

THE HIGH COURT

COMMERCIAL

[2008 No. 6237 P.]

BETWEEN

DECLAN RYAN, MARIE MCGOVERN, MARTIN RYAN AND IRENE RYAN,

PLAINTIFFS

AND

ORAN RYAN AND TRINETTE LARKIN

DEFENDANTS

JUDGMENT delivered by Mr. Justice Michael White on the 21st day of February, 2014

1. This matter comes before the court by way of notice of motion, brought by the receiver appointed by order of the court on 27th July, 2009 in respect of the assets of the dissolved partnership the subject matter of the substantive proceedings.

2. The receiver seeks the following reliefs:-

(i) Directions on proceedings against John O'Donohue and Maureen O'Donohue for the recovery of rent and the sale of property to realise the debt.

(ii) Directions in respect of proceedings against Anne Byrne for the recovery of rent arrears.

(iii) Directions in respect of proceedings against Su Pin Chen in the Circuit Court for the recovery of rent arrears.

3. The receiver also seeks a sum for his costs totalling €180,436.65 for the period 12th November, 2011 to date. The original sum sought by the receiver was €212,184 but this was amended on the date of the hearing.

4. The receiver also seeks an order from the court for payment out of the legal costs of the receiver in the total sum of €277,133.16, for the period between 2nd June, 2011 and 31st August, 2013.

5. The receiver then seeks liberty to pay out the remaining assets of the partnership.

6. The motion was heard on 10th December, 2013, mainly on affidavit, but Mr. Ken Fennell, the receiver was cross examined. Judgment was reserved.

Brief history of the partnership

7. The parties to the proceedings were involved in a family partnership in commercial property. The property held by the partnership was:-

- Shamrock Chambers 59, 60, 61 Dame Street and No's 1 and 2 Eustace Street, Dublin 2, held by indenture of lease of 1st June, 1961 between the Canada Life Assurance Company of the one part and Lipton Limited of the other part for a term of 99 years from 1st June, 1961 subject originally to the annual rent of €3,936 which was subsequently reviewed arising from a rent review clause and was raised to €425,000 per year from 2003. The first named Plaintiff did not have an interest in this property.

- Olympia House 62/63 Dame Street, Dublin 2, a freehold property. The first named plaintiff, Declan Ryan did not have an interest in this property.

- Freehold property at 16 Fitzwilliam Square, Dublin 2.

- Freehold property at 17 Fitzwilliam Square, Dublin 2.

- Freehold property at 4 Fitzwilliam Place, Dublin 2.

8. The properties were rented by way of lease; Shamrock Chambers had thirteen tenants; Olympia House, ten tenants; 4 Fitzwilliam Place, one tenant; 16 Fitzwilliam Square, two tenants; and 17 Fitzwilliam Square, one tenant. On the appointment of the receiver there were seventeen tenants whose leases had expired.

9. The partnership was profitable to 2005. As a result of the rent review of Shamrock Chambers, the partnership accrued a substantial loss in the year ending 2005. The rent review was finalised in 2005 but the rent was backdated to 2003 and increased from €3,936 per annum to €425,000 per annum.

10. In the course of the receivership, all the properties were sold.

11. The first sale was that of 4 Fitzwilliam Place which was sold to the incumbent tenant for the sum of €2m. Fixed charges held by the Bank of Ireland over a number of the properties were discharged from the proceeds of sale together with a capital gains tax payment of €320,000. The net funds after deduction of legal fees were lodged to the receiver's account.

12. Because of the serious difficulties with the Shamrock Chambers property it was decided to sell the remainder of the properties by tender with an original deadline of 13th March, 2002. This tender issued to four parties.

13. On 30th March, 2012, the court gave certain directions and ruled that it would consider the receivers preferred bid.

14. On 24th April, 2012, the court approved the sale of the remainder of the partnership property to Claddank Distribution (Irl) Limited for a total sale price of €1,275,100. The court approved the sale of Shamrock Chambers, 16 Fitzwilliam Square, Dublin and 17 Fitzwilliam Square, Dublin 2 for €850,100 with a closing date of 18th May, 2012 and the sale of Olympia House for a consideration of €425,000 with a closing date of 31st October, 2012. This order of the court was complied with and the balance of the partnership properties were sold.

15. In addition to the sale of the properties, there were many other responsibilities undertaken by the receiver which are set out in the detailed reports provided to the court.

History of the proceedings

16. High Court proceedings were initiated by the plaintiffs on 29th July, 2008, arising from a dispute among the partners as to how the partnership business had been conducted. There were allegations by the plaintiffs that the first named defendant had mismanaged aspects of the property portfolio on behalf of the partnership and they exposed the partners to significant liabilities. A statement of claim was delivered on the same date as the plenary summons, 29th July, 2008. On 1st October, 2008, the first named defendant filed an appearance and on 16th October, 2008, the second named defendant filed an appearance.

17. By order of the court of 10th November, 2008, the proceedings were transferred to the Commercial List for hearing and directions given.

18. By order of the court of 2nd March, 2009, trial of the action was directed for 14th July, 2009 and further directions were given.

19. The next significant order was that of 2nd April, 2009, when on a motion brought by the plaintiffs, the court appointed a receiver of the assets of the dissolved partnership, the subject matter of the proceedings and the court directed the receiver to:-

- (a) Get in and sell/realise the assets of the dissolved partnership;
- (b) Institute in the names of the plaintiffs and defendants such proceedings as he may consider necessary for the recovery of any rent or other assets due or belonging to the dissolved partnership;
- (c) Carry on the business of the dissolved partnership insofar as may be necessary for the beneficial winding up thereof;
- (d) Appoint a solicitor and such other agents as he may consider necessary to assist him in the performance of his duties;
- (e) Open and maintain one or more bank accounts in his own name for the purpose of the winding up of the dissolved partnership;
- (f) Make compromises with any creditors or debtors of the dissolved partnership on such terms as he may consider appropriate in the circumstances; and
- (g) Do all such other things as may be necessary for winding up the affairs of the dissolved partnership and distributing its assets.

20. By order of the court of 27th July, 2009, the trial was re-fixed for 26th January, 2010.

21. Mr. Ian Lawlor the original receiver was replaced by court order of 27th July, 2009. Ken Fennell of Kavanagh Fennell Accountants was appointed the receiver and similar directions to the receiver were granted as in the previous order.

22. Substantive proceedings between the parties were compromised by settlement agreement of 26th January, 2010. A dispute arose between the plaintiffs and the first named defendant about the implementation of this settlement agreement and that matter was determined by the court on 24th July 2013 when the receiver was directed to pay to the plaintiffs such monies as may be available for distribution to the first named defendant in part satisfaction of €600,000 which the first named defendant agreed to pay to the plaintiffs by the terms of settlement.

The legal principles on the measurement of costs claimed by a receiver and his agents.

23. The power of the court to measure costs derives first from the jurisdiction of the court in the substantive proceedings, from the order of the court appointing the receiver, and the application of the Rules of the Superior Courts.

24. The court is assisted by case law in interpreting its function, and the case law opened to the court has been helpful in that regard. The Irish case law opened to the court has focused on the statutory role of examiners and administrators but the general principles enumerated do have application to the appointment of a receiver in partnership dissolution.

25. In *Wood and Ors v Gorbunova*, a judgment of the English High Court of 19th June 2013 [2013] EWHC 1935(Ch) some general principles are set out in Para 38 which states;

38. "The terms of the order reflect the long established position in relation to a receiver's right to be indemnified out of the relevant assets. The position was authoritatively described by Warrington J in *Boehm v Goodall* [1911] 1 Ch 155 at 161, in a passage which is frequently cited. In particular, it was set out by Lord Walker in *Capewell v Revenue & Customs Commissioners* [2007] 1 WLR 386 at [21] where he said:

"21 It has always been a basic principle of receivership that the receiver is entitled to be indemnified in respect of his costs and expenses, and his remuneration if he is entitled to be remunerated, out of the assets in his hands as receiver, Warrington J stated the principle in a well known passage in *Boehm v Goodall* [1911] 1 Ch 155, 161:

"Such a receiver and manager [that is, one appointed by the court] is not the agent of the parties, he is not a trustee for

them, and they cannot control him. He may, as far as they are concerned, incur expenses or liabilities without their having a say in the matter. I think it is one of the utmost importance that receivers and managers in this position should know that they must look for their indemnity to the assets which are under the control of the court. The court itself cannot indemnify receivers, but it can, and will, do so out of the assets, so far as they extend, for expenses properly incurred; but it cannot go further. It would be an extreme hardship in most cases to parties to an action if they were to be held personally liable for expenses incurred by receivers and managers over which they have no control."

This passage was cited and applied by Vinelott J in *Evans v Clayhope Properties Ltd* [1987] 1 WLR 225, 229-230 (upheld by the Court of Appeal [1988] 1 WLR 358, Nourse LJ, at p 363, sharing Vinelott J's doubts as to whether a receiver's remuneration could be recovered as litigation costs)."

In *Re Sharmane Ltd* [2009] IEHC 377 Finlay Geoghegan J stated, at Para 36 of the judgment

"There are no statutory criteria according to which the Court should determine what constitutes reasonable remuneration for the purpose of Section 29. It does not appear to me that this can be determined by reference only to the total charge out costs computed from the hours spent and relevant hourly rates for the Examiner and those working with him. This may of course comprise one element to be taken into account in determining what reasonable remuneration is. However in my view it should not be the only element, and in determining what is reasonable remuneration the Court must also have regard to the nature of the work carried out, the complexity of the work and the importance or value of the work to the client. These would be common elements taken into account by professionals charging or seeking to agree fees with clients."

While referring to Section 29 of the Companies (Amendment) Act 1990, it is a principle that equally applies to the measurement of the receiver's costs in this case. The Court does not simply measure the costs by reference to the measurement of time, and can take an overall view and determine reasonable remuneration.

26. The court order granted the receiver power at Para d) of the order "to appoint a solicitor and such other agents as he may consider necessary to assist him in the performance of his duties." A question arises as to the court's power to measure the solicitor's costs. The receiver's power to appoint a solicitor derives from the court order. The solicitor acts as the receiver's agent and is directly accountable to him rather than the parties to the substantive action. The court does have power to measure the legal costs incurred by the receiver if it considers it is in the interests of justice to do so. It is desirable in most cases to refer solicitor's costs to taxation to avail of the expertise of the Taxing Master, but certainly in receiverships where resources are limited it is a power the court can exercise.

Costs of the official receiver and his legal advisers

27. By order of 20th December, 2010, the costs of the solicitors for the receiver for the period 27th July, 2010 to 20th December, 2010, were measured at €76,328.63 made up of a professional fee of €59,829.31 with vat of €12,564.15, together with counsel's fees of €2,250 with vat of €472.50 and outlay of €1,107.67 with vat of €105.

28. By order of the 20th December 2010, the remuneration of the receiver from the period 27th July, 2009 to 20th December, 2010 was measured at €170,266.70 being made up of a professional fee of €137,639, outlay of €3,077.28 and vat of €29,550.42.

29. By order of 29th July, 2011, interim fees of €80,000 were allocated in equal measure in respect of (a) legal costs; and (b) the costs of the receiver.

30. By further order of 21st December, 2011, it was ordered that the sum of €20,000 together with VAT thereon should be allocated in equal measure in respect of (a) legal costs and; (b) the costs of the official receiver.

31. By order of 13th February, 2012, the plaintiffs and the receiver entered into a consent whereby 50% of the fees claimed by the receiver were paid subject to an undertaking by the relevant parties that if the amount ultimately determined was less than the amount paid, any balance would be repaid. There was a direction to tax the balance of the solicitor's costs.

26. The effect of these orders and the understanding of the court is that the fees of the receiver and his legal advisers have been paid in full up to 1st June, 2011, by payment of the total sum of €234,318.28 to the receiver and €246,328.63 to the solicitors for the receiver.

27. In respect of fees due for the period 2nd June, 2011 to 11th November, 2011, the sum of €35,551.65 has been paid to the solicitors and the balance claimed of €23,451.65 has been remitted for taxation in accordance with the order of the court of 13th February, 2012.

28. The receiver has been paid the sum of €29,118.44 and has an outstanding claim for the sum of €17,018.44 for this period.

29. The motion then before this Court deals with the period from 12th November, 2011 up to date. The court assumes that this is up to the date of the issue of the motion.

History of difficulties with Shamrock Chambers

30. This property was held under a lease of 99 years where the original rent was reviewed in 2005 from €3,936 to €425,000 a year back dated to 2003. The partners apart from the first named plaintiff were personally liable in respect of the rent on the property.

31. Monies had to be borrowed by the partnership from Bank of Ireland to discharge arrears of rent. Due to counterclaims by tenants in the Chambers and defaulting tenants, the rent received by the partnership when it was being administered by the receiver was €198,453 a year, a short fall of €226,540. The professional advice received by the receiver was that the potential future liability to buy out the lease was between €3.7m and €5m as compared to a market value of the property of €1.2m.

32. In his report for the court, the receiver has outlined in some detail the work undertaken to try and resolve this issue including detailed negotiations with Canada Life and their legal advisers, and consultation with the partners. Canada Life initiated proceedings against the partners. The negotiations with Canada Life were difficult and complex. The Court accepts the work undertaken by the receiver to resolve the Shamrock Chambers lease issue was significant and time consuming.

Circuit Court proceedings against Su Pin Chen

33. These were court proceedings seeking arrears of rent from Ms. Pin Chen. The only reference to these proceedings is at Para. 11 of the affidavit of the receiver sworn on 25th October, 2013. The record number for the Civil Bill is 2011/77/18. The proceedings have not been exhibited in the application before me. They do not seem to have been progressed in any way. The court notes from the detailed bill of costs prepared by the legal costs accountants on behalf of the solicitors for the receiver that Ms. Pin Chen contacted the solicitors on 19th October, 2011, indicating that she did not owe any money. She was served with the Civil Bill on 20th October, 2011, but no further action was taken to process the proceedings. Pursuant to the order of this Court of 27th July, 2009, at Para. (f), the receiver had the power to make compromises with any creditors or debtors of the dissolved partnership in such terms as he may consider appropriate in the circumstances. He should have been decisive in respect of this matter. The court does not know the exact position but it seems that the first named defendant was not in a position to provide any assistance to the receiver in relation to the lease with Ms. Pin Chen. These proceedings should not continue and the receiver or the solicitors should not be entitled to any fees in respect of the work carried out in respect of same. The receiver should not have proceeded with this matter. The court will allow the outlay on the Civil Bill and payment to the summon server. No further action seems to have been undertaken in respect of this matter after 14th March, 2012.

The High Court proceedings against Anne Byrne

34. The court notes from perusal of the bill of costs prepared on behalf of the solicitors for the receiver that correspondence commenced with Ms. Byrne on 9th June, 2011. A High Court summons dated 14th February, 2011, was served on Ms. Byrne around July 2011. Ms. Byrne filed an appearance on 18th July, 2011. The court has not been supplied with any relevant information about the nature of this dispute. A notice of motion was issued and served in or around February 2012 seeking liberty to enter final judgment for the sum of €78,461.96. On 25th February, 2012, the Master of the High Court struck out the proceedings. An appeal was filed on 2nd May, 2012. The proceedings were reinstated on 9th July, 2012, by order of the High Court and were remitted for plenary hearing. Subsequently on 16th July, 2012, Cusack McTiernan Solicitors on behalf of the plaintiffs became involved and objected to the involvement of the first named defendant. They were advised that the first defendant was not directly involved in the proceedings. Instructions had to be taken from the first defendant and affidavits prepared by him as he was a person who dealt with Ms. Byrne. No further action was taken subsequent to its reinstatement by the High Court on 9th July, 2012. The Court notes the receiver's power pursuant to Para. (f) of the order of 27th July, 2009. It was up to him to decide. If the assessment is that Ms. Byrne is not a mark or that proceedings would not be successful against her, the proceedings should be discontinued. The solicitor's fees in relation to the work done on Ms. Byrne's case should be dealt with separately. No fee has been inserted by the legal costs accountant in respect of same and I presume that it is part of the general instructions fee claimed of €169,700. The court cannot discern what fee the receiver is seeking in respect of this work.

Conduct of the proceedings against Nova Travel Limited, John O'Donohue and Maureen O'Donohue, High Court proceeding [2009 No. 5483 P. and [2012 No. 158 S.P.

35. In the notice of motion, the receiver requests directions from the court on the conduct of these proceedings. In the course of the hearing before this Court on 10th December last, the receiver indicated he was prepared to finalise these proceedings. From a perusal of the bill of costs, the court is satisfied these proceedings were progressed properly up to and including the order of the High Court of 30th July, 2012 when a well charging order and order for sale was procured. After the procurement of the well charging order, it was appropriate to enter into negotiations with Mr. and Mrs. O'Donoghue due to the terminal illness of Mrs. O'Donoghue who sadly died on 3rd April, 2013.

36. This is a difficult situation, but the receiver has no option but to execute the court orders. The court understands the dilemma facing the receiver. The costs of the litigation should be dealt with separately. The solicitor should prepare a separate bill of costs for these proceedings and indicate if they are party and party or solicitor and client costs. The receiver is entitled to be paid separately for the work undertaken on this matter. It has not been identified in the fee note furnished by the receiver to the court.

The conduct and criticism of the receiver.

37. The plaintiff served notice of cross examination on the receiver and he was robustly cross examined in the course of the hearing on 10th December, 2013.

38. Having considered the substantial documentation the history, and submissions the Court finds that a lot of the criticism of the receiver is unfair. It is important the court separates the issue of remuneration sought by the receiver and the general criticism of him made by the plaintiffs.

39. The intervention of the plaintiffs in the bid process, for the sale by tender in March and April 2012, and the involvement of their solicitors with Canada Life were not helpful and interfered with the work of the receiver. The plaintiffs sought the appointment of the receiver in their proceedings and this was acceded to by the court. They would have been advised that the consequences of that action were to lose control of decision making which had to be exercised by the receiver. The receiver kept all parties informed of developments.

40. The Court disagrees with the proposition put forward on behalf of the plaintiffs that this was a simple receivership in the form of a glorified conveyancing exercise.

41. The court understands the frustration of the plaintiffs. The original proceedings were not exhibited before the court but the court sought a copy of the statement of claim.

42. The conduct of this partnership was far from ideal. There was no proper estate management historically, rent arrears were allowed to build up. Leases were allowed to expire. There was no proper planning to deal with the rent review of Shamrock Chambers.

43. The receiver set out on affidavit the difficulties he had with Canada Life. The receiver viewed their position as unreasonable and unjustified. This has been an unfortunate saga for all the parties in that the net amounts available after dissolution to the partners will be minimal.

44. There were a number of outside factors:-

(i) the collapse of the property market;

(ii) the exposure of the partners to the lease of Shamrock Chambers and the requirement to market other properties together with Shamrock Chambers in order to deal with this difficulty;

- (iii) the possibility of unsustainable losses in the partnership if the lease of Shamrock Chambers could not be resolved; and
- (iv) the unreasonable position taken up by Canada Life in respect of the negotiations on this lease.
- (v) The complications around the bid process with the involvement of two of the partners and Mr. Jim Carr.

45. These proceedings were compromised between the parties, and the court is sympathetic to the plaintiffs position. However, they interfered too much with the receiver and built up costs as a result.

46. It is unfortunate this receivership lasted so long, the receiver having initially been appointed on 2nd April, 2009. Five years is far too long to finalise the dissolution of a partnership by way of official receivership.

The costs of the receiver from 12th November, 2011 to date.

47. The receiver refers to his application for payment in paras. 12 and 14 of his affidavit sworn on 25th October, 2013. He states that the fees that he is seeking are fully particularised in the report marked with the letters KF1. I have carefully considered this report and the fees are not particularised in any great detail at all. The court has been presented with one sheet headed the Ryan Partnership Time Analysis 11th November 2011 to 24th October, 2013, where the employees are set out their position, their hours, their rates and totals. There were further exhibited time sheets, which do not correspond with the number of hours set out in the composition statement of account. I have carried out an analysis of the time sheets, and the dates they cover, and refer to them as follows:-

- Ken Fennell, Senior Partner – 20/11/11 – 30/04/12: 30hrs
- Michael Ladden, designated as partner which is conceded was not his appropriate ranking – 14/11/11 – 29/05/12: 128.15hrs
- Mark Dignam, Manager – 28/11/11 – 18/5/12: 52.15hrs
- Darragh Goode, Senior – 18/11/11 – 25/05/12: 127.15hrs
- Rachel O'Brien, Semi-Senior – 15/11/11 – 17/05/12: 38hrs
- Aisling McGovern, Trainee – 23/12/11 – 29/05/12: 13.15hrs
- Garrett O'Connell, Junior – 14/03/12: 1hr
- Conor Quane – 11/05/12: 30mins

48. The total hours in the time sheet exhibited are 390hrs 15mins. Obviously there must be other time sheets which have not been exhibited, or else I have missed them in the documents which have been produced to the court. There are 122hrs unaccounted for if the claim is for 712hrs 15 mins.

49. In s. 5 of the report, the receiver refers to a summary of work carried out in the period from 15th March, 2013 to 23rd October, 2013. However, on perusal, it refers to work carried out in 2012. There is no breakdown of the work carried out by the individual employees related to the detailed work of the receivership. The exercise by this Court of the measurement of an official receiver's fees is an onerous responsibility and not a rubber stamping exercise. The documentation furnished by the receiver to justify fees of €180,436.65, having already been paid substantial fees falls short of what the Court would expect to enable it to carry out its task.

50. Kelly J in a judgment of 17th November 2010, *In the matter of Missford Limited t/a Residence Members Club and In the matter of the Companies Amendment Act 1990, as amended*, stated,

"Anecdote or personal experience cannot be used as a benchmark to set an appropriate level of hourly rate charge. A comparator must be sought."

51. In that case, he fixed fee rates at, managing partner €357 per hour, supervisor, €176.40 per hour; senior, €155.40 per hour, semi-senior, €126 per hour; and junior, €84 per hour.

52. That case was decided approximately four years ago. Since that date, there has been retrenchment in the public finances. The Court would have expected a further fall in those rates. While the court cannot take judicial knowledge of it without specific evidence, it notes the developing practice of seeking tenders for insolvency work and insolvency practitioners bidding for that work. The receiver is entitled to be properly remunerated for all the work he has undertaken.. The court is not prepared to finalise the receiver's account yet. The court will require the discrepancies to be explained and a more detailed fee account presented to the court. If the plaintiffs wish to challenge the rate of fees, they have the responsibility to produce appropriate and relevant statistics on hourly rates for different categories of insolvency practitioner or adduce expert evidence by way of affidavit.

53. I direct payment on account to the receiver of €63,000 together with VAT at 23% thereon at €14,490 making a total of €77,490. The court also directs that the sum set out at para. 15 of his affidavit should be finalised that is, Canada Life €40,000; court duties, €34,634; and rental refund of €15,232, unless there is any objection by the other parties.

The solicitor's costs.

54. The court has the jurisdiction to measure the legal costs of a solicitor appointed by an official receiver. Normally, the court would refer the solicitor's costs for taxation to the Taxing Master, which is the most desirable course.. However, Mr. O'Brien's solicitor on behalf of the second named defendant has referred to the paucity of the net assets for distribution to the partners. There will be substantial stamp duty on taxation of costs and fees to a legal costs accountant. In those circumstances I will measure the solicitor's costs.

55. The court is satisfied from the draft bill prepared by legal costs accountants on behalf of the solicitors, that very substantial work was carried out by the firm in the course of this receivership. However, the court is dissatisfied with the structure of the bill. The bill briefly sets out the work carried out by the solicitors in different sections. It sets out a fee for the conveyancing work of €12,000, a

fee of €3,000 for the draft lease to Jo'burger limited, a fee of €2,300 for the lease to Plu fab Limited, a fee of €1,250 for the lease of the ground floor unit at Shamrock Chambers to Terry Dunne. The instruction's fee covers a wide range of work including the court cases, the bid process, defending the motion for directions of the plaintiff's, and various other work, the bill states:-

"This bill of costs covers the period from 2nd June, 2011 to 31st October, 2012. The work can be elaborated on at a later stage if required and for all further correspondences, and time occupied in connection with this matter are discharged by way of instruction's fee, of €169,700."

56. If this Court is to measure costs, that is inadequate. I have already disallowed the costs in respect of the Circuit Court proceedings against Ms. Chen and also directed that there be a separate fee statement prepared for the High Court proceedings against Nova Travel Limited and the O'Donoghues and the High Court proceedings against Anne Byrne. Likewise, the instructions fee should be broken down in respect of the other sections of the work carried out by the solicitors.

57. The solicitors have also prepared a separate bill for work in progress from 1st November, 2012 to 31st August, 2013, seeking professional fees of €34,658.58, VAT thereon €7,971.45; postage and sundries €3,000, VAT on postage and sundries, €690; stamp duty commissioner's fees €1,576. In the summary account prepared by the solicitors they give a credit for €23,503.12. The court notes from the court orders in respect of the fee application by the solicitors for the period 2nd June, 2011 to 11th November, 2011, they were paid €35,551.65, that is €12,100 paid by court order of 21st December, 2011 and €23,451.65 paid by court order of Charleton J. on 13th February, 2012. The order of 13th February, 2012, directed that the balance claimed of €23,451.65, be sent for taxation. The credit specified in the summary of the outstanding fees to the solicitors for the period 2nd June, 2011 to 31st August, 2013, is incorrect. There also seems to be duplication of the sum of €59,003.28 claimed from 2nd June, 2011 to 11th November, 2011. This seems to have been dealt with by the High Court orders of 21st December, 2011 and 13th February, 2012. If the court is to deal with the solicitor's legal costs by measuring same, the court would expect expert opinion being provided by and on behalf of the plaintiffs in respect of their challenge to the costs. In the alternative, it is open to the parties to try and make one final effort to agree the costs, which would be in everybody's interest. In the meantime, the court will permit the receiver to pay out the solicitor's legal fees and outlays as follows:-

On Account €90,000,

VAT @ 23%, €20,700

Post and sundries €1,000,

VAT thereon €230

Stamp duty €823

Commissioner's fee €184

Summons service fee €160

Counsel's fee €12,700

VAT thereon €2,921

Total €128,558