para. 12.

Companies (Winding-Up) Rules 1929 (S.R. & O. 1929, No. 612), r.192(2): "No payment in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 54, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the Company without proof that the same have been considered and allowed by the Registrar . . ."

P.R. Caruana for the applicant;

The Registrar did not appear and was not represented.

1 **ALCANTARA, A.J.:** The applicant is Mr. Richard Hooper, the remaining liquidator of the Guaranteed Permanent Building Society. On May 12th, 1983, the Registrar of Building Societies, pursuant to s.24 of the Building Societies Ordinance, ordered that the Guaranteed Permanent Building Society be dissolved and wound up under the supervision of the court pursuant to the provisions of the Companies Ordinance. The Registrar in that same order appointed Mr. Richard Hooper and Mr. Brian Beckett as liquidators, and Messrs. Triay & Triay as the solicitors for the liquidators.

2 The present application seeks directions from the court on a number of points. Counsel for the applicant has taken a very wise course. He has served the summons now before me on the Registrar of Building Societies. I commend this practice not only in the case of building societies (which are few and far between) but also in the case of companies which are in the process of being wound up. In this latter case the Official Receiver (not just the person appointed to do the work of the Official Receiver) should be served. The Official Receiver or the Registrar might

consider adopting the practice of being represented in chambers by the Treasury Solicitor (Crown Counsel in Gibraltar) in all applications, except very simple and straightforward ones, whether they oppose the application or not. The assistance of the Treasury Solicitor can be invaluable to the judge in making the right order.

3 In the present application, there is a letter on record dated April 28th, 1989 from the Registrar addressed to the solicitors stating: “I thank you for your letter of April 26th, 1989 with enclosed summons and confirm that I do not intend to attend at the hearing.” The inference that I draw from that communication is that the Registrar is not opposed to the directions sought, but neither is he necessarily in favour of them. He is leaving it to the court to do the correct thing without expressing any view on what the correct thing is or should be.

4 The first direction that the liquidator seeks is that Mr. Brian Beckett be formally removed as a joint liquidator of the Society. I do not think that there is a need to make a formal order, as the Companies Ordinance, s.174(1) states that “a liquidator appointed by the court may resign . . .” Although Mr. Beckett was appointed by the Registrar and not by the court, the above sub-section is applicable pursuant to s.23(2) of the Building Societies Ordinance, which reads:

“ . . . [T]he enactments and rules for the time being in force for the winding-up of companies registered under the Companies Ordinance shall apply to the winding-up of a society under this Ordinance as if such society were a company within the meaning of that Ordinance.”

5 Mr. Beckett in fact resigned as joint liquidator by letter to the Registrar of Building Societies. That letter has been exhibited, but is undated. I have not been given a date for when this took place, but my impression is that it happened some time ago.

6 I am prepared to make a formal order that Mr. Beckett has ceased to be a joint liquidator. I have no application made by either the liquidator—Richard Hooper—or the Registrar of Building Societies before me for another joint liquidator to be appointed in his place. It appears that there is no need.

7 The second direction that the applicant seeks reads as follows: “That the fees of Messrs. Triay & Triay, solicitors for the liquidators, be paid out of the assets of the Society in the sum of their fee note dated October 3rd, 1988.”

8 Obviously, if solicitors are appointed to help and advise the liquidator, the liquidator is bound to pay their legal fees and expenses; no court order is necessary for that. It is implicit in the appointment. The solicitors’ fee note referred to above amounts to £1,850.

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9 Mr. Caruana for the applicant raises a point of some practical interest: must all bills or charges of solicitors irrespective of importance or amount be taxed before the liquidator can pay the solicitors? Counsel has referred me to r.192(2) of the Companies (Winding-Up) Rules 1929, which applies to Gibraltar. This sub-rule does not make easy reading, but this is how I read it, in respect of the issue now before me: "No payments in respect of bills or charges of solicitors . . . shall be allowed out of the assets of the Company without proof that the same have been considered and allowed by the Registrar." The sub-rule does not say "taxed by the Taxing Master," but "considered and allowed by the Registrar." The Registrar, according to r.2 of the Rules, is the Registrar in Bankruptcy.

10 I have formed the opinion that what is required is that the Registrar should consider, without taxing, whether the fees or charges are generally reasonable, requiring, if need be, such information as he deems fit. If he were to come to the conclusion that the amount were exorbitant or out of line, he would not allow the fees or charges. The solicitors in such a case would have to have their bill taxed before the Taxing Master before it could be paid. It is not for me to tell the Registrar how he should proceed on his consideration. In this respect, I am quite sure that he is more experienced and better qualified than me.

11 Strictly speaking, I should give a direction that the fee note of the solicitors be submitted to the Registrar for his consideration but, having been given the details of the work performed, it appears to me that the sum of £1,850 is not exorbitant or unreasonable. In the circumstances, I am prepared on this occasion to make the order sought and to authorize the payment.

12 The third direction sought reads as follows:

"That, pursuant to s.174(2) of the Companies Ordinance, the remuneration of the joint liquidators be fixed by reference to time spent on the liquidation and that their fee in the sum of £8,446.76 to June 30th, 1987 be approved for payment."

Section 174(2) 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 . . ."

13 In *In re International Invs. Ltd.* (1), I came to the conclusion that the primary form of remuneration should be on a percentage basis, rather than on a time-spent basis, but because the special facts of that case I assessed remuneration according to results. The liquidator was claiming £29,105, and I awarded £10,000. The liquidator appealed. The appeal was allowed and this is what the Court of Appeal had to say:

"We think it is quite clear that a percentage basis would be totally inappropriate in the circumstances of this case. The amount claimed

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in the fee note seems very high but we accept that the liquidator's task was an exceptional one. We think there is no other way in which we can fairly and properly assess the fee.”

14 In the present case a percentage basis is also inappropriate. The time-spent basis has now the approval of the Gibraltar Court of Appeal for difficult cases. This is a difficult case. I am bound by the Court of Appeal. The answer to the third direction is that the remuneration can be fixed on a time-spent basis. The payment of £8,446.76 is approved.

15 Finally, insofar as the fourth direction sought is concerned, as to the future, the answer has already been given: remuneration on a time-spent basis is proper in this particular case insofar as the liquidator is concerned. The solicitors are to charge their usual legal fees and charges, which they might have to justify if taxation were to be ordered.

16 There is just one more thing that I would like to say, and that is that it would help that if at the time of appointing a liquidator the basis of his remuneration were also fixed. Apart from a percentage (which no one wants) there is time-spent basis, result basis or a lump sum. The latter is my preference for ordinary cases.

Order accordingly.
