Neutral Citation [2016] IEHC 666

THE HIGH COURT

[2016 No.242 COS]

IN THE MATTER OF STAR ELM FRAMES LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2014

AND IN THE MATTER OF A PETITION BY

MICHAEL GLADNEY

PETITIONER

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 3rd day of October, 2016

1. In 2013, the company in this case was the subject of an application to Kelly J. (as he then was) to approve a scheme of arrangement in the context of an examinership. That scheme provided for the making of a significant investment in the company in the amount of €150,000. At para. 5.1.1 of the scheme, a loan of €60,000 was to be made to the company as well as an investment of €60,000, which was stated to have been lodged in a escrow account. It has been averred to that this transpired to not have been the case, an averment not denied in the present application.

2. Furthermore, in the scheme arrangement, Mr. Anthony O'Gara was to be an executive director of the company. Again, it appears that this was not done and that he has acted as a non-executive director. Mr. David Sage was to resign as a director, and a dispute has arisen whether he has acted as a shadow director since then.

3. Mr. Myles Kirby on behalf of the Revenue Commissioners indicated at the time of the examinership his view that the scheme would not work and that it was underfunded. However, the scheme was nonetheless approved by the High Court. However it did not resolve the company's difficulties.

4. On 9th March, 2016, the Revenue Commissioners sent a letter of demand to the company pursuant to s. 570(a) of the Companies Act 2014 in the amount of €585,523.35. It was later stated that this was an overstatement of the tax liability and the correct figure accounting for sums written off in the examinership was in the amount of €350,147.30. However at the hearing the Revenue informed me that their position was that €295,136 remained unpaid from the examinership, together with a further €271,794 returned since then. In addition, sums of approximately €38,000 were considered due in relation to P30s for April and May 2016, and based on the previous VAT return, a figure of €81,962 for VAT for May/June 2016 could be postulated. On that basis, the total figure now due to Revenue would in any event exceed the amount stated in the letter of demand.

5. The Revenue's petition for the compulsory winding-up of the company with which I am now dealing, was filed on 24th June, 2016. A verifying affidavit was filed on 30th June, 2016 but not served until 5th July, 2016.

6. On 1st July, 2016, notices were published on behalf of the Revenue in the *Irish Times, Irish Independent* and *Iris Oifigiúil* stating that the petition was due to be heard on 18th July, 2016, and that interested parties should furnish notice of their intention to appear by 15th July, 2016.

7. On 6th July, 2016, the company ceased trading and on the following day appears to have entered into a rental agreement with David Sage which the Revenue characterises as a transfer of business and a "*phoenix operation*".

8. A creditors' meeting was held on 18th July, 2016, at which the company appointed, and a majority of the creditors approved, the nomination of Mr. Anthony J. Fitzpatrick as liquidator in a creditors' voluntary winding up.

9. When the petition came before the High Court on 18th July, 2016, no interested parties had in fact formally given notice of their intention to appear in accordance with form No. 8 to the rules of court as required by Order 74, rule 15. Pursuant to that rule, parties who failed to give such notice shall not be heard by the court without special leave. In the present case, I granted such leave, on their application, to Mr. Fitzpatrick, Mr. O'Gara and Mr. Sage and gave liberty for the formal entry of appearances and the filing of affidavits.

10. I have now heard from Mr. Dermot Cahill, B.L., on behalf of the Revenue Commissioners as petitioners, Mr. Ronnie Hudson, B.L., on behalf of the company and Mr. Fitzpatrick, and Ms. Jacqueline McManus, Solicitor, on behalf of Mr. O'Gara and Mr. Sage.

11. Mr. Cahill's application is for a winding up of the company by the court, as opposed to permitting the creditors' winding up to continue. After a three-day hearing during the Long Vacation, I granted the relief sought on 10th August, 2016, and I now give reasons for having done so.

The status of the parties

12. The rules of court do not appear to envisage the concept of a "respondent" to a petition, perhaps because of the large number of persons who could potentially be in that position, but rather the rules speak in terms of a person entitled to be heard on the petition. A person who has such an entitlement has therefore the rights of a party to a more traditional court application. In substance, Mr. Fitzpatrick, Mr. O'Gara and Mr. Sage have all the entitlements of a respondent in a normal court application. At one point Mr. Hudson complained that he had not been made a respondent so to put the matter beyond doubt I gave liberty to all parties to enter a formal appearance. This liberty was taken up and appearances were filed by Mr. Fitzpatrick, the Company, and Messrs. O'Gara and Sage. Of course, enjoying the rights of a party also involves an assumption of the liabilities of a party, including a liability as to costs where so ordered.

The role of the liquidator in an application for a court winding-up

13. In *Hewitt Brannan (Tools) Co Ltd* [1991] BCLC 80, Harman J. said that a voluntary liquidator had "*no business to take an attitude as to the continuation or not of his voluntary liquidation*". I consider this approach to be correct. The liquidator should stand back from an application of this type and allow the primary parties, being the disagreeing creditors, and to a lesser extent, the directors, to fight the issue out.

14. Mr. Fitzpatrick's failure to do so has led to this application being much more protracted and expensive than it otherwise would have been. Furthermore it led to the unedifying position whereby he, rather than the chairman of the creditors' meeting, took on the

primary onus of defending the chairman's rulings and conduct of that meeting.

15. It is true that liquidators (and the companies themselves that are in voluntary liquidation, which are in effect simply liquidators under another name) have from time to time been made respondents in company law applications. But that is primarily because the new rules of court require a wide number of applications to be made on notice to the liquidator (see O. 74 r. 40(2) and (3), r. 83(1) and (2) and other sub-rules which involve a bewildering array of applications by notice of motion or originating notice of motion, on notice either to identified parties including the liquidator or to unidentified parties). It is perhaps debatable whether the notice of motion procedure is really the most appropriate one for many of these applications, or if so whether requiring notice to the liquidator (as opposed, say, to the directors) properly reflects the limited role of the liquidator as set out in Hewitt Brannan. Finlay-Geoghegan J. in *Revenue Commissioners v Ladaney Ltd* [2015] IECA 62 at para. 15 commented that it was not inappropriate for the liquidator to participate where named as a respondent but otherwise "*the position might have been different*". It seems open to debate as to whether the correct role of the voluntary liquidator should really hinge on the probably unintended side-effect of the Rules Committee having provided for a motion procedure in the new O. 74. Perhaps there is a case for the rules to be reviewed from this perspective. But in the present case, the petition procedure does not involve any specified respondents and the liquidator has become involved of his own choice rather than because he must do so. That choice and the further decision to take on virtually the entire burden of defending the petition seems to me to reflect a misunderstanding of the role of the voluntary liquidator.

Is the jurisdictional basis for a winding up by the court established?
16. The basis relied on for a winding up by the court is the inability of the company to pay its debts. Pursuant to s. 570 of the Companies Act 2014, inability to pay debts may be proved in a number of ways. Notably, under para. (a), a failure to meet a letter of demand may establish an inability to pay debts. Caselaw has established that the letter of demand must be unequivocal, of a peremptory character and unconditional: see *In Re Riviera Leisure Limited* [2009] IEHC 186, *per* Laffoy J. approving a statement to this effect in Lyndon McCann and Thomas B. Courtney *Companies Act 1963 – 2012*, p. 455 (see also *In re a Company* [1985] B.C.L.C. 37 at p. 41 *per* Norse J.; *Re Bryant Investment Co Ltd* [1974] All ER 683). In the present case, Mr. Hudson takes issue with the Revenue letter of demand, on the grounds that the amount was incorrect.

17. The legislation requires that the debt be over €10,000 (s. 570(a)(i)). It does not specify that the demand must be precisely correct. In *Truck and Machinery Sales Ltd. v. Marubeni Komatsu Ltd* [1996] 1 I.R. 12, Keane J. held that "*Where a company admitted its indebtedness to the creditor in a sum exceeding the statutory minimum [then £1,000] but disputed the balance, even on substantial grounds, the creditor should not normally be restrained from presenting a winding up petition."* That decision was approved by the Supreme Court in *Meridian Communications Ltd. v. Eircell* [2001] IESC 42 *per* McGuinness J. The effect of that approach seems to me to be that a dispute or even mistake as to the precise amount of a debt does not preclude the presentation of a petition as long as there is an undenied debt of at least the statutory minimum.

18. Furthermore, debt to an ongoing creditor is something of a moving target. As stated above, the Revenue position at the hearing was that a liability exceeding that originally demanded was likely to exist, but in any event that liability was ongoing by reference to P30s and VAT as they fell due. An identity between a letter of demand and an amount of debt proved at a hearing may well be impossible to achieve. The petition procedure should not break down as a result.

19. More broadly, a letter of demand is not the only mechanism for establishing that a company is not able to pay its debts, because s. 570(d) permits the court to be satisfied of that in some other way. In the present case, Mr. Hudson admits that the company is unable to pay its debts, and therefore, even if there is a defect in the Revenue letter of demand, the statutory basis for the court to be entitled to order a winding up of the company nonetheless exists.

20. Mr. Hudson submits that the "*process is defective*" as a result, but it is not so defective as to mean that the company is to be regarded as somehow now able to pay its debts. It is not so able.

Can a late affidavit of verification be cured?
21. Contrary to Mr. Hudson's submission the affidavit of verification was not sworn out of time. Four days are allowed by O. 74 r. 12 and the affidavit was sworn on 30th June, 2016, 6 days after the petition was presented on 24th June, 2016. However a combination of the disregard of the first day (O. 122 r. 10) and the weekend period where the limitation period is less than 6 days (O. 122 r. 2) mean that the petition was in fact presented within 4 days together with the extension of that period allowed by the rules.

22. The affidavit was however served out of time. Mr. Hudson submits that the winding-up rules in O. 74 are self contained and that a late affidavit of verification is not something that can be rectified by order of the court as he describes it as "*statutory*". But rules of court are not self-contained. Any individual rule of court is a statutory instrument or an element of a statutory instrument but has been inserted into a larger scheme. By amending the 1986 rules through the insertion of a new O. 74, those provisions are made subject to the existing and overarching terms of the rules, including the provision in O. 122 r. 7, permitting the court to extend time. Not only has the court got a jurisdiction to extend the time for a verifying affidavit, but it should exercise that jurisdiction in the interests of justice where there has been no irredeemably prejudicial delay; and as those criteria are met in this case, I do so here.

Should the company be wound up by the court or should the creditors' winding up be left in place?
23. In the present case, there are a multitude of mutually reinforcing reasons as to why a winding up by the court is more appropriate than one by the creditors.

24. It is clear from *In Re Hayes Homes Limited* (Unreported, High Court, O'Neill J., 8th July, 2004) at pp. 14 to 15 that whether the court should replace a creditors' voluntary winding up with a winding up under the direction of the court is a matter for the court's discretion on weighing up all of the relevant factors, including issues such as whether failure to make the order would give rise to a justifiable sense of grievance, and issues relating to management or transfer of the company's assets.

25. It is probably true to say that courts have generally been slow to displace an existing liquidator, perhaps on the basis that the identity of the liquidator makes little difference and such applications amount to not a great deal more in the end than an arm-wrestle between accountants for the fees of the liquidation. O'Hanlon J. said in *Re Gilt Construction Ltd*. [1994] 2 I.L.R.M. 456 that the court should be slow to dislodge a voluntary liquidator appointed by a majority of the creditors, especially where the amount available is small. This approach was followed by McCracken J in *In re Naiad Ltd* (Unreported, High Court, 13th February, 1995) and *In re Eurochick Ireland Ltd* [1998] IEHC 51. However, where there is something significantly more in the balance, the result can be different, as McCracken J. noted in *Eurochick* at p. 4, referring to a situation where wrongdoing needed to be investigated.

26. In the present case, I have regard to all of the circumstances but there appear to be at least nine general factors militating in favour of a winding-up under the supervision of the court which are relevant as follows.

(i) Whether there are allegations of misconduct required independent supervision

27. In this case, there are allegations of misconduct by or on behalf of the company, which militate in favour of a court-supervised process rather than a process conducted by a person appointed by those to be investigated.

(ii) Whether the precipitating event for the creditors' winding up was the presentation of a petition

28. In the present case the petition was filed first and the creditors' winding up meeting took place on the morning the petition was due to come before the High Court.

(iii) Whether there are allegations in relation to the court having been misled that required independent investigation

29. In the present case as noted above, Revenue have alleged that the court was misled in relation to aspects of the examinership process. Elements of the Revenue's complaint in this regard have not been denied: for example that Mr. O'Gara delegated various functions to Mr. Sage such that the latter acted as a shadow director (Affidavit of Ms. Davena Lyons at para. 22). It is also notable that the allegations regarding incorrect conduct of the creditors meeting are not denied by the person concerned, Mr. O'Gara (although they are denied by the liquidator). This factor appears to militate in favour of a court-supervised liquidation.

(iv) The conduct of the company since the liquidation

30. In the present case there are allegations of a "phoenix syndrome"; and the execution of an agreement between Mr. Sage and the company the day after the company ceased trading appears to provide some evidence for this. It is also perhaps not without relevance that the rental agreement with Mr. Sage of 7th July, 2016 was not disclosed to Revenue until Mr. Fitzpatrick's second affidavit on 2nd August, 2016. Not only that, but on 20th July, 2016, the day after Mr. Fitzpatrick says he found out about it, he wrote a letter to Revenue which did not mention the rental agreement and spoke in upbeat terms about the state of the company assets, saying that possession "*is being taken by the landlord*". The letter was not exhibited formally but was received by me on consent of the parties so it is a matter I can have regard to in the application.

(v). The complexity of the matter

31. While the complexity of this liquidation was a matter of dispute, it is clear even on the current material that it has some features which are of some difficulty and complexity, again militating in favour of liquidation under court direction.

(vi) The views of the stakeholders primarily affected

32. While Mr. Hudson makes great play of his appointment by the voting creditors, it is clear from the company statement of affairs that it is so hopelessly insolvent that only the preferential creditors will benefit. As Mr. Cahill submits "*unsecured creditors won't receive a penny*". To that extent, the views of the non-preferential creditors need to be significantly discounted in terms of the weight that should be attached to those views in determining whether the company should be liquidated by order of the court. In *Re H. J. Thompkins and Sons Limited* [1990] BCLC 76, it was noted that those with the "*largest stake*" should have regard paid to their views.

(vii) The views of stakeholders representing public rather than private interests

33. I also do not overlook the fact that both stakeholders who represented public interests, the Revenue and Limerick City Council, were supportive of the appointment of Mr. Kirby, and the present application is brought by one of those bodies. While not in any way decisive, it is a factor that the court can take into account.

(viii) The views of stakeholders unconnected to the company

34. Particular weight can be attached to the views of stakeholders not connected to the company: In *re Balbradagh Developments Ltd* [2008] IEHC 329; In *re Falcon RJ Developments* [1987] BCLC 437. To that extent the Revenue somewhat have the advantage over the other protagonists in this application.

(ix) The extent of objections by other creditors

35. In the present case, the only creditor objecting to a court winding up is Mr. O'Gara, who apart from being a person with a separate capacity of being a director of the company, is only an unsecured creditor. The absence of more significant objections from other creditors is also a factor to be borne in mind.

36. Having regard to the foregoing, the factors militating in favour of exercising the discretion for a winding-up under the direction of the court are overwhelmingly more weighty than those against. Under those circumstances, I will direct that the company be wound up by the court.

Where a liquidator appointed by creditors takes office before a company is wound up by the court, can he or she only be removed "for cause"

37. Section 638 of the 2014 Act provides for the removal of a liquidator for "*cause*". But is clear that not all removals of a liquidator require cause. For example, the creditors can simply displace a liquidator appointed by the members by appointing their own liquidator (section 637(4) of the 2014 Act). This involves a majority vote, not "*cause*".

38. It seems to me that the position is similar where the court appoints a liquidator on foot of a court-directed winding up under s.575. A liquidator so appointed simply displaces any previously appointed liquidator, who thereby vacates office. That is not a removal under s. 638 and does not require "*cause*".

39. The issue, therefore, is not so much whether "*cause*" has been shown against Mr. Fitzpatrick, but rather when in the exercise of the discretion conferred by s. 575 it is more appropriate to appoint a new liquidator to conduct the court-supervised winding up.

Should the existing voluntary liquidator continue in office?

40. In the present case, there are a number of reasons militating in favour of the appointment of Mr. Kirby rather than the continued conduct of the liquidation by Mr. Fitzpatrick:

(i) As noted above, the company's activities have featured significant signs of a phoenix syndrome, albeit that Mr. Fitzpatrick tried to address this.

(ii) Furthermore Mr. Fitzpatrick was considerably less than forthcoming to Revenue in his letter of 20th July, 2016.

(iii) A dispute has emerged in relation to voting entitlements at the creditors' meeting; the Revenue contend that votes were mis-attributed and that their nominee would have had a majority support at least of the secured creditors if the correct entitlements had been provided for. In particular they point to a very significant increase in liabilities to staff since the examinership (an increase from €212,008 in December, 2013 to €494,916 at the time of the petition). Mr. Fitzpatrick says that he is investigating this matter (para. 40 of his affidavit of 28th July, 2016), but this statement only exposes the unreal and conflicted position he is in. An examination which resulted in a finding that the staff's liability is overstated would undermine and jeopardise the outcome of the creditors' meeting and his own position as liquidator. Likewise, the amount due to Limerick City Council was marked down in a manner objected to by them and Revenue: Mr. Fitzpatrick is again in a compromised position in attempting to investigate this as to do so could further undermine his own appointment.

(iv) insofar as the conduct of the liquidation may involve inquiry into the conduct of any of the members, it is more appropriate that Mr. Fitzpatrick be replaced because he was originally nominated by the members (see *In Re Hayes Homes Limited and In Re Marcon Developments Limited* [2010] IEHC 372);

(v) the fact that the liquidator may have to investigate misconduct by the directors means that it is more appropriate that someone other than their nominee be the liquidator;

(vi) Mr. Kirby's fees will be guaranteed by the Revenue irrespective of any shortfall in the liquidation process, thereby beneficial the conduct of the liquidation and ensuring that no steps will be left undone due to a lack of finance (a matter described as a "*considerable boon*" by O'Neill J. in *Hayes Homes* at p. 16).

(vii) As noted above, the creditors who represented public interests favoured Mr. Kirby's appointment.

(viii) Mr. Fitzpatrick has not expressed any difficulty with the make-up of the creditors' committee, which in this case is hardly such as to make it a vigorous watchdog that will satisfactorily safeguard Revenue's interests. Mr. Cahill fairly describes it as a body "*stacked with the very people who require to be investigated*", including Messrs. Sage and O'Gara, and Mr. Freeman who granted the lease to Mr. Sage. One might have expected Mr. Fitzpatrick to see a difficulty with this sort of composition of the committee but he did not.

41. I also have regard to the submissions made against Mr. Kirby's appointment including the following:

(i) The fact that Mr. Fitzpatrick was the choice of the members. However for the reasons stated above, this is not of decisive weight.

(ii) The fact that Mr. Fitzpatrick was found at the meeting to be the choice of the majority of the creditors, and the court is required by s. 566 of the 2014 Act to have regard to his views (although not to be bound by them: see *Bryan Conroy Companies Act 2014*, p. 276, citing *McEvoy v. Meath County Council* [2003] 1 I.R. 208). By reason of the dispute as to the voting entitlements, this factor is of diluted weight, but in any event would not be decisive.

(iii) Mr. Fitzpatrick has given assurances of his intention to steadfastly pursue all matters. While I do not doubt his intentions in this regard, I consider that a person not nominated by the members will be in a better position to do so.

(iv) The costs of a court order to liquidate are likely to be higher than those of a creditors' voluntary winding up. However, in the particular circumstances, this does not appear to me to be a decisive reason against making an order in favour of Mr. Kirby.

(v) Mr. Hudson submits that the Revenue will be in the loop anyway as a member of the creditors committee of inspection. I have dealt with this matter above.

(vi) It was also submitted that Mr. Kirby had a prior involvement as an opponent of the examinership and a protagonist at the creditors meeting. These are not major points against his appointment now.

(vii) It was also submitted that there was no issue with Mr. Fitzpatrick's work. I do not think that this can be entirely sustained, if for no other reason that by reference to his failure to inform the court or Revenue in a timely manner about the agreement entered into when the company ceased trading.

(viii) It was submitted that the petitioner need to demonstrate prejudice to displace the existing liquidator. This is not the case. Nor indeed does prejudice need to be shown to convert a voluntary winding up to a compulsory one: In *re Downs & co Ltd* [1943] I.R. 420.

42. On balance, therefore, a consideration of all relevant factors strongly militates in favour of the appointment of Mr. Kirby as the liquidator, an appointment which will have the effect of displacing and removing from office, Mr. Fitzpatrick.

43. If, contrary to the approach I have taken above, "cause" within the meaning of the Act is in fact necessary then I would consider the factors mentioned above to constitute sufficient cause for this purpose.

44. Mr. Cahill also relied on the fact that Mr. Fitzpatrick's conduct of a previous liquidation was criticised by both the High Court and Court of Appeal in the case of *In Re Ballyrider Limited*, but in the circumstances, it is not necessary for me to replace reliance on this matter because I consider Mr. Kirby's appointment to be more appropriate in any event (see judgments of Murphy J., *Revenue Commissioners v. Fitzpatrick* [2015] IEHC 477, and Irvine J. *Revenue Commissioners v. Fitzpatrick* [2016] IECA 228(Unreported, Court of Appeal, 26th June, 2016).

45. But if it had been necessary to do so, however, it seems to me that criticisms of the conduct of a particular liquidation by a liquidator cannot be in principle excluded from amounting to cause for objecting to that liquidator on a subsequent occasion. Furthermore, if it was necessary to do so, I would also have regard to my finding above that Mr. Fitzpatrick has misunderstood the

role of voluntary liquidator in this case.

Transfer of books and records and other material
46. The consequence of the order made is that Mr. Fitzpatrick no longer has an entitlement to the books and records or other material of the company and must transfer them to the new liquidator. Mr. Hudson was invited to agree to this voluntarily but he informed me that he did not have instructions to do so, so I made an order directing such transfer.

Costs and stay application
47. Costs must follow the event in this case. The liquidator by consuming a substantial amount of court resources over 3 days in a vacation must accept the corresponding liability for the costs of having done so. Had he stood back and let the primary parties deal with the matter, there would have been no costs liability to him and the matter would have been dealt with much more cheaply and quickly. Curiously despite having sought and obtained liberty to file an appearance, when at a later stage the matter of costs arose, Mr. Hudson claimed that his client was a "non-party". I cannot accept this submission. Mr. Hudson cannot become a forensic equivalent of Schrödinger's cat, simultaneously existing and not existing in the proceedings depending on who is asking the question and why. Indeed if Mr. Hudson's client was truly a "non-party", one wonders why he applied for and obtained special leave to be heard, why he filed an appearance and what was the jurisprudential basis for him to have consumed so much in the way of scarce judicial resources in this application. The liquidator was a party to the application in all material senses. The submission that he was a "non-party" is without merit and is purely semantic. Even if one were to (in my view incorrectly) call him a third party or even non-party, his participation has caused costs to be incurred for which he has a corresponding liability.

48. Ms. McManus's submissions were very helpfully economical and did not materially add to the length of proceedings: I therefore make no order as to costs in relation to her clients even though they were also unsuccessful.

49. The balance of convenience in all the circumstances does not favour a stay on the order, because if the voluntary liquidation is allowed to continue, the passage of time will defeat the purpose of the order being made.

50. I was also minded not to stay the costs order for the following reason. Mr. Fitzpatrick and the company are jointly liable for the costs of this application. Insofar as costs are recouped from Mr. Fitzpatrick rather than the company, such payment generates additional funds from which the company's creditors can be paid. It is appropriate therefore for the company *via* the new liquidator to be entitled to set off the costs being paid by it to Revenue against any monies due by the company to Mr. Fitzpatrick for his work to date (in effect, paying the liquidator's fees to date directly to Revenue in satisfaction of costs due, rather than paying them to Mr. Fitzpatrick), thereby increasing the pot available to the creditors generally. Refusing a stay on the costs order therefore was designed to facilitate this set-off although I appreciate that there are probably other ways to achieve the same objective.

Order
51. For the foregoing reasons, the order I made on 10th August, 2016 was as follows:-

(i) the time be extended for the filing of the verifying affidavit up to the date on which it was filed;

(ii) that the company be wound up under the provisions contained in the Companies Act 2014 in main proceedings, in accordance with Article 3(1) of Council Regulation (EC) number 1346/2000;

(iii) that Mr. Miles Kirby be appointed as liquidator and that Mr. Anthony J. Fitzpatrick be therefore removed from office;

(iv) that Mr. Anthony Fitzpatrick present all books, records, accounts and property of the company to Mr. Kirby as soon as possible and no later than 15th August 2016, under s. 572(1)(b) of the 2014 Act;

(v) that the directors of the company and Mr. Sage make a statement of affairs of the company;

(vi) that the petitioner should recover his costs of the proceedings against Mr. Fitzpatrick personally and the company jointly and severally;

(vii) that costs payable to Mr. Fitzpatrick in his capacity as liquidator should be set off against his liability for the costs ordered against him;

(viii) that a stay on the winding up order and the costs order be refused.