

THE HIGH COURT

1984 No. 6249p

IN THE MATTER OF CASTLE BRAND LIMITED (IN LIQUIDATION)

AND IN THE MATTER OF THE COMPANIES ACTS 1963 TO 1986

Judgment of Miss Justice Carroll delivered the 2nd day of
October 1989.

The Official Liquidator of Castle Brand Limited (In Liquidation) has applied to the Court for liberty to pay the costs of a Legal Costs Accountant employed by his Solicitors in connection with the Taxation of his Solicitors costs, together with VAT, amounting in total to £5,119-75. When the matter first came before the Court, the issue was referred back to the Taxing Master. The Revenue Commissioners, as the largest creditor, were appointed to oppose the application on behalf of the creditors and contributories. The item of the charges and outlay of the Legal Costs Accountants were first added to the Bill for taxing and then, as the Taxing Master was not satisfied it was an item for which the client ought or could be

liable, taxed off the item. He set out his reasons in a Report to the Court and it is that decision which is appealed. He says at page 5 thereof:-

"The primary duty of a Solicitor in relation to charges and expenses is to have the Bill of Costs prepared properly and in accordance with law, practice and rules laid down by the Rules of Court and this whether he does the work himself or a member of his staff or engages the services of a Legal Costs Accountant. Where a Solicitor engages a Legal Costs Accountant he does so in ease of himself, that is to say to relieve himself of the burden and responsibility of drawing, preparing and submitting the Bill, whether for Taxation or not and further to have the benefit of the expert and specialised knowledge of a Legal Costs Accountant. If however he can then visit these charges and expenses of the Legal Costs Accountant upon the Paying Party (who has not or never had any privity with the Legal Costs Accountant) this would in my respectful opinion, be completely unreasonable and be a complete departure from a very long established practice and tradition going back to the earliest concept of legal costs as we know them today."

Section 281 of the Companies Act 1963 provides:-

"All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims."

Order 74 Rule 128 (2) of the Superior Court Rules provides

"No payments in respect of bills of costs, charges or expenses of solicitors, accountants, auctioneers, brokers or other persons, other than payments for costs, charges or expenses fixed or allowed by the Court shall be allowed out of the assets of the company unless they have been duly fixed and allowed by the Examiner or the Taxing Master as the case may be."

The Official Liquidator claims that the costs in question are costs and charges properly incurred and must be allowed by the Taxing Master.

In support of his case it was argued on his behalf:-

1. When it is necessary to tax the costs of a successful litigant who has been awarded Party and Party costs, it is accepted practice that the fees of the legal Costs Accountant engaged to appear before the Taxing Master on the taxation of these costs should be paid by the client (i.e. the successful litigant). By analogy the Official Liquidator should pay for the costs of a Legal Costs Accountant in the liquidation.

2. While a client is entitled to be furnished with particulars of fees and outlay without any additional expense, the practice is to submit a non-detailed Bill. In many cases the client agrees. If objection is raised, a Legal Costs Accountant is engaged to prepare a detailed Bill for taxation. In many cases the client will, on being presented with the detailed Bill, pay the account or compromise it. The Official Liquidator is deprived of the opportunity to compromise with a Solicitor. In every case he is obliged to go to Taxation.

3. Solicitors acting on behalf of an Official

Liquidator invariably instruct an independent Legal Costs Accountant to prepare a detailed Bill of Costs. The Liquidator has no say in the Instructions Fee claimed by his Solicitor. The Solicitor in consultation with the Legal Costs Accountant decides on a fee. The time involved in preparation is considerable - Much care is required because if the Taxing Master taxes off one-sixth of the Bill, the costs of Taxation and the Court Fees on the Bill of Costs and on the Certificate of Taxation are disallowed under Order 99 Rule 29 (13).

Under the Solicitors (Ireland) Act 1849 (s. 2) every client is entitled to a detailed Bill of Costs drawn up by his Solicitor for Solicitor and Client costs. The Solicitor is entitled to add certain items in connection with the preparation of a detailed Bill of Costs including a fee for drawing and engrossing the same, serving it, attending Taxation, etc., (see Appendix W Section 5 Items 30 to 33, Superior Courts Rules). Apart from those charges, a Solicitor is not entitled to charge any fee for the preparation of the Bill of Costs. This rule was applied in a voluntary winding-up in the case of *In Re. the National Bank of Wales* (1902 2 Ch 412).

In my view there is no validity in the case made by the Official Liquidator on behalf of his Solicitor in this application.

Party and Party costs awarded to a successful litigant are the property of that litigant. In the recovery of those costs, a Legal Costs Accountant engaged to appear on

taxation is acting on behalf of the successful litigant and not on behalf of his Solicitor. So the analogy drawn is not correct.

The Liquidator cannot claim to have the same rights as an ordinary client who has to pay out of his own pocket and who can decide whether to compromise or not. The Official Liquidator is not in the same position. He pays out of funds belonging to the creditors or contributories and the requirement to go to Taxation in every case is for their protection to ensure that costs have been reasonably and properly incurred. In the same way, the one-sixth rule is there to ensure that an inflated Bill will not be presented.

In cases where the court has allowed the expenses of a Legal Costs Accountant, it was exercising its discretion to allow costs under Order 74 Rule 128(2) in the particular circumstances of each case. These examples have no relevance in this case which seeks to establish that the costs of a Legal Costs Accountant are taxable as of right as costs for which an Official Liquidator, as the client, should always be liable.

In my opinion it cannot be said that the cost of employing a Legal Costs Accountant is a cost properly incurred by the Official Liquidator because under long established law the cost is one which must be borne by the Solicitor.

The costs of this application are costs which should be borne personally by the Solicitor for the Official Liquidator as it was for his benefit, not for the benefit of the Liquidation, that the application was made.

Shells Caneel