



**THE COURT OF APPEAL
CIVIL**

**Unapproved
No Redactions Needed**

Neutral Citation No. [2024] IECA 58

Court of Appeal Record No. 2022/226

High Court Record No. 2016/2326S

**Whelan J.
Haughton J.
Pilkington J.**

BETWEEN/

**MARGARET BEST AND CARMEL BEST (AS JOINT COMMITTEE OF THE
PERSON AND THE ESTATE OF KENNETH BEST, A WARD)**

**PLAINTIFFS/
RESPONDENTS**

- AND -

**PRAMIT GHOSE, NIALL JOSEPH TINNEY, PATRICK THOMAS FINNEGAN,
PETER ALPHONSUS COSTIGAN, PATRICK DEMPSEY, RAYMOND DEASY,
TADHG FRANCIS GUNNELL, ANGUS MCDONNELL, DAVID HARLOWE,
MARTIN HARTE, AIDAN SHEERIN, ARTHUR QUINLAN, JOHN MARTIN
MAGUIRE, ANNE BARRETT, LEGACY INVESTMENT HOLDINGS LIMITED,
TOGETHER FORMERLY TRADING AS BLOXHAM STOCKBROKERS
PARTNERSHIP, BLOXHAM STOCKBROKERS PARTNERSHIP (IN
LIQUIDATION) AND NORTHERN TRUST (IRELAND) LIMITED**

DEFENDANTS

- AND -

PRAMIT GHOSE

**FIRST DEFENDANT/
APPELLANT**

JUDGMENT of Ms. Justice Pilkington delivered on the 13th day of March 2024

Introduction

1. This is an appeal by Mr Ghose (“Mr Ghose” or “the appellant”) in respect of a portion of a costs judgment (styled a Costs Ruling) of Baker J. delivered on 5 August 2022 (‘the costs ruling’)¹ and its Order of the same date (perfected 9 August 2022).
2. The costs ruling arises on foot of two previous judgments; the first on 27 June 2018² (‘the 2018 principal judgment’), with its Order dated 16 October 2018 and a supplemental judgment, delivered on 9 June 2020³ (‘the 2020 judgment’).
3. The fact that this is an appeal against a portion of a costs ruling belies the complexities that arise and the issues that underlie its adjudication.

Background

4. Mr Best was made a ward of court by Order of the President of the High Court on 14 June 1993, following proceedings instituted on his behalf against the manufacturer of a vaccine he had received as a baby, and a significant sum was paid into court in settlement of these proceedings (‘the Fund’). His mother and subsequently his sister were appointed his committee on 14 June 1993 and 9 December 2005 respectively. I will refer to the respondents collectively as ‘the Committee’ or ‘the respondents’.
5. In or around July 2002 the Fund was transferred to Bank of Ireland Security Services and its assets were managed by Bloxham Stockbrokers Partnership (‘Bloxham’). The transfer was authorised by the President of the High Court on 25 July 2001. The 2018 principal judgment

¹ [2022] IEHC 507

² [2018] IEHC 376

³ [2020] IEHC 355

records (at para. 33) that Bloxham managed the Fund until May 2012, when it was directed to cease trading by the Central Bank. Bloxham was subsequently wound up by order of the High Court⁴, and Mr Wallace appointed its liquidator. Thereafter the Bloxham accounts were moved to J&E Davy Stockbrokers ('Davys').

6. This litigation commenced by way of a summary summons issued on 1 December 2016.⁵ The matter then came before Baker J. on foot of a Notice of Motion issued on 1 March 2017 in which the relevant relief sought⁶ was:

“(a) an order that the first to tenth and twelfth to sixteenth defendants account to the plaintiffs for their dealing with the Fund and provide the plaintiffs with all supporting documentation for the account.”

7. The consideration of this issue forms the basis of the 2018 principal judgment. Without anticipating matters yet to be discussed, it is common case that the core of this appeal begins after delivery of the 2018 principal judgment. Its primary focus relates to the Court's award of costs in respect of litigation that took place after its delivery, which comprise six hearings ('directions hearings'), which took place on 25 July 2018, 16 October 2018, 13 December 2018, 7 February 2019, 4 April 2019 and 10 May 2019⁷. These in turn culminated in the 2020 judgment.

8. Whilst the costs ruling itself deals with the costs of all the proceedings within this application, it is that specific clause which deals with the costs to be awarded after the delivery of the 2018 judgment and up to the delivery of the 2020 judgment that is at issue in this appeal.

⁴ Order of Cross J. on 31 May 2012

⁵ Authorised by Order of the President of the High Court on 7 November 2016.

⁶ Paras 4 & 5 of the 2018 principal judgment

⁷ Transcripts of each have been furnished.

9. It therefore follows that this is not an appeal in respect of the 2018 principal judgment, the various directions hearings or the 2020 judgment, but an analysis of them is necessary so as to properly understand the costs ruling. In short it is necessary, in order to understand the costs ruling, to consider the judgments and applications that underpin it.

The 2018 Principal Judgment

10. The 2018 principal judgment sets out the background to the litigation. As set out above, this judgment solely considers the single relief sought by the Committee, being an order for the taking of an account in respect of the Fund.

11. The judgment records that, in respect of this application;

- (a) Mrs Best swore a grounding and supplemental affidavit, an affidavit in support of her application was sworn by David Croft, a financial expert retained by the Committee.
- (b) Mr Ghose, the first named defendant swore two affidavits and he was cross examined⁸.
- (c) In respect of the remaining defendants, Baker J. confirmed that the first to fourteenth formed the Bloxham Stockbrokers Partnership and the judgment further records at para. 11 that affidavits were sworn on behalf of the third, eight, ninth, tenth, twelfth, thirteenth and fourteenth defendants.
- (d) Paras. 6 and 7 record that no orders were sought against the eleventh named defendant, Aidan Sheridan, or against the seventeenth and final defendant, Northern Trust (Ireland) Ltd.

⁸ Pursuant to a notice to cross examine, it appears he was the only party who gave oral evidence.

12. Because the Committee sought the taking of an account as an actionable right in itself as opposed to an ancillary relief to a substantive action, the Court held that the plaintiffs must initially establish such an entitlement (para. 39).

13. Based upon a comprehensive analysis of the relevant case law and on the facts of this case, Baker J, found such an entitlement arose where the defendant owes a fiduciary relationship to the plaintiffs and is obliged to account by virtue of that relationship⁹

14. In considering the nature of the fiduciary relationship between Bloxham and the Committee¹⁰, the court concluded at para. 69:

“I am of the view that Bloxham undertook the management of the Fund in circumstances which imported a duty to act with loyalty, and whilst Bloxham was entitled to be paid commission and other management charges on the agreed basis, it could not act in its own commercial interests. The management contract contained sufficient elements of a fiduciary nature to import a duty to account.”

15. After considering an argument by counsel for Mr Ghose as to whether the fact of managing an account gives rise to a fiduciary relationship between the manager¹¹ of the Fund and the beneficiary, Baker J. stated at para. 74:

“It seems to me, therefore, not to be necessary to determine whether Bloxham is to be described as a fiduciary in the absolute sense or whether, for the purposes of the present application, the arrangement entered into with Bloxham imported an obligation of

⁹ The Court considered *Aforge Finance v HSBC Institutional Trusts* [2010] 2 IR 688, para. 15 and *Chaine-Nickson v Bank of Ireland* [1976] IR 393. See also McGhee, *Snell’s Equity* (33rd ed. Sweet & Maxwell) at paras 20-012 and 20-015

¹⁰ The Court focused upon a number of cases including *IBRC Ltd v Morrissey* [2013] IEHC 208 (paras. 54-56, 63) and *In Re Money Markets International Ltd* [2000] 3 IR 437 @ 447- 448 (para. 57)

¹¹ Para. 72

confidence and trust importing in turn an obligation to explain or account the exercise of the discretionary power. I am satisfied on the evidence that Bloxham did have an obligation to explain and account for the exercise of its discretionary investment and management powers, and that the contractual relationship does import a sufficient degree of confidence or trust to constitute the management obligation as being fiduciary in nature.”

16. Baker J. confirmed at para. 80 *“the obligation on Bloxham derives from the nature of the contract by which Bloxham was engaged to administer the fund with the interests of Mr. Best in mind”*.

17. Following her conclusion that Bloxham *“are obliged to give an account of the dealings with the capital and income of the Fund, and that the details would, if necessary, be supported by relevant documentation and be sufficiently intelligible and clear to provide an explanation as to the movement on the account”* (para. 96), the Court went on to consider the nature of the accounting information which had already been furnished.

18. It was apparent to the Court that the Registrar of the Wards of Court office and possibly the Accountant of the Courts of Justice held additional documentation which the Court directed should now be furnished to the Committee. At para. 30 of her judgment Baker J. noted Mr Ghose’s oral evidence that reports *“may have been sent”* to the Office of the Wards of Court but he did not know if they were sent on a regular or consistent manner. The Committee contended that no such reports were received. Mr Ghose also gave evidence that he did not know what happened to the Bloxham computerised data after its liquidation. It transpired that the liquidator Mr Wallace held 504 boxes of documentation from Bloxham.

19. At para. 128 the court held:

“I consider in summary that the following is the position:

- (a) there exists an obligation on the defendants, subject only to what I say below regarding the role to be played by some of the defendants, to furnish a full record of transactions in the form of an account or narrative;*
- (b) the documents available at the hearing of the application before me are prima facie not complete;*
- (c) the plaintiffs, with their advisors, are to be permitted to inspect the 504 boxes of documents held by Mr. Wallace;*
- (d) the President of the High Court is to be asked for further directions regarding the documents held by the Registry of the Office of the Wards of Court and/or the Accountant of the Courts of Justice or other relevant office;*
- (e) Mr. Croft¹² is to further analyse and inspect the documents now available and can then offer further assistance with regard to the adequacy of the records for his purpose.”*

20. Baker J. then considered whether the liquidator had a duty to account. She was satisfied, in essence, that he did not and at para. 116 states that there is *“no basis on which I can import any obligation on Mr. Wallace whether it be as agent or trustee or as fiduciary on behalf of the Fund”*. She also noted that Mr Wallace only held the documentation for a period of some ten days, between his appointment as provisional liquidator and the documents being forwarded to Davys.

¹² The financial expert retained by the Committee

21. The court then went on to separately consider the position of Bloxham, the partners comprising the first to fourteenth defendants, in some detail (paras. 121 to 131). Her summary of their position is set out in para. 132 to 141 and 143 and in my view, in light of the issues that arise within this appeal, it requires to be set out in full:

“132. The plaintiffs argue that, notwithstanding some of the defendants had never had any involvement with the management of the files, they can still be held liable to furnish an account. Bloxham traded as a limited partnership and is governed by the Partnership Act 1890 ('the 1890 Act') and the 1907 Act. The plaintiffs rely on s. 5 of the 1907 Act to the effect that every partner is an agent of the firm, s. 6, by which every act or instrument relating to the business of the firm binds the firm and all partners, s. 9, by which every partner is liable jointly and with other partners severally for all debts and obligations the firm incurred while he is a partner.

133. It is argued in those circumstances that the fact that certain defendants have retired from the firm does not relieve them of any obligation that accrued during their currency as partners.

134. Section 17(2) of the 1890 Act provides as follows:

'A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.'

135. I accept that in principle, as a matter of statute, the retired partners may have a continuing obligation in respect of matters that arose during their partnership. Their retirement does not extinguish that obligation.

136. However, a practical problem presents itself in that some of the retired partners never had any involvement in the Fund and can offer no assistance. They might technically have an obligation in other classes of action, but for the purposes of the present application, which is concerned solely with the question of the giving of an

account, I am satisfied only those persons who could arguably have information or access to information and documents, or be in a position to explain other documentation, can be held liable to account.

137. I am further satisfied that, having regard to the discretionary nature of the remedy, the position of the first defendant who was the managing partner at the relevant times must be distinguished from that of partners who retired in the currency of the Bloxham management of the Fund, and also from those persons who continued to be partners but who had no involvement with the Fund.

138. The exercise of discretion to refuse the relief is compelling in the case of retired partners whose evidence is that they have no relevant information and no means of obtaining that relevant information has not been controverted.

139. I accept the argument by counsel on behalf of the eighth defendant that he has nothing to offer and by the solicitor who acts for Ms. Barrett, the fourteenth defendant, that she had no involvement whatsoever with the relevant division in Bloxham.

140. I accept also the argument made by counsel on behalf of the ninth and thirteenth defendants, who are retired, that are not now in a position to explain the documentation furnished, albeit both that ninth and thirteenth defendants could at some point, and depending on the outcome of this stage of the process, be called upon only if necessary to fulfil a gap in an explanation.

141. I accept also the argument by counsel on behalf of the limited partner, the fifteenth defendant, that it could not have any liability to account having regard to its limited statutory powers of management.

.....

143. I propose in the circumstances making orders against the first named defendant only, and will hear counsel with regard to the correct approach to the other defendants.”

From the delivery of the 2018 Principal Judgment to its Order on 16 October 2018

Directions hearings on 25 July 2018 and 16 October 2018

22. As set out above Baker J. stated that she would hear counsel as to the position of those other defendants. Those matters were discussed within the first two directions hearings on 25 July 2018 and 16 October 2018 respectively.

23. The transcript of these two directions hearings discloses that Baker J. heard submissions from the plaintiff, the first named defendant Mr Ghose and also on behalf of the third, eighth, the ninth to thirteenth (who had joint representation) and the fourteenth named defendants. Of the defendants, all bar Mr Ghose were in essence seeking Orders to the effect that the proceedings be struck out against them and sought costs. In respect of any application for their respective costs Baker J. was very clear (see p.47 lines 6-12 of the transcript of 16 October 2018) that *‘the costs of all parties be reserved to a date to be fixed and it won’t be the next time we’re in court’*. At p 51 of the transcript of 16 October 2018 Baker J. stated that she anticipated that the second to sixteenth named defendants *‘shouldn’t attend on the next occasion’*.

24. There was also a discussion as to the time to be afforded to Mr Croft in his ongoing examination of the documentation.

25. Arising from these two directions hearings the Order in respect of the 2018 principal judgment dated 16 October 2018 (perfected 18 October) then issued.

The Court Order dated 16 October 2018 arising from the 2018 Principal Judgment

26. The pertinent portions of the Order are as follows;

“IT IS ORDERED that the matter against the First Named Defendant be adjourned to the listing of the proceedings.....:

“AND IT IS ORDERED the proceedings against the second to fourteenth defendants inclusive be struck out and it is further ordered that, should the First Named Defendant be ordered to account to the Plaintiffs hereafter, the Plaintiffs shall have liberty to apply to re-enter the proceedings as against the Second to Fourteenth Named Defendants or any of them, only if necessary, and for the limited of purpose of calling upon them or any of them to fill a gap in the explanation of any documentation forming part of such account. AND IT IS ORDERED that the issue of costs as between the Plaintiffs and Kieran Wallace be reserved and that either party may have liberty to apply for an application in respect of costs”

The Order concludes:

“AND IT IS ORDERED that the matter of costs and expenses of the documentary review exercise and the matter of costs between the Plaintiff and the Defendants be adjourned to a date to be specified by the Court”.

27. The Order also refused the granting of reliefs against the fifteenth named defendant and dismissed the claim against the sixteenth named defendant. It also set out the representation at

the initial hearings in December 2017 and on the two subsequent directions hearings of 25 July and 16 October 2018 on behalf of the plaintiff and the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth, thirteenth, fourteenth, fifteenth and sixteenth named defendants.

Remaining Directions Hearings prior to the 2020 Judgment

Directions Hearing on 13 December 2018

28. At the outset the court was informed by the Committee, that whilst Mr Croft had been examining the documentation held by the liquidator, he only had actual accounts from Bloxham for the years 2002 and 2003. Accordingly, they sought accounts from 1 January 2004 to 5 June 2012 which appears to be the date when the Bloxham account was transferred to Davys.

29. It appears that both Mr Croft for the Committee and Mr Kirby¹³ had furnished reports to the Court. Mr Kirby considered there was sufficient documentation available to create an account. Mr Croft, on the other hand, points to certain deficiencies within this documentation.

30. The Committee submitted (p. 9 & 10 of the transcript) that Mr Ghose who was the managing partner of Bloxham at the operative time had an innate knowledge of the partnership's systems and by virtue of his own expertise would be the ideal person to compile such a report.

¹³ The papers disclose that Mr Ghose had retained an expert Mr Miles Kirby to assist him

31. On more than one occasion, Counsel for Mr Ghose expressed his client's attitude to the ongoing proceedings and their associated costs, which he expresses in the following terms (p. 22 of the transcript):

“My client has always made it absolutely clear, and the court has been furnished with a book of correspondence in which this is evident, that he is willing to assist in whatever way he can. He has made that commitment consistently and without condition. That's the first point I wish to make.”

And at page 24;

“..... My client's primary concern, and I have made no bones about this, is the issue of the costs of these proceedings.....”

32. Counsel for Mr Ghose pointed to paras. 96 and 128 of the Court's 2018 principal judgment where the Court clearly found the obligation to account is the obligation of the Bloxham defendants and not one unique or personal to Mr Ghose. At p.32 of the transcript counsel for Mr Ghose reiterates that if any Order is to be made against his client that it is made in his representative capacity. Baker J. noted the point but said that she would hold over consideration of this issue until other matters had been further considered and thereafter adjourned the hearing.

Directions Hearing on 7 February 2019

33. This application opens with an explanation that it had been listed at the behest of Mr Ghose, who had now in fact prepared an account which is headed *“Account of the Management of the Wards of Court (Kenneth Best) portfolio by Bloxham”* and signed by him in his capacity of former managing partner of Bloxham and dated 25 January 2019 (‘the Ghose report’). It was also accepted by all that Mr Ghose had undertaken this task without reference to any

specific Court Order that he should do so. He stated that he had done so on foot of submissions advanced on behalf of the Committee (see para. 30 above) that he was ideally placed to compile it and he again stressed that he had done so in a representative capacity.

34. Counsel for the Committee required time for Mr Croft, to consider the report and specifically its adequacy. Again, the Committee raised the issue as to who was to pay the costs of compiling the account. Baker J. indicated that she would reflect further on this aspect of the matter and adjourned the hearing.

Directions Hearing on 4 April 2019

35. On this occasion the Court had been furnished with two updated reports from Mr Croft and Mr Kirby. The Committee had two concerns; that certain portions of Mr Ghose's account required to be redacted (an issue they raised belatedly) and that it was not an adequate account. On both points, the adequacy of the Ghose report and the issue of redactions, the matter was adjourned, in the hope that an accommodation might be reached. Again within the transcript (at p.17) Mr Ghose's counsel stresses that Mr Ghose appears in a representative capacity as a representative of the Bloxham partnership. The matter was then adjourned to 10 May 2019.

Directions Hearing on 10 May 2019

36. This is the final directions hearing prior to the 2020 judgment. Its purpose was essentially to consider the two outstanding issues; redactions and primarily the adequacy of the Ghose report. It is apparent that the issues concerning redactions had been resolved but it is clear that this is the first directions hearing where the Court had been furnished with the Ghose report. That left the question of the adequacy of the report.

37. At p. 10 of the transcript Baker J. stated:

“Mr. Ghose has taken it upon himself, and I am using that carefully now, because I am aware from Mr. Jeffers¹⁴ that there are reasons for this. But he has taken it upon himself as an expert and he has to be respected as that, and as somebody who would know the lie of the land generally within Bloxhams and how they manage and what their accounts system looks like. He has taken it upon himself to prepare this document and what role he had in Bloxhams pre-liquidation may or may not be relevant...”

38. Counsel for Mr Ghose submitted that he has done all that can reasonably be expected of him. Counsel for the committee was more circumspect. Again, concern was expressed on behalf of Mr Ghose described as the *“last defendant standing”* (p.46) and also emphasising that he has standing in a representative capacity for the other partners within Bloxham. Counsel for Mr Ghose then goes on to point out that he has now appeared before the court on his own *“in that capacity”* on six occasions since the 2018 principal judgment was delivered and that he has retained solicitors, counsel and a financial expert and has reviewed extensive documentation relating to the fund arising from which he prepared a detailed account, which he maintains satisfied the requirements set out within the 2018 principal judgment. The Court noted these submissions and reserved its judgment, which it then delivered in June 2020.

The 2020 judgment (9 June 2020).

39. Baker J. succinctly states at para. 1 that the question for her determination is:

“whether the defendants have adequately met the obligation identified in the judgment that an account be given of the management of the funds of Kenneth Best, a ward of the

¹⁴ Counsel for Mr Ghose

High Court, and on whose behalf the defendants were entrusted with the management of funds lodged in the High Court”.

40. At para. 5 Baker J. stated;

“For the reasons set out in the principal judgment the proceedings against the second to fifteenth defendants were struck out. The first defendant, at the relevant time managing partner of Bloxham Stockbrokers Partnership (‘Bloxham’), acts as representative/defendant and in his personal capacity”.

This paragraph was emphasised and relied upon by Mr Ghose within this appeal.

41. Baker J. initially sets out her conclusions within the 2018 principal judgment (para. 6). She also set out the steps that have been taken since its delivery and highlights the volume of documentation that has been furnished¹⁵.

42. In considering the Ghose report Baker J. noted¹⁶ that Mr Ghose, with his significant experience and knowledge of the ward’s portfolio, had taken it upon himself without any express direction of the court, to prepare a report dated January 2019. In examining this report she took the view that clear regular transaction statements had not been provided to the Committee, and that Mr Ghose has essentially reassembled the information and had now provided a summary valuation of the Fund. The question for the court was whether the Ghose report was, in light of the 2018 principal judgment, sufficient¹⁷.

¹⁵ Paragraph 9

¹⁶ Paragraph 18

¹⁷ Baker J. had also confirmed that owing to the question of redactions, a copy of the Ghose Report, upon which both parties agreed, had not been furnished to the Court until the final directions hearing on 10 May 2019.

43. The Court then considered the reports produced by Mr Croft and Mr Kirby, and their respective comments on the Ghose report. In essence, with some reservation Mr Croft appeared to accept that the documentation could form the basis of preparing an account but had suggested in his report that the report of Mr Ghose would not inform a “lay man” as to how the fund is performing¹⁸. The Court took issue with his assumption or conclusion that this was the appropriate criteria with which to assess it. The Court then records Mr Kirby’s view that the Ghose report is accurate and sufficient for all professional purposes¹⁹.

44. Baker J. accepted, on the basis of the evidence available to her, that no regular or periodic reports or statements were provided by Bloxham to either the Committee or the Office of the Wards of Court since 2007²⁰.

45. At para. 41 Baker J. considered that the common sense approach, which she had advocated within her 2018 principal judgment, should be maintained and that there was now little to be gained by making of any further Order for the preparation of further reports on the basis that such an exercise would be expensive as it appeared that the documentation now available was sufficient to meet the obligations identified within the 2018 principal judgment. Accordingly, she stated:

“... I am satisfied that no further order should be made that the albeit incomplete documentation now to hand as supplemented by the narrative and reconciliation carried out by Mr. Ghose and the supporting documentation taken together amount to a sufficient compliance with the obligation that an account be provided.”

¹⁸ Paragraphs 28 and 29

¹⁹ Paragraph 33

²⁰ Paragraph 39 – this date may be an error as it appears the complaint is made from 2004.

46. That then left the question as to who was liable to pay the costs and expenses of the experts. As the Court pointed out this was not the costs of the proceedings (which is considered subsequently within the costs ruling) but *“the engagement by the experts with the voluminous documentation obtained since the principal judgment summarised above”*.²¹

47. Counsel for Mr Ghose argued that the making of an account is to be met by a beneficiary not by the person giving the account. Counsel for the Committee argued that Bloxham had breached its legal obligations in failing to provide a report and should now be obliged to discharge the expenses associated with that exercise.

48. Baker J. held at para. 50, that the absence of the furnishing of regular and complete statements by Bloxham had led to the present litigation and the efforts to assembler records and reconstruct the information regarding the transactions over 15 years was noted and:

“That was best done by experts and Mr. Ghose has offered considerable assistance by preparing a report and narrative which while not equivalent to monthly or quarterly statements offers a reasonable profile of the movements of the investments.”

49. In the following paragraph the Court held that *“the costs of engaging the experts to carry out this task are to be met by Bloxham as it is its failure that has led to the inability of the committee to understand the transactions or to have otherwise available copies of periodic statements²².”*(my emphasis)

50. In the penultimate paragraph Baker J., stated that she would hear from counsel as to the appropriate Order noting that Bloxham is insolvent and in liquidation. She then expressed the

²¹ Paragraph 42

²² Paragraph 51

Court's lack of knowledge as to whether any financial arrangements existed between Mr Ghose and the other defendants and whether any expenses were capable of been met in the form of insurance or other funding.

51. Thereafter, the Court indicated she would hear from Counsel as to the costs of proceedings.

52. There was no subsequent Court hearing on costs, rather following the 2020 judgment, the parties were informed that the Court required written submissions on this question of costs . As well as the plaintiffs, written submissions were delivered on behalf of the first, second, third, fifth, eighth, tenth, twelfth, thirteenth and sixteenth named defendants in June / July 2020²³. The costs ruling was then delivered in August 2022.

The Costs Ruling - 5 August 2022

53. Baker J. reviewed the issues and conclusions arising from the 2018 principal judgment and the 2020 judgment.

54. She took the view that the starting point for considering costs in the litigation to determine 'the event' as set out within RSC O. 99 R 1(4) that '*costs follow the event*' and as discussed by Clarke J. in *Veolia Water U.K. plc v. Finglas CC (No. 2)*²⁴ ('*Veolia Water*').

²³ The submissions from the 2nd, 3rd, 5th, 8th, 12th, 13th and 16th named Defendants are all considered within the Committee / Plaintiffs' Supplemental Submissions dated 17 July 2020.

²⁴ [2007] 2 IR 81, the Court also cited *MD v ND* [2016] 2 I.R. 438

55. Baker J. then confirmed that within her 2018 principal judgment she had sought to establish whether the relationship between the plaintiffs and Bloxham was akin to a fiduciary or trust relationship from which a duty to account might be discerned. The Court had confirmed this to be so. For this reason at paragraph 14 the Court held that the plaintiffs had succeeded and obtained an order and declaration that an account be furnished and at paragraph 15 that this was, up to that point, the determination of a single event.

56. At para. 16 after noting that, in the course of subsequent hearings, Mr Ghose had indicated his willingness to assist in whatever way he could but also noted that he maintained the defence that he did not owe an obligation to account, continued:

“.....Mr Ghose, in fact, offered considerable professional assistance in the analysis of the documentation and books after the principal judgment was delivered, and his professional skill and courtesy to the court in the course of the proceedings were of great assistance. Nonetheless the question here is liability for costs of litigation and the event giving rise to the making of a costs order against Mr. Ghose and the other defendants, and for the later parts of the case where he was the sole remaining defendant, arise in the context of adversarial litigation which he must be seen to have lost.”

57. The Court was clear that the Bloxham partners bore the burden of costs *“which includes the costs of the pleadings, submissions, and the hearing on the substantive case leading up to the delivery of the principal judgment and order...”*²⁵ (my emphasis).

58. The Court noted that within the 2018 principal judgment she had considered s.17(2) of the Partnership Act 1890 (‘the 1890 Act’) that a retired partner does not cease to be liable for

²⁵ Paragraph 18

partnership debts or obligations and may have ongoing obligations and she again recites the statutory obligations in her consideration of the position of the respective defendants²⁶.

59. At paragraph 23 in considering the position of the defendants the Court stated;

“23. Those defendants against whom the action no order was made after delivery of the principal judgment could at an early stage have either agreed some means by which Mr. Ghose would formally act as a representative defendant or could in the alternative have applied before the hearing commenced to have the action against them dismissed. While the later engagement with, and orders made, were against the first defendant only this was because he was a managing partner, and in a position, to deal with the substantive questions arising. It would have been futile at that point in time to have kept the other Bloxham partners in the case for the purpose of the exercise of examining the documents and coming to a conclusion on the defence raised by Mr. Ghose that an account had in fact already been provided.

60. At paragraph 24 she notes that as these defendants (except the fifteenth and sixteenth) *“..were as a matter of law obliged to meet the obligations to account to the plaintiffs. They must in these circumstances be responsible for the costs of the litigation.”*

61. Baker J. again referred to the fact that the Court did not have any knowledge (and, she confirmed, nor could it) of any indemnity or other issues that existed between the partners, save she noted that no notices of indemnity and contribution were served, and in such circumstances she considered that the costs of the proceedings should be borne by the defendants jointly and severally²⁷.

²⁶ See in general paragraphs 20-40

²⁷ Paragraph 22

62. At paragraph 28 Baker J. in considering the position of the other defendants stated;

“28. The fifth defendant made written submissions on the issues of costs and argues that the litigation was unduly extended and that there was “an unfortunate use of time and effort” is involved. I cannot entirely disagree with that proposition, but nonetheless the plaintiffs were found to be justified in instituting these proceedings, their entitlement to relief was contested, they did obtain the relief sought, and as a result of the subsequent hearings, a statement of account was prepared which was in the circumstances as good as could be achieved having regard to the passage of time. The order for costs reflects this and as I will explain more fully below, the costs of the subsequent hearings are to be ordered against the first defendant only.

That issue is considered from paragraphs 41 onwards of her costs ruling.

63. Within paragraph 41 Baker J. was clear that the issue of costs in respect of what she styled as the subsequent directions hearings was ‘*less straightforward*’²⁸.

64. Baker J. was satisfied that she had been required to hear evidence from the experts on behalf of both the plaintiff and the first named defendant as to the format and contents of such an account (para. 42).

65. At para. 42 Baker J. also confirmed that her 2020 judgment had found that the narrative and reconciliation carried out by Mr Ghose complied sufficiently with her Order within the 2018 principal judgment.

²⁸ Paragraph 41

66. At para. 43 the Court stated;

“43. The costs order must take account of the fact that after the principal judgment was delivered the case came on for hearing against the first defendant only on a number of occasions. The costs of those hearings on 13 December 2018, 7 February 2019, 4 April 2019 and 10 May 2019 were concerned with the adequacy of the documentation, narrative or account given and costs must lie against the first defendant only. I do not preclude by this order any possible claim by him against his former partners for indemnity or contribution, but that is not a matter before me here.” (my emphasis)

67. I note that the Court, in this quotation only cites four of the six directions hearings after the delivery of the 2018 principal judgment and states that these are the ones where costs must lie against the first named defendant only. This finding is not reflected within para. 53 of this judgment or within the Court Order, which finds that costs in all directions hearings lie against Mr Ghose . Within para. 57 above I have referred to the Court having found (para. 18 of the costs ruling) that Bloxham must bear the costs of the judgment and Order, which in my view suggests that this includes the first two directions hearings, prior to that Order in October 2018. This point is also considered below.

68. Paragraph 52 then considered Mr Ghose’s argument that the hearings on 7 February, 4 April and 10 May 2019 were unnecessary as he was ultimately vindicated as he was found to have adequately met the obligation to make an account. Baker J. disagreed as she considered that it was proper to analyse the work of Mr Ghose, particularly in light of the approach adopted by Mr Croft. However the Court did also acknowledge the work undertaken by Mr Ghose and that this should be acknowledged and reflected in any final Order of the Court.

69. The Court concluded at para. 53 as follows;

“53. The costs of the hearings leading to the delivery of the supplemental judgment are to be borne by the first defendant but must take account of the fact that Mr. Croft wrongly asserted that the obligation to account had not been met, and as the plaintiffs continued with the litigation and pressed for further statements and documents they must be seen to have added unnecessarily to the time and effort involved. To have regard to this factor, to the fact that the plaintiffs did add to the number of hearings by not seeking the 504 boxes and any documents held by the Ward of Court Office until after the principal judgment was delivered, and also to reflect the fact that the work carried out by Mr. Ghose directly relieved the plaintiffs and their expert from an even more burdensome analysis, I propose to award the plaintiffs 65% of the costs of the subsequent hearings against Mr. Ghose only.”

70. The appellant contends that this appears to be the only paragraph within this judgment where Baker J. provides any explanation or reason for the award of costs against Mr Ghose. However, references would also appear to be made at para. 43 of the costs ruling as quoted at para. 66 above.

71. At para. 55 the order for costs is set out.

“55. The net result of these deliberations therefore is the following:

(a) The plaintiffs are entitled to their legal costs up to the date of delivery of the principal judgment against all defendants except the seventh, eleventh, fifteenth, sixteenth and seventeenth defendant. The order will be on a joint and several basis. For clarity this means the costs of the pleadings, legal representation, pre-trial correspondence etc. The action was tried on affidavit and oral evidence of the first defendant and the two

*experts*²⁹. The legal costs include costs of Mr. Croft. These latter costs were an essential element of the analysis of the defence offered by the defendants to the orders sought, as the defendants had continued to argue that an account did exist and had been given from time to time. The costs against the second defendant are to be assessed on an undefended basis.

(b) 65% of the costs leading up to the delivery of the supplemental judgment on 5 June 2020 are awarded to the plaintiffs against the first defendant only, subject to the observation above.

(c) The expenses of engaging the experts to carry out the examination of the books and papers are to be met by the first defendant as provided in the supplemental judgment.

(my emphasis)

(d) Costs to be adjudicated in default of agreement.”

72. Para. 55 (c) above refers to the costs of engaging experts and so on to be met by the first named defendant ‘*as provided in the supplemental judgment*’. As set out at para. 49 above, the ‘*costs as provided in the supplemental judgment*’ (para. 51) clearly awarded these costs against Bloxham. The appellant maintains that this is incorrect and seek an Order confirming this. The respondents have confirmed they have no objection to such an Order being made.

73. The operative portions of the Court’s Order dated 5th August 2022 are as follows;

“ *IT IS ORDERED* that the plaintiff be awarded his costs up to the 27th day of June 2018 (the date of the substantive judgment) against the below Defendants on a joint and several basis.....

²⁹ Only one witness, Mr Ghose, had given oral evidence.

The Order states that the Defendants in question comprise the first, second (undefended basis only), third, fourth, fifth, sixth, eighth, tenth, twelfth, thirteenth and fourteenth named Defendants. The Order continues;

“ AND IT IS ORDERED that the Plaintiff be awarded 65% of his costs from 28th day of June 2018 to the 9th of June 2020 (the period after the substantive judgment up to the date of the supplemental judgment) against PRAMIT GHOSE the First Named Defendant”
(my emphasis).

The Order further records that there is to be no Order as to costs in respect of the seventh, eleventh, fifteenth, sixteenth and seventeenth named Defendants.

The Appeal

74. This appeal therefore considers;

- (a) the High Court’s award of costs within its costs ruling “... from 28th day of June 2018 to the 9th of June 2020 (the period after the substantive judgment up to the date of the supplemental judgment)” against Mr Ghose personally.
- (b) Within that timeframe the plaintiffs are awarded 65% of their costs, to be borne by Mr Ghose.
- (c) The appellant also seeks an Order that paragraph 55(c) of the costs ruling is incorrect and this is considered at para. 72 above. Paragraph 55 (c) of the costs ruling is incorrect as it does not reflect para. 51 of the 2020 judgment and there is a clear direction that it should do so. The appellant is entitled to an Order that the award of costs at para. 55 (c) should reflect that it is against Bloxham not ‘the first defendant’.

75. Where the appellant appeals that portion of the costs ruling where Mr Ghose is found personally liable for the costs between the 2018 principal judgment and the 2020 judgment, the respondents' position is clear that it is 'neutral' in respect of that portion of the Order under appeal.

76. The respondents however seek to maintain Baker J.'s percentage apportionment of 65% of the costs in their favour.

77. At the outset the appellant satisfied the Court as to service of his Notice of Appeal (and accompanying authorities) in respect of the, second, third, fourth, fifth, sixth, eighth, ninth, tenth, twelfth, thirteenth and fourteenth defendants. At the conclusion of the appeal representatives on behalf of two of the respondents; Mr Martin Harte and Ms Anne Barrett, the tenth and fourteenth named Defendants respectively, announced their appearances before the Court. They sought to make a submission regarding the issue of an indemnity but were informed that this did not form part of this appeal. None of the remaining parties appeared before this Court.

Submissions - Appellant

78. The appellant contends that Mr Ghose has been left with a significant personal liability. His counsel points to the fact that six hearings took place following the delivery of the 2018 principal judgment and that to award 65% of those costs is unfair and inconsistent with the earlier findings of the High Court.

79. In reviewing the background to this case, the appellant is keen to emphasise and point to Baker J.'s finding that none of the defendants acted '*in any wrongful way with regard to the management of the Fund...*'³⁰. That is accepted.

80. Counsel for the appellant makes two overall points:

- (a) that the costs of any hearings after he furnished the Ghose Report should not have been visited upon Mr Ghose at all because they were for the most part an exercise in determining whether the account furnished by him was sufficient, and;
- (b) if the Court did not err in awarding the plaintiffs the costs of the subsequent hearing, such an order should have been made against the defendants jointly and severally, (except for the 15th and 16th named defendants). The appellant points to the clear finding of the Court that the obligation to account to the plaintiffs lay with Bloxham and that it follows that they must in turn bear responsibility or liability for the costs of the litigation.

81. Within these submissions the appellant points to those portions within the judgments and directions hearings in support of his appeal. The respondents of course do likewise.

82. The appellant maintains that he has been singled out solely on the basis of his being managing partner of the firm at the time of the liquidation and for some but not all of the period when the ward's fund was under the management of Bloxham³¹. Within the 2018 principal judgment at paras. 126 and 129 the Court had noted that both the eighth and twelfth named defendants were also former managing partners of Bloxham.

³⁰ para. 17 of the 2018 principal judgment

³¹ Mr Ghose appears to have been managing partner from 2007 to 2012

83. The appellant further submits that no legal authority has been advanced by Baker J. or in any submissions to this Court to the effect that his role as managing partner within Bloxham rendered Mr Ghose personally liable for costs.

84. The appellant's counsel also points to the Court's acknowledgement of Mr Ghose's significant assistance in reviewing the considerable documentation and following a suggestion by the plaintiffs' counsel that he would be ideally placed to prepare an account, proceeded to do so. He points out that, ultimately, Baker J. found that the Ghose report amounted to sufficient compliance with the obligation, within the 2018 principal judgment, that an account be provided.

85. The appellant seeks to highlight two cases, both judgments of Collins J. as to the review criteria that this Court should consider in any appeal on costs. In *T.O & ors v Minister for Justice & or ('TO')*³² Collins J. sets out the approach to be adopted by an appellate court when asked to review Costs orders of the High Court. Paragraph 30 is relied upon and sets out the six criteria in the following terms;

“30. This issue has been considered in a number of Supreme Court decisions and also in many decisions of this Court. These decisions are not always expressed in precisely the same language and some differences of emphasis and nuance are discernible. However, the following propositions can, I think, be advanced with a measure of confidence:

(1) While costs orders are discretionary, this Court nonetheless has “full appellate jurisdiction in respect of such orders”: Godsil v Ireland [2015] IESC 103, [2015] 4 IR

³² [2021] IECA 293

535, per McKechnie J (*Dunne and Charleton JJ concurring*) at para 65, citing *In bonis Morelli; Vella v Morelli* [1968] IR 11.

(2) It follows that the Court “may substitute its own discretion in place of that of the trial judge”: *Mangan v Independent Newspapers* [2003] 1 IR 442, per McCracken J (*Geoghegan and Fennelly JJ concurring*) at 447.

(3) The jurisdiction “is not dependent on having to establish an error of law or otherwise on proving that in the exercise of such discretion the trial judge acted erroneously” (*Godsil*, at para 65)

(4) At the same time, however, an appellate court “will, in general, be slow to interfere with the exercise of a trial judge's discretion in awarding costs”: *MD. v ND* [2015] IESC 66, [2016] 2 I.R. 438, per McMenamain J (*dissenting in the result*), at para 46.

(5) Furthermore, an appellate court “should not simply substitute its own assessment of what the appropriate order ought to have been but should afford an appropriate deference to the view of the trial judge who will have been much closer to the nuts and bolts of “the event” itself”: *Nash v DPP* [2016] IESC 60; [2017] 3 I.R. 320, per Clarke J (*as he then was*) ((*Denham CJ and O'Donnell, Dunne and Charleton JJ concurring*), at para 67.

(6) Absent some error of principle on the part of the trial judge, an appellate court should intervene only where it “feels that the exercise by the trial judge of an assessment in relation to costs has gone outside of the parameters of that margin of appreciation which the trial judge enjoys”: *Nash*, at para 67. Where the costs order is “within the range of costs orders which were open to the trial judge within the margin of appreciation which must be afforded to a High Court judge”, there will be no basis for appellate intervention: *Nash*, para 73.”

86. The appellant also relies upon *Openhydro Group Ltd. (in provisional liquidation) and the Companies Act*³³ (“*Openhydro*”), in its discussion as to the basis for which this Court should re-visit portion of the High Court’s costs ruling. In particular at paras. 28 and 29 Collins J. stated as follows:

“28. *There is no doubt that this Court will be slow to interfere with the exercise of a High Court judge’s discretion in relation to costs and significant weight will be given to the views of the judge. But even a discretionary decision of the High Court is subject to review by this Court in exercise of its Article 34.4.3 jurisdiction: see Collins v Minister for Justice, Equality and Law Reform [2015] IECA 27 and the authorities referred to by Irvine J in her judgment. Furthermore, it is clear that this Court’s power of review is not dependent on the demonstration of any error of principle on the part of the High Court judge: see Godsil v Ireland, [2015] IESC 103 [2015] 4 IR 535 at paras 65 & 66 (per McKechnie J), as well as MD v DD [2015] IESC 66, [2016] 2 IR 438, at para 46 (per MacMenamin J), both of which were concerned with appellate review of costs orders. Nothing in Nash v DPP suggests any departure from that approach.*

29. *Furthermore, it seems to me that, as a matter of first principle, the “appropriate deference” to be shown to the view of the High Court as to where the costs should fall in a given situation must surely depend on whether this Court is in a position to understand the basis on which the High Court reached that view. If the High Court fails to adequately explain its basis for exercising its discretion on costs in a particular way, it appears to me that there is little or no scope for showing any significant deference to its decision: see my observations in Betty Martin Financial Services Ltd v EBS DAC [2019] IECA 327, at para 40.”*

³³ [2021] IECA 151

87. The appellant contends that Baker J. failed to properly explain why she concluded that the costs of the hearings, after the 2018 principal judgment up to the delivery of the 2020 judgment, must lie against Mr Ghose only. He does so in the particular circumstances where, Baker J., having found a liability to account by Bloxham within her 2018 principal judgment, thereafter awarded costs (up to the delivery of the 2020 judgment) against Mr Ghose personally. They contend that the only portion of the costs ruling where any explanation is furnished is within paragraph 53 of the costs ruling.

88. The appellant maintains that the Court failed to give sufficient weight to the fact that had all relevant documentation been obtained prior to the institution of proceedings the Ghose report or something similar could have been created without the necessity for such costly proceedings and particularly all the subsequent direction's hearings.

89. The appellant points to the initial directions hearings where it was clear that the plaintiffs' representatives had not yet inspected all the 504 boxes referred to above and consequently Mr Croft had not prepared an updated report. Accordingly, the matter was adjourned from 25 July and 16 October 2018 to 13 December 2018.

90. At the directions hearing of 13 December 2018 counsel for the plaintiffs (page 9, line 24 of the transcript) submitted that an account could be created by Mr Ghose in relatively short order.

91. On 7 February 2019 the proceedings were listed on this occasion at the request of Mr Ghose, primarily for the purpose of informing the Court that he had prepared an account dated

25 January 2019 which had been furnished to the plaintiffs. The appellant contends that it was largely produced in reliance on the additional documents that were in the plaintiffs' possession rather than within the 504 Bloxham boxes. He further contends that had those documents been made available to Mr Croft or the defendants prior to December 2017 that a significant amount of court time and legal costs would have been saved.

92. The appellant states very clearly that in preparing this report in compliance with the finding of Baker J. in her 2018 principal judgment that there was "*an obligation on the defendants...to furnish a full record of transactions in the form of an account or narrative*" and that Mr Ghose did so in a representative capacity. Mr Ghose's submission is very clear that he would not have volunteered to do so had he known it would create an additional personal exposure to costs.

93. The next adjourned date of 4 April 2019 comprised submissions from counsel for the plaintiffs who maintained that the Ghose account was not an adequate account. As a consequence, the matter was adjourned in order that the adequacy of the account might again be considered and also the question of redactions.

94. The issue of the adequacy of the Ghose report was then heard in some detail on 19 May 2019 and the Court reserved its judgment, which was the 2020 judgment.

95. The appellant maintains that within the 2020 judgment the Court found that the account prepared by Mr Ghose was sufficient to comply with his obligations that an account be provided and secondly that the costs of engaging the experts to carry out this task were to be met by

Bloxham – (para. 51 with para. 45 of this judgment defining them as the “*Bloxham Stockbrokers Partnership*”).

96. The appellant maintains that certainly following the delivery of the Ghose account it would be unfair and indeed improper for the Court to award costs against it. He maintains that as he was ultimately successful in the Court’s determination that his report account was sufficient, then it is not appropriate for the plaintiffs to be awarded costs notwithstanding that they were opposing aspects of the adequacy of the Ghose Report and that their submission on this point did not find favour with the Court.

The respondents’ submission

97. As set out above the respondents’ only submission is in respect of the Court’s award of 65% of costs in its favour.

98. The overall submission of the respondent is that the costs ruling is a fair and just exercise of the court’s discretion, after Baker J. had engaged in a careful and reasoned consideration arising from several complex issues. They also emphasise the deference that ought to be afforded to Baker J. in dealing with this litigation over a significant period of time which made her best placed to exercise her discretion in her apportionment of the costs.

99. They further submit that this Court should be slow to depart from a High Court’s adjudication on costs is highlighted within the judgment of this regard.

100. The respondents contend that, despite Mr Ghose’s argument that he should not be required to provide an account, on 25 January 2019 he did so but unilaterally and without

notifying the plaintiffs or the Court in advance and in advance of the 2020 judgment as he had anticipated the likely view the Court might adopt. He simply delivered a report to the Committee which he contended was a sufficient account of Bloxham's dealing with the fund. Thereafter, it was he who arranged for the proceedings to be listed on 7 February 2019 and they were adjourned for consideration of that same report.

101. On the next date (4 April) the Court did not receive the Ghose report or consider its adequacy because the parties were unable to agree which portions of it should be redacted. The matter was further adjourned on the issue of the appropriate redactions and also to allow the Court to consider the adequacy of the report itself³⁴.

102. The respondents contend that it was therefore only at the last hearing on 10 May 2019 that the parties addressed whether the Ghose Report was an adequate account.

103. The respondents' summarise the directions hearings as follows;

- (a) the first two (July and October 2018) concerned the form of order arising from the principal judgment and Mr Ghose's contention (which they contend subsequently turned out to be incorrect) that an account was likely to exist and that the Committee should review the additional documentation to identify it.
- (b) The third (December 2018) was a substantive hearing as to whether Baker J. should order Mr Ghose to provide an account because up to that point he had resisted this.
- (c) The fourth (February 2019) was arranged by Mr Ghose arising from his having provided a report and
- (d) the fifth (April 2019) sought further time to agree redactions and

³⁴ They reference paragraph 18 of the 2020 judgment.

(e) the sixth (1 May 2019) concerned the two issues as to whether the Ghose account was adequate and whether the Bloxham defendants should discharge the Committee's experts' costs and expenses.

104. The respondents are clear that in the Court's 2020 judgment the Court found that the Ghose report amounted to a sufficient compliance with the obligation to account and on the issue of the costs and expenses of preparing the account, the Court held that the "*costs of engaging of experts to carry out this task are to be met by Bloxham*"³⁵

105. With regard to the necessity of the hearings in February, April and May of 2019 they ask that the Court's reasoning to uphold the Court's ruling at para. 53 of the 2020 judgment is upheld.

106. The respondents submit it is clear that the appellant does not disagree with the legal principles applied in the costs ruling, the appellant, they maintain, has limited his contention that Baker J. applied the correct law but reached the wrong conclusion in applying that law to the facts.

107. In considering the extent of the High Court's discretion when awarding costs the respondents cite McDonald J. *In the Appropriate Care of a Ward of Court*³⁶ and in doing so they commend para. 46 of his judgment as follows:

"46. I therefore do not believe that I can carry out a scientific analysis of the kind envisaged by Clarke J. in Veolia. It seems to me that the best I can do is to take the more rough and ready approach which has been adopted by the High Court in Wright and in

³⁵ Para. 51 of the 2020 Judgment

³⁶ [2020] IEHC 20

Anderson and by the Court of Appeal in Naylor and also by the Supreme Court in Sheehan v. Corr’.

108. I of course accept that the allocation of costs in cases such as this is not an exact science. However, I also note that McDonald J. within paragraph 46 of this judgment did proceed to set out, in great detail, the precise basis upon which the apportionment of his award of costs was being made.

109. The respondents also rely upon *Sony Music Entertainment (Ireland) Ltd v UPC Communications Ireland Ltd*³⁷ (*‘Sony’*) where Finlay Geoghegan J. stated at para. 9;

“9.I am of the view that great deference should be given to orders made by a High Court judge in exercise of his/her discretion in relation to costs pursuant to Ord. 99, r. 1. This is perhaps especially in relation to proceedings such as the present one which were complex, included many issues, and were at hearing over 10 days in relation to substantive matters during which substantial oral evidence was given that this Court on appeal has not considered in full as the substantive appeal issues did not require. Whilst there is for the reasons stated more fully in Collins no a priori requirement that an appellant establish an error in principle for this Court to interfere , I nevertheless consider we should, in relation to costs orders, be very slow to interfere unless there are errors detectable in the approach of the High Court or, even without such errors, an appellant satisfies this Court in the particular circumstances of the case that the interests of justice require that it should interfere in the High Court order for costs”.

110. In summary the respondents submit;

³⁷ 2017 [IECA] 96

- (a) That Baker J. had seisin of the proceedings and that this appeal court cannot gain a similar level of familiarity with what transpired during the course of the proceedings.
- (b) The proceedings were complex.
- (c) The Committee had limited funds and brought the proceedings subject to the directions of the President of the High Court and as a consequence this Court should be reluctant to make an order against a committee which has acted *bona fide* in the interests of the ward.

Discussion and conclusions

111. This appeal considers the following section of the costs ruling;

“ IT IS ORDERED that the Plaintiff be awarded 65% of his costs from 28th day of June 2018 to the 9th of June 2020 (the period after the substantive judgment up to the date of the supplemental judgment) against PRAMIT GHOSE the First Named Defendant” both as to Mr Ghose’s personal liability and the 65% apportionment of costs in favour of the Plaintiff.

112. The appellant also seeks an Order that paragraph 55(c) of the costs ruling is incorrect³⁸ as it does not reflect para. 51 of the 2020 judgment as it was specifically required to do. The appellant is entitled to an Order reflecting that the award of costs at para. 55 (c) of the costs ruling is against Bloxham not ‘*the first defendant*’. No objection was raised by the respondents to this application.

113. Para. 34 of the 2020 judgment states;

³⁸ Considered at para. 71 above

‘...The present ruling is not concerned with questions of negligence, nor with any assessment of why the fund is now insufficient to deal with the ongoing needs of Mr Best nor is it concerned with any analysis of the movement of the funds. The sole question is whether the obligation identified in the principal judgment had been met, and if not, what further needs to be done.’

114. This quotation clearly applies to the totality of this litigation.

115. In my view the 2018 principal judgment constitutes Baker J.’s most detailed analysis of the issues in this case and in particular her careful and measured analysis as to why the liability to account rests with Bloxham, which is in turn reflected within her costs ruling that they bear the costs up to the date of its delivery (save for the seventh and eleventh named defendants). It is within this judgment that the Court considered aspects of the Partnership Act 1890 which I have quoted in full within para. 21 above. In particular she notes in light of s.17(2) of the Act that, as a matter of statute, retired partners may continue to have an ongoing obligation in respect of matters that arose during the partnership and that retirement does not extinguish that obligation.

116. My difficulty is in discerning, as a matter of law, what changed thereafter from an award of costs against Bloxham on a joint and several basis up to the date of delivery of the 2018 judgment, to then awarding the plaintiffs their costs against Mr Ghose personally, from the delivery of that judgment up to delivery of the 2020 judgment.

117. There was an identification of Mr Ghose, at a relatively early stage, as the person within Bloxham tasked with considering the issues that arose within this litigation. Indeed after the finding against Bloxham within the 2018 principal judgment he indicated his willingness to

assist, which the Court recognised in its judgments. From the directions hearing in December 2018 Mr Kirby, the expert retained by Mr Ghose, stated his view that there was sufficient documentation available to create an account. Mr Croft considered there were deficiencies.

118. The appellant states, without equivocation, that had he known he was at risk of being found to have a personal costs liability, he would have never countenanced producing the Ghose report, which was ultimately determined by the Court, in its 2020 judgment, to be a proper account for the Committee's purposes.

119. The 2020 judgment accepted that the terms of the Ghose report satisfied the Order that Bloxham furnish an account within the 2018 principal judgment. No issue was taken by the Court, nor any submission advanced at the time Mr Ghose proffered his report, to the effect that it did not conform with the Order requiring that such an account was to be furnished by Bloxham. It was simply accepted as such.

120. As to the reasons why a finding of personal liability might lie against Mr Ghose, Counsel for the appellant points to para. 53 of the costs ruling (set out at para. 69 above) which he states is the only paragraph where the Court's reasoning is to be found. Within paragraph 53, in my view, the Court essentially set out the factors that warranted reduction in the percentage apportionment of costs against Mr Ghose personally, as opposed to reasoning why he was solely personally liable.

121. I would also point to para. 43 of the costs ruling (para. 66 above) where the Court held that the hearings of *“.....13 December 2018, 7 February 2019, 4 April 2019 and 10 May 2019 were concerned with the adequacy of the documentation, narrative or account given and costs must lie against the first defendant only.”*

122. The directions hearing of 13 December 2018 was of course in advance of the Ghose report. I remain puzzled as to why, if these issues of ‘*adequacy of the documentation, narrative or account given*’ troubled the Court, this necessarily resulted in a finding of personal liability for costs against Mr Ghose alone. Of course, arising from those hearings, it was accepted that the Ghose report complied with its Order.

123. The directions hearing from February 2019 onwards, also considered in the next section, dealt with the nature of the account to be furnished and ultimately whether the Ghose report was sufficient. I do not see why any personal liability should attach to Mr Ghose in circumstances where his report was under active consideration within these directions hearings.

124. In my view the first two directions hearings (in July and October 2018) sought primarily to speak to the possible form of the Order arising from the 2018 principal judgment. Submissions were made by all defendants and on this basis I do not know why any award of costs should be made personally against Mr Ghose alone; in my view this should attract the same Order as to costs that the Court made in respect of the 2018 principal judgment itself. I have also made reference to where the Court suggested that a personal Order against Mr Ghose might exclude these first two directions hearings in any event.

125. It is clear that Mr Ghose as managing partner for part of the relevant period was singled out by virtue of his expertise, background and, frankly, willingness to engage. In my view, none of these factors warrant fixing Mr Ghose alone with liability for costs arising after the 2018 principal judgment.

126. At para. 35 of the 2018 principal judgment the Court stated “*At all material times, Bloxham carried on transactions on behalf of the Fund and acted as advisors and managers of the Fund, but was not a custodian.*” If the position of Bloxham altered over time this is not apparent.

127. There is perhaps little between the parties as to their account and analysis of what occurred after delivery of the 2018 principal judgment, comprising the six hearings which I have described throughout as directions hearings, followed by the 2020 judgment and the costs ruling. There may be certain nuances between them but overall the arguments concerned the importance of the issues raised and the costs implications that follow.

128. The Court on more than one occasion made references³⁹ to the fact that indemnities or issues of contribution or insurance might exist between the members of the former Bloxham partnership. These are not matters that arise within this appeal.

129. At paragraph 137 in the 2018 principal judgment the Court stated;

“137. I am further satisfied that, having regard to the discretionary nature of the remedy, the position of the first defendant who was the managing partner at the relevant times must be distinguished from that of partners who retired in the currency of the Bloxham management of the Fund, and also from those persons who continued to be partners but who had no involvement with the Fund”.

³⁹ See paras. 50, 61 & 66 above

130. No legal principle has been identified, and no authority has been produced, that would support the proposition that any legal liability can attach to Mr Ghose personally arising by virtue of his position as managing partner within Bloxham from 2007 to 2012.

131. In my view this litigation must be viewed as a continuum, one judgement leads directly from another; the issues may differ but following the 2018 principal judgment with its requirement that Bloxham furnish an account, what follows deals initially with the differences between the parties as to the ultimate formulation of its Order and thereafter to more nuanced aspects of the requirement to account, and ultimately whether the Ghose report constituted an account in accordance with the Court's initial judgment. With the delivery of the 2020 judgment the circle is then complete. I cannot discern any principle or factual circumstance arising from the 2018 principal judgment or arising thereafter that warrants separating Mr Ghose from the other partners in Bloxham, and imposing on him alone a liability that is not shared by all partners.

132. In determining the issue of Mr Ghose's personal liability as to costs, I note para. 29 of *Openhydro* where the Court considered that the question of deference to the High Court's adjudication on costs must in turn be considered or dependent upon whether this Court is in a position to understand the basis upon which the High Court came to its view. I have already expressed my difficulty in identifying the circumstances and discerning the reasoning which led to the finding of a personal liability against Mr Ghose.

133. For the reasons set out above, in my view the costs ruling, awarding the plaintiffs their costs from 28th day of June 2018 to the 9th of June 2020 (the period after the substantive judgment up to the date of the supplemental judgment) should have mirrored the High Court's

initial Order as to costs in respect of the 2018 principal judgment and be borne by Bloxham (save for the seventh and eleventh named defendants) and not Mr Ghose personally.

The Percentage Apportionment of Costs – The award to the Plaintiff of 65% of the costs

134. In considering this issue the matters discussed above also have a relevance to the Court's ultimate determination on this point.

135. The appellant takes particular issue with the hearings post the furnishing of the Ghose report in January 2019. He then points to the Court's conclusion in the 2020 judgment that it was an account sufficient for its purpose. In my view after the Ghose report was furnished, this did not preclude the Committee (and in particular its expert) from initially considering Mr Ghose's report in detail and making comments upon its contents. If Baker J. wished to consider the outcome of those deliberations, in my view she was fully entitled to do so. However, that does not necessarily determine the question of costs.

136. The delivery of the Ghose report makes it plain that it was clearly accepted that an account had to be furnished, and thereafter the discussion turned to its adequacy. I appreciate the issue of redactions was raised (belatedly) and the Ghose report does contain redactions. However, the Court did not rule on any issue regarding redactions but rather the matter had to be adjourned further, in part, to see if an accommodation might be arrived at, which delayed the Court having sight of the report.

137. In considering the six directions hearings I am mindful that the transcripts reveal the ebb and flow of active engagement by all parties before the Court. In such cases views that are expressed by the Court are often for the purpose of teasing out issues and arguments that may

require adjudication. Some of the so-called *directions hearings* appeared to take up limited time and were more akin to ‘for mention’ applications. The final directions hearing in May 2019 is clearly of significance, in duration and also importance. This was the final hearing prior to the Court’s adjudication upon the ‘status’ of the Ghose report. The determination of the 2020 judgment on this point is clear; the account was sufficient and no further Order or direction was required.

138. The respondents contend that had Bloxham / Mr Ghose accepted after 2004 that there was no account within the papers and had Bloxham / Mr Ghose thereafter agreed to furnish a proper account, much if not all of this litigation would not have been necessary. They point out that a significant percentage figure (35%) has been deducted from the costs to reflect Mr Ghose’s ultimate preparation of the document. That, they submit, was an appropriate exercise of the Court’s discretion.

139. The respondents ask that the Court take account of the Committee’s impecuniosity and whilst it is noted I am uncertain as to the basis of such a submission. As a matter of general principle it cannot be said that the impecuniosity of one party can determine that there should be an award of costs in its favour. Of course the respondents are entitled to all of their costs up to the delivery of the 2018 principal judgment and the expenses of engaging experts.

140. With regard to the apportionment of 65% of the costs in favour of the respondents, I am cognisant of the fact that Baker J. had seisin of this matter over a considerable period of time, was acutely aware of all of the issues and had considered each of them in great detail.

141. In contradistinction to what I find as the lack of reasoning regarding Mr Ghose's personal liability within the costs ruling, Baker J. sets out her reasons for the percentage apportionment of costs within para.53 of her costs ruling, for convenience I reproduce the pertinent portion below;

“.....Mr. Croft wrongly asserted that the obligation to account had not been met, and as the plaintiffs continued with the litigation and pressed for further statements and documents they must be seen to have added unnecessarily to the time and effort involved the plaintiffs did add to the number of hearings by not seeking the 504 boxes and any documents held by the Ward of Court Office until after the principal judgment was delivered, and also to reflect the fact that the work carried out by Mr. Ghose directly relieved the plaintiffs and their expert from an even more burdensome analysis....”

142. Baker J. was in my view entirely correct to highlight these issues. There may be others. However, even taking these alone; Mr Croft's incorrect insistence that the obligation to account had not been made out and pressing for further documentation, which the Court holds must be seen to have added unnecessarily to the time and effort involved. The Court also found that the failure to seek the 504 boxes and any documentation within the Wards of Court office until after the delivery of the 2018 principal judgment added to the number of hearings. Finally, the Court acknowledged the work carried out by Mr Ghose.

143. Each of these issues to which the Court had regard, Baker J. has found added to the duration of this litigation. I cannot discount the possibility that locating and examining the documentation at an earlier stage could have had a significant impact upon the course of this action. Without even considering the impact of the Ghose report, which I deal with below, these would appear to be very serious matters to which Baker J. had regard in considering the

way in which the respondents chose to conduct this litigation. In light of this I therefore consider that, following this reasoning, to then award 65% of costs in the respondents' favour does not adequately reflect the important issues raised by Baker J. in discussing her percentage apportionment of costs.

144. How or why this specific figure of 65% is arrived at is not explained. Perhaps it would be unfair to require it to be so, on the basis that this Court should view it as an instance where the Court simply exercised its discretion based upon the trial judge's significant knowledge and experience in dealing with this case.

145. The costs award of 65 % in favour of the respondents in my view raises an additional question as to whether any further consideration should be given to reflect the Court's approval of the Ghose report following additional directions hearings, in particular what appears to have been a significant hearing in May 2019, culminating in the 2020 judgment. This is something that is not expressly considered by Baker J. in para. 53 of her costs ruling but is in my view a significant factor that should be weighed in the balance.

146. The Ghose report, save for the agreed redactions, was the report that Baker J. ultimately approved, without qualification. Mr Ghose had also gone to the time and expense of having his own expert Mr Kirby scrutinise and furnish a report for the benefit of the Court as to adequacy of the documentation available and thereafter the Ghose report. He also retained his own legal representation. Mr Croft maintained certain reservations with regard to the Ghose report; that of course was his prerogative, but the fact that the Ghose report was upheld by the Court must in my view be reflected in any percentage apportionment as to costs.

147. I note and accept the statement in *Sony* that deference should be afforded by this Court to a High Court judge in the exercise of judicial discretion in relation to costs. I also note the judgment of *TO* which sets out a number of propositions to guide the approach of this Court in reviewing such costs, which also reiterates that an appellate court has full appellate jurisdiction in respect of reviewing an award of costs. I have already cited *Openhydro* in considering the personal liability of Mr Ghose.

148. The appellant seeks that no Order is made in favour of the respondents in respect of their costs. In my view within the initial hearings, particularly those in July and October 2018 the liability for costs must lie with Bloxham for the reasons set out within this judgment.

149. In exercising this Court's discretion in reviewing the costs ruling and order, as well as the issues clearly identified by Baker J. in considering the question of a percentage apportionment of costs, in my view it is also proper to take account of the fact that the Ghose report was furnished and, notwithstanding the respondents' objections, was deemed acceptable within the Court's 2020 judgment.

150. The issue before the Court was initially whether an account was required. This was determined by the 2018 principal judgment. After considering this judgment consideration then turned to what was required to furnish an account. From the furnishing of the Ghose report, the issue from then until the delivery of the 2020 judgment was as to its adequacy. That issue was determined in favour of the appellant and in my view that must in turn be reflected in any percentage apportionment of costs. Such an apportionment should reflect, not only those factors considered by Baker J., within para. 53 of her Costs Ruling, but also incorporate a

percentage apportionment on costs to reflect that the Ghose report was produced by the appellant and approved by the Court within its 2020 judgment.

151. Taking all of these factors into account I would reduce the apportionment of costs in favour of the plaintiffs/respondents from 65% to 20%.

Outcome of the appeal

152. For the reasons set out above in my view that portion of the costs ruling where the Court ordered that the Plaintiff be awarded costs from 28th day of June 2018 to the 9th of June 2020 (the period after the substantive judgment up to the date of the supplemental judgment) against the Appellant, Mr Ghose, alone is to be set aside and substituted with an Order that the Plaintiffs / Respondents be awarded these costs against Bloxham Stockbrokers Partnership on the basis of joint and several liability (save for the seventh and eleventh named defendants) as more particularly set out in the proposed form of Order which follows.

I further Order that the Plaintiffs / Respondents are to be awarded 20% of these costs.

Orders;

- (a) In respect of the High Court Costs Order in proceedings 2022 [IEHC] 507 dated 5 August 2022 (perfected 9 August 2022) which recites;

“ IT IS ORDERED that the Plaintiff be awarded 65% of his costs from 28th day of June 2018 to the 9th of June 2020 (the period after the substantive judgment up to the date of the supplemental judgment) against PRAMIT GHOSE the First Named Defendant”

is to be varied as follows:

“ IT IS ORDERED that the Plaintiffs / Respondents be awarded 20% of their costs from 28th day of June 2018 to the 9th of June 2020 (the period after the substantive judgment up to the date of the supplemental judgment) against the Defendants set out below on a joint and several basis.

The Defendants comprise; The First named Defendant / Appellant and the Second (costs on an undefended basis), Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Twelfth, Thirteenth and Fourteenth Named Defendant

- (b) An Order setting aside paragraph 55 (c) of the Costs Ruling in proceedings 2022 [IEHC] 507 to reflect that the costs are to be borne by the Defendants as more particularly defined within (a) of the preceding paragraph.

Costs of this Appeal

153. Whilst the respondents expressly did not participate in that portion of the Appeal concerning whether Mr Ghose or the Bloxham Stockbrokers Partnership should be liable for costs pursuant to the terms of the Costs Ruling, nevertheless the appellant, if he wished to challenge this portion of the Order, had to do so on appeal and has succeeded in doing so.

154. I therefore find that the appellant has succeeded in this part of his Appeal in the terms set out above.

155. The apportionment of costs at 65% within the same paragraph as also been varied to 20%, also for the reasons set out above.

156. Accordingly, as each party has succeeded in part in respect of the overall appeal in my view that should be reflected in this Court making no Order as to costs.

157. If either party wish to dispute this proposed costs order they are asked to inform the Court of Appeal Office and the matter will be listed for this purpose on Thursday 21 March 2024 at 9.30am.

As this judgment is being delivered electronically Whelan and Haughton JJ. have indicated their agreement with it and the orders I have proposed.