



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

Cause No: FSD 70 OF 2021 (RPJ)

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF PERFORMANCE INSURANCE COMPANY SPC (IN OFFICIAL
LIQUIDATION)**

Before: The Hon. Raj Parker

Appearances: Mr Colm Flanagan and Ms. Alice Carver of Nelsons for the Shareholders
of Bottini Insurance SP

Mr Adam Crane, Ms Nicosia Lawson, and Ms Nia Statham of Baker and
Partners (Cayman) Limited for the Official Liquidator

Heard: On the papers

Date of decision: 24 June 2024

Draft Ruling circulated: 24 June 2024

Ruling delivered: 15 July 2024

Costs and issues arising from various summonses

RULING

Introduction

1. The Company, Performance Insurance Company SPC, is in official liquidation.
2. Bottini Insurance SP is a segregated portfolio of the Company.
3. This application deals with costs issues arising from two summonses filed in 2021.
 - a) A summons of 6 December 2021 (as amended on 14 April 2022) issued by the JOL's (now the "OL") concerning remuneration, expenses and costs (the "Amended Remuneration Summons").
 - b) A summons of 17 November 2021 issued on behalf of the sole shareholder of Bottini Insurance SP, ABM Wappingers INC (the "sole shareholder"), together with the shareholders of SSS Insurance SP to appoint an additional joint official liquidator ("AJOL"), the "AJOL summons".
4. The Court has reviewed the written submissions filed by the parties in respect of this matter as well as the extensive written materials identified in those submissions¹. The Court has agreed to determine this matter administratively on the papers.

Determination

The Amended Remuneration Summons

5. The OL says he has applied the principles set out by the Court in the Remuneration Judgment dated 10 November 2022 and the Costs Judgment dated 29 December 2022 to revise and seek the Court's approval of the OL's reduced remuneration and expenses in relation to Bottini Insurance SP².
6. The sole shareholder's position is that there is no verifiable explanation as to the application of the principles set out in the Court's Judgment of 29 December 2022 and that as such, a detailed review of the costs has not been possible³. The Court is not a costs assessor and does not impugn the professionalism or integrity of the OL. These matters have been outstanding for a considerable period of time.

¹ See the sole shareholders submissions of 11 April 2023 and Letter on behalf of the OL of 14 April 2023

² The Court handed down another Judgment dated 24 March 2023 which addressed costs issues arising from the previous two judgments

³ See also § 17 of the sole shareholders first submissions

7. In the absence of reasoned objections, the Court is therefore prepared to approve the OL's reduced remuneration and expenses in relation to Bottini Insurance SP as set out at §7 of the OL's written submissions of 30 May 2024.
8. The sole shareholder said in its written submissions of 11 April 2023 that it does not dispute that the OL is entitled to remuneration and expenses of the AJOL Summons and the Amended Remuneration Summons in relation to Bottini Insurance SP to be paid out of the assets of the Company and that the OL's remuneration and expenses for the period from 26 February 2021 to 15 February 2022 in relation to Bottini Insurance SP to be assessed by the Court, should be payable out of the assets of Bottini Insurance SP.
9. However, the Court notes that the sole shareholder says the amount claimed by the OL is immaterial because Bottini Insurance SP has no assets and there is no benefit to incurring costs for a detailed assessment of the "costs and remuneration claimed by the OL".
10. The Court also notes the sole shareholder's position that the argument that the shareholder or the successor entity to Bottini Insurance SP should be required to pay the OL's remuneration, expenses and costs is a matter which requires an application which, if and when it is made, will be opposed.
11. The OL's remuneration in respect of the Amended Remuneration Summons in relation to Bottini SP should rank below the sole shareholder's costs and be set-off against the sole shareholder's costs.

Sole Shareholder's Costs

12. The sole shareholder seeks its costs of the AJOL Summons and Amended Remuneration Summons, and seeks an order similar to the March 2023 Order made in respect of the costs awarded to the shareholders of SSS Insurance SP. The Court has already made rulings on the set off and interim costs issues which arose (see the Court's Judgment of 24 March 2023) and these should apply to Bottini Insurance SP as well. The Court also applies its reasons derived from the Costs Judgment of 29 December 2022 to Bottini Insurance SP.
13. The sole shareholder will be granted an Order similar to the March 2023 Order in respect of the costs awarded to the shareholders of SSS Insurance SP. There should be a parity in approach.
14. The Court follows the principles laid out in the Judgment dated 24 March 2023 (paragraphs 33 to 36) in relation to interim costs (see below).

15. As to the costs of the Amended Remuneration Summons, the Court accepts that the sole shareholder did not participate at the hearing in an attempt to save costs and having been invited by the Court to make submissions after the hearing did so, which were likely to have been less than a full participation at the hearing.
16. The sole shareholder's costs of the Amended Remuneration Summons are to be taxed on a standard basis if not agreed and are payable out of the Company's assets in priority to the OL's remuneration.
17. The sole shareholders costs of the AJOL Summons are to be taxed on the standard basis if not agreed and are payable out of the Company's assets in priority to the OL's remuneration in the Company's liquidation.
18. The Company should pay interim costs to the sole shareholder of US\$52,000 in respect of its costs of the AJOL Summons and US\$21,000 in respect of its costs of the Amended Remuneration Summons.
19. The parties should draw up and agree the relevant Orders for the Court's approval. There will be liberty to apply generally.



THE HON. MR. JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT