THE HIGH COURT

[2005 No. 279 COS]

IN THE MATTER OF MOULDPRO INTERNATIONAL LIMITED (IN LIQUIDATION)

AND

IN THE MATTER OF THE COMPANIES ACTS 1963 TO 2005

BETWEEN

PEARSE FARRELL (OFFICIAL LIQUIDATOR)

APPLICANT

AND

PLASTRONIX INVESTMENTS LIMITED

NOTICE PARTY

JUDGMENT delivered by Ms. Justice Finlay Geoghegan on the 9th day of October 2012

1. This judgment is given on one issue only arising in the application for final orders made by Mr. Farrell, the official liquidator ("the Liquidator") in the above liquidation. The application was brought by direction of the Court on notice to Plastronix Investments Ltd. ("Plastronix"). The dispute relates to the amount of the remuneration sought by the Liquidator to be determined in respect of the work done by him in the liquidation.

Background

2. Mouldpro International Ltd. ("the Company") was established in Dublin in 1984. It specialised in the manufacture of advanced technology plastic injection mouldings for the consumer electronic, automotive and construction industries. It was initially a subsidiary of Toyota Ireland Ltd., then acquired by the Munekata Group and, in 2002, acquired by the then directors of the Company through a management buyout and changed its name to its current one. In 2003, the Company established a branch in the Czech Republic. The main customers of the Company are recorded as having been Sony, Toshiba, Panasonic and Orion. The Liquidator, in his second report to the Court of 28th February, 2006, summarised the events leading to the petition for winding up which are relevant to the conduct of the liquidation and issues arising in this application in the following terms:

> "In October 2004 the Company commenced a downsizing and restructuring plan. They placed their premises at Jamestown Road on the market for sale. Subsequently new significantly increased levels of production were agreed with Sony in order to meet Sony's increased production requirements. The Company sought to 'Leaseback' its premises for a two year period.
>
> However, late that month Toshiba major customer announced the cessation of its UK television operations. This was quickly followed, within a fortnight, by a similar announcement from Sony, the Company's other major customer that it too was closing its UK operations. Both announcements resulted in an immediate loss of turnover in the order of €10,000.000. The business would no longer be sustainable in the long term and the directors sought independent advice regarding the Company's financial position which advice resulted in my appointment on foot of a petition brought by a related company [Plastronix] in its capacity as a creditor of the Company."

3. On 22nd July, 2005, the Liquidator was appointed as provisional liquidator, and on 14th August, 2005, an order made for the winding up of the Company and his appointment as official liquidator.

4. The Liquidator is a well-known insolvency practitioner and a partner in the firm RSM Farrell Grant Sparks ("FGS"). In the final application, he has sought an order of the Court determining his remuneration as provisional and official liquidator as follows:

Fee Period	Net (€)	VAT (€)	Total (€)
22 Jul 05 to 28 Feb 06	738,449.31	155,074.36	893,523.67
1 Mar 06 to 30 Sep 07	348,379.17	73,159.63	421,538.80
1 Oct 07 to 31 Mar 09	211,522.03	45,477.24	256,999.27
1 Apr 09 to 30 Sep 11	196,081.00	41,177.00	237,258.00
Post-Costs	8,264.00	1,736.00	10,000.00
Total:	1,502,695.41	316,624.23	1,819,319.74

The Law

5. There is limited statutory guidance for the determination of liquidators' remuneration. Section 228 of the Companies Act 1963 provides:

> "The following provisions relating to liquidators shall have effect on a winding-up order being made—

. . .

(d) a person appointed liquidator shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs."

6. Order 74, r. 46 of the Rules of the Superior Courts provides:

"An Official Liquidator shall be allowed in his accounts or otherwise paid, such salary or remuneration as the Court may from time to time direct and in fixing such salary or remuneration the Court shall have regard to any necessary employment of accountants, assistants or clerks by him. Such salary or remuneration may be fixed either at the time of his appointment or at any time thereafter. Every allowance of such salary or remuneration, unless made at the time of his appointment or upon passing an account, may be made upon application for that purpose by the Official Liquidator on notice to such persons (if any) and shall be supported by such evidence as the Court shall require. The Court may from time to time allow such sum (if any) as the Court shall think fit to the Official Liquidator on account of the salary or remuneration to be thereafter allowed. The Court may direct that an inquiry be held by the Examiner or the Master as to the salary or remuneration of the Official Liquidator and that the Examiner or the Master (as the case may be) do report thereon to the Court. The Master shall have the same powers as the Examiner in conducting any such enquiry."

7. The discretion given the Court by s. 228 of the Act of 1963 is a wide one. In Re Car Replacements Ltd. (High Court, Murphy J., 15th December, 1999), the judge observed, having quoted s. 228:

"Despite this wide discretion, the practice of the courts has been for many years to determine the remuneration of an official liquidator on the basis of the hours worked by him and his staff. No doubt, this procedure has its own infirmities. There is no scale of the appropriate rate of the remuneration and it is frequently argued that such a system does nothing to encourage expedition in the completion of the winding up of the affairs of a company. In the present case, the Official Liquidator has throughout presented his claim for remuneration on the basis of the hours worked, and it is agreed by Primor and the other Notice Parties who appeared on the application that the rates claimed by the Official Liquidator were appropriate and that no dispute arose as to the hours worked by him and his staff on the winding up of the companies viewed as whole."

In that decision, at issue was the attribution of the hours worked between 39 companies within the PMPA Group, all being wound up by the Court.

8. The jurisdiction given the Court to direct an inquiry to be held by the Examiner in O. 74,r. 46 is not one which has been exercised in recent times. Counsel drew attention to the Supreme Court appeal in *Merchant Banking Ltd*. [1987] ILRM 260, in relation to a High Court decision delivered on 29th April, 1985, following such an inquiry.

9. The current practice now for many years has been for liquidators to make applications to the Court for determination of their remuneration based upon a report of the official liquidator setting out the work done by him and his staff in the period for which the fees are sought and to include a list of each member of staff working on the liquidation, their level within the firm and the charge-out rate applied by the relevant accountancy firm in respect of the individual. It has also been the practice to put a creditor likely to be affected by the determination of the remuneration on notice and to request that person to act as a *legitimus contradictor*. In many cases, this is the Revenue Commissioners as a preferential creditor. In instances where the preferential creditors may be paid in full, normally the largest unsecured creditor will be put on notice. There may be particular reasons in some instances why a different creditor may be chosen.

10. The further established practice is that an official liquidator may apply from time to time throughout the liquidation seeking either determination of his remuneration for a specified period or seeking a payment on account of the amount of the remuneration which he is seeking in respect of that period. Those applications are grounded upon similar reports. In recent years, it has been the prevalent practice only to make orders for payments on account and to leave the final determination of the remuneration to the end of the liquidation. The orders for payments on account are made upon an undertaking from the official liquidator to refund the liquidation in the event that the amount determined is less than the payment on account. Where objections are made to the amount of the remuneration on an application for a payment on account, the Court will sometimes make orders for payments on account of less than the total amount sought. However, even where an order is made for the payment on account of the full remuneration sought, it is not indicative that the Court will fix the remuneration in the amount sought. This is accepted on behalf of the Liquidator herein.

11. In recent years, the High Court has also exercised an analogous jurisdiction in determining the remuneration of examiners appointed pursuant to the Companies (Amendment) Act 1990. Section 29(1) of the Act of 1990 (as amended) provides:-

"(1) The court may from time to time make such orders as it thinks proper for payment of the remuneration and costs of, and reasonable expenses properly incurred by an examiner."

12. In a number of decisions, commencing with in the matter of *Sharmane Ltd. and Others* [2009] 4 I.R. 285, given on 30th July, 2009, the High Court has considered its approach to the determination of remuneration under s. 29 of the Act of 1990, based upon claims for remuneration by reference to time spent and hourly charge-out rates. Whilst those decisions were given in relation to the remuneration of examiners, in practice since 2009, the caselaw has been subsequently relied upon by their official liquidators and applied to the determination of their remuneration by the Court. In *In Re Sharmane Ltd*., I stated at p. 296:

"35. It is common case that the remuneration sanctioned by the court pursuant to s. 29(1) must be reasonable remuneration in the sense that it must be reasonable both for the examiner and for the companies to which he was appointed. The remuneration sought to be sanctioned is exclusively based upon the time spent by the examiner and his colleagues working on the examinerships, each being costed out at the hourly rate applicable to them in the firm of Hughes Blake Chartered Accountants. Those hourly rates, I assume, in accordance with normal practice, include a profit element for the accountants.

36. There are no statutory criteria according to which the court should determine what constitutes reasonable remuneration for the purpose of s. 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."

13. The principles set out above have been cited with approval by Kelly J. in *Re Missford Ltd*. [2010] 3 I.R. 756, in relation to an examiner and in *ESG Reinsurance Ireland Ltd*. [2010] IEHC 365, in relation to the remuneration of an administrator appointed pursuant to the Insurance (No. 2) Act 1983, and by Clarke J. in *Re Marino Ltd*. [2010] IEHC 394, in relation to an examiner. In each of these three cases, Kelly J. and Clarke J. addressed the appropriateness of the specific hourly rates set out by the examiner or administrator in respect of himself and the staff of the relevant accountancy firm. The rates allowed have subsequently been applied by official liquidators and allowed by the Court without objection from the Revenue Commissioners in applications in winding ups by the Court. In the current year, the Revenue Commissioners have further reduced hourly rates it considers appropriate in windings up. That reduction does not affect any period to which this application relates.

14. Counsel for the official Liquidator and notice party did not dispute the applicability of the above decisions to this application. Counsel for the official Liquidator did emphasise compliance by the official Liquidator in the preparation and presentation of the reports supporting the applications for determination of his remuneration with the established and accepted practice of the Court. He submitted that if the Court were now going to require further or additional material, that any such requirement should be clearly indicated and applied prospectively. I accept that submission subject to the following. Since the delivery of the judgment in *Re Sharmane Ltd.*, it has been clear that the Court, in determining the remuneration of persons appointed as examiners, administrators or official liquidators, will not determine the reasonable remuneration by reference only to the total charge-out costs computed from the hours spent and relevant hourly rates, but will also have regard to:

(i) the nature of the work carried out; and

(ii) the complexity of the work; and

(iii) the importance or value of the work 'to the client'.

In *Re Sharmane Ltd.,* the client was the company as an examiner was appointed to it on the basis that it was a company with a reasonable prospect of survival as a going concern. In a liquidation, the client is not the company. Insofar as the primary obligation of a liquidator in most liquidations is the realisation of the assets of the company and their distribution to those entitled on a winding up in accordance with the relevant priorities, it appears to me that in the sense used, the 'client' in a liquidation are those persons entitled on a distribution of the assets of the company in accordance with statutory priorities. There is, in general, the added complication in a liquidation that not all work which a liquidator is required to do may be of importance or value to those entitled on a distribution of the company's assets. In making this comment, I have in mind, in particular, the obligations imposed on a liquidator pursuant to s. 150 of the Companies Act 1990, and s. 56 of the Company Law Enforcement Act 2001, in relation to making reports to the Director of Corporate Enforcement and bringing applications for declarations of restriction of former directors of the company in liquidation. In the context of a winding up, it appears to me that one would have to add, as a relevant matter, compliance by the liquidator with statutory or regulatory obligations. This latter matter is not something of importance on the facts herein.

15. Current practice does not expressly require an official liquidator to break down in any precise way the time spent on different elements of the work conducted by him and his staff in the course of the winding up. Order 74, r. 46 of the Superior Court Rules does require an official liquidator to support a fee application with "such evidence as the Court shall require". Some official liquidators, in my experience, have provided schedules with a breakdown on time per topic. There may be time-recording systems which permit this to be simply done. However, it is not the norm.

16. It is important to try and keep an appropriate balance between requiring a liquidator to put sufficient information before the Court that it (and any creditor acting as legitimus contradictor) can form a view on what is reasonable remuneration, having regard to the above elements, and not imposing such detailed requirements as will involve extra work and expense to the liquidation. Official liquidators include in their remuneration claims the time spent on the preparation of reports for the Court which support applications for the determination and payment of remuneration and have been allowed same.

17. As observed by Murphy J. in 1999 in *Re. Car Replacements Ltd.*, the current system which is still significantly based upon time spent and charge-out rates "has its own infirmities". However, the real problem is to come up with a better system which of itself is not overly time consuming and expensive and results in the Court being in a position to fix remuneration which is reasonable, both for an official liquidator and reasonable for the creditors of the Company. Insofar as the approach of the High Court since the decision in *Re Sharmane Ltd*. in 2009 has sought to add to the consideration by the Court the nature, complexity and importance or value of the work done for the creditors or other persons entitled on a distribution in the winding up, albeit in a context where the starting point is the computation of the remuneration based upon time spent and the relevant charge-out rate, the statements of principle cited with approval by Laffoy J. in *Re Redsail Frozen Foods Ltd*. (*In Receivership*) [2007] 2 I.R. 361, from Ferris J. in the English High Court in *Mirror Group Newspapers plc. v. Maxwell* [1998] BCLC 638, at p. 652, are of assistance. In particular, in that decision, where he was fixing the remuneration of receivers appointed to the M.G.N. Group in relation to hourly rates and time spent, he stated, ". . . time spent represents a measure not of the value of the service rendered, but of the costs of rendering it. Remuneration should be fixed, so as to reward value, not so as to indemnify against cost. ." I would agree with the distinction made between the value of work done and the cost of rendering it. Persons who have worked as professionals are aware of the truism that there is not a direct correlation between the value to a client of work done and the time spent by the professional person in producing the work. All have experienced differences of approach between professionals, who, in theory, are at the same level (have same charge out rate), one of whom may, in half the time of the other, produce work of greater value for a client. In determining an official liquidator's remuneration, it is appropriate to have regard to the value of the work and also, separately, to the cost of rendering it.

18. I now turn to the application of these general principles to the facts herein.

Liquidator's Remuneration

19. As already set out, the Liquidator seeks the determination of his remuneration in respect of four distinct periods (apart from post/final order costs in respect of which no objection was made and which appear reasonable). The first three periods had been the subject of separate applications brought in March 2006, December 2007 and May 2009, respectively. Each of those applications was grounded upon a detailed report setting out the work done in the relevant period and seeking to justify the remuneration sought by reference to work done, time spent and charge-out rates in accordance with normal practice. Plastronix was not the *legitimus contradictor* on any of the prior applications. The Revenue Commissioners were on notice of the first application and GE Commercial Finance, as the largest unconnected unsecured creditor, in the second and third applications. Whilst criticism has been made of this choice, it does not appear to me justified. The only orders made on the first three applications were orders for payment on account

and counsel for the Liquidator properly did not seek to rely upon the amounts paid as a determination previously made by the Court of the remuneration for the first three periods.

20. In the present application, following the initial affidavit and report of the Liquidator, Mr. Nangle, the managing director of Plastronix, delivered an initial replying affidavit in which he raised a number of matters in relation to the level of remuneration sought by the official Liquidator. He also raised other issues, one of which related to the legal costs of the Liquidator. Subsequently, agreement was reached on those by a reduction of 10% of the legal costs in respect of the final period.

21. One general issue raised by Mr. Nangle was the lack of detailed particulars of the tasks undertaken by the Liquidator and breakdown of the time spent on each task and details of the seniority of the persons engaged in each task. It was also submitted in the first affidavit that a forensic accountant should be engaged to express a view on the time and costs incurred by the Liquidator and his staff in the liquidation and the appropriateness of the fees sought. This latter application was not pursued at the ultimate hearing and correctly so, in my judgment, as it would not be justified on the facts herein.

22. In response to Mr. Nangle's first affidavit, the Liquidator delivered his second affidavit in January 2012, and having regard, in particular, to objections made to the fees claimed in respect of the final period from 1st April, 2009, to 30th September, 2011, provided at Exhibit 2PF2, a listing of the tasks undertaken by each individual within the aggregate hours worked. Mr. Nangle subsequently swore two further affidavits and the Liquidator two further affidavits in which a number of factual issues were canvassed in some detail and some comment made by each. Certain of the matters were clarified in the course of the exchange of affidavits and other matters were not pursued at the ultimate hearing.

23. Mr. Nangle was the former managing director of the Company. He is also a director of Plastronix which was the petitioner. He was one of the persons who swore a statement of affairs of the Company. In addition, he was retained by the Liquidator for a significant period in the liquidation on a consultancy basis to assist, in particular, with the preparation of what is referred to as the "Sony claim" and which is relevant to certain of the issues to be determined in relation to the reasonable remuneration of the Liquidator. Mr. Nangle is a person who has a particularly detailed knowledge of the winding up of the Company and is in a position to be of assistance to the Court in the objective determination of the reasonable remuneration of the Liquidator. However, inevitably, he is also a person who has a particular point of view on certain issues by reason of his closeness to the affairs of the Company.

24. The Liquidator submits that this was a particularly complex liquidation. Mr. Nangle disputes this. I accept the Liquidator's view that there were a number of complex issues arising in this liquidation which did require significant work by the Liquidator and his staff. Nevertheless, objectively, the level of remuneration sought is high and the time taken to complete the liquidation significant.

25. The total fees sought are in the order of €1.5 million. The receipts in the Liquidator's summary as at 30th September, 2011, are €8,345,503. Certain of those receipts are not realisations which required much work in the liquidation in the sense of being deposit interest, VAT refunds (on fees paid during the liquidation), bank balances in existence at the commencement of the liquidation and employee entitlements received from the relevant departments. Those items aggregate approximately €2.8 million. The Liquidator's estimated outcome as at 30th September, 2011, includes €213,257 available for unsecured creditors. The unsecured creditors have been adjudicated at €3,272,163, which gives an estimated dividend of 6.52%. Plastronix has been admitted as an unsecured creditor in the sum of €1,019,976. Mr. Nangle personally is admitted with a debt in the order of €350,000 and it is stated that together, they represent approximately 40% of the unsecured creditors. The estimated dividend is based upon an allowance of the full fees claimed by the Liquidator. Any reduction in fees increases the amount available for the unsecured creditors.

26. Counsel for Plastronix submitted that it is a matter for the Liquidator to satisfy the Court on the evidence put before it that the amount of the remuneration he is seeking is reasonable remuneration for the work done by him in the liquidation. Counsel submitted that the onus was on the Liquidator to so establish and that it was not a matter for Plastronix to establish that any part of the remuneration was unreasonable. In general, I accept that submission. However, the Liquidator has put before the Court four separate reports justifying the fees sought in respect of the four separate periods and has given additional information in response to the affidavits filed by Mr. Nangle. It is, therefore, appropriate for the Court to consider the reasonableness of the remuneration claimed in the context of the objections raised by Mr. Nangle, having regard, in particular, to Mr. Nangle's detailed knowledge of what took place in this liquidation and in relation to the affairs of the Company. I propose, therefore, considering certain of those specific objections, and in particular, as they relate to different periods.

27. I propose, firstly, considering the objections made to the aggregate fees claimed for the first period from 22nd July, 2005, to 28th February, 2006. The Liquidator, both as provisional Liquidator and subsequent to his appointment as official Liquidator, with the sanction of the Court, continued the trading of the Company, both at its Dublin and Czech operations. At the date of his appointment, the Company had significant unfulfilled orders from customers, including both Sony and Toshiba. The Liquidator, with the assistance of Company employees, immediately prepared a projected profit and loss account for a proposed period of production from 15th August, 2005, to 2nd December, 2006. He entered into negotiations with Sony and Toshiba who wished orders to be completed. They agreed to underwrite the anticipated trading losses on an agreed ratio. An agreement was entered into with them. The projected profit and loss account included an estimated fee for the Liquidator's remuneration of €140,000. In the actual profit and loss account for the trading from 15th August to 2nd December, 2005, the total remuneration claimed was €290,000. Notwithstanding this variation, the operational loss for this period was €784,934 against a budgeted loss of €785,594. I accept the explanation given by the Liquidator that the work required from him and his staff in relation to the trading operations was much greater than anticipated. Further, having considered the terms of the agreement between the official Liquidator and Sony, it appears to me that the essential basis of same was an agreement to indemnify against trading losses with a cap of €750,000. I do not accept the submission that as a matter of probability, if the fees incurred by the Liquidator and his staff were lower, there would have been a benefit to the liquidation. I am also satisfied that this was a period of intense work in the liquidation with positive benefits for the creditors.

28. Overall, my assessment is that the remuneration claimed by the Liquidator for the period up to and including 28th February, 2006, the primary part of which covered the trading and significant realisations of debtors (€2.3m) is reasonable. Whilst the hourly rates claimed in some instances are higher than those which would, in the current climate, be considered as reasonable, they are consistent with the rates which were being allowed to official liquidators in 2005/2006. Accordingly, I propose allowing in full the remuneration claimed in respect of the first period up to and including 28th February, 2006.

29. There is one specific issue raised by Plastronix which, in part, covers the above period. Objection has been made to fees paid to a Mr. Jim Dully, a consultant retained by the Liquidator in the course of the liquidation. Mr. Dully was a person who was previously employed as a consultant by the Company prior to its winding up. He has no connection with the Liquidator. He was an expert in the plastics business. In the course of the winding up, the Liquidator continued to retain him as a consultant. The Liquidator stated that he provided invaluable advice to him in relation to the recommencement of trading in Dublin and the Czech Republic and assisted him in a number of other issues relating to realisation of assets and certain other issues arising in the liquidation. The fees paid to him

were paid by cheques drawn on the liquidation account, all of which were countersigned by the Examiner in accordance with the Rules of Court. The amounts paid were included in the Liquidator's accounts, all of which have been passed by the Examiner. Order 74, r. 128(2) precludes the payments of fees to persons specified and "other persons, unless either fixed by the Court or unless they have been duly fixed and allowed by the Examiner (or the Taxing Master as the case may be)". I am satisfied on the facts of this liquidation that the Examiner allowed the payment of the consultancy fees to Mr. Dully by countersigning the cheques in question and it is not a matter for the Court on this application to review those payments. There is no requirement that the sanction of the Court be obtained for the payment of such fees when they form part of the costs of realisation. Sanction of the Court may, of course, be obtained either where an official liquidator or the Examiner considers it desirable that this be done. It was not considered necessary at the time these payments were allowed by the Examiner and made. In those circumstances, they are not subject to review in this application.

30. Counsel for Plastronix submitted that as of 28th February, 2006 in this liquidation, it would appear that the greater part of realisation of assets was completed. There is force in this submission. The estimated outcome prepared as of 28th February, 2006, discloses that the additional expected receipts were €1.168m in respect of the proceeds of plant and equipment and an additional €27,000 in respect of debtors' balances. The report makes clear that the sale of the plant and machinery was already well progressed and anticipated to be completed by June 2006.

31. The estimated outcome as at 28th February, 2006, included a projected dividend to preferential creditors of 89.36 and, implicitly, no dividend for unsecured creditors. The future anticipated payments included €1.04m for liquidator's costs fees and expenses. This must be considered against the determination sought at the time for payment of €733,449.31 in respect of fees and outlay which had not been paid. The Liquidator, at the time, must therefore have anticipated only incurring an additional €300,000 in fees and outlay to the completion of the liquidation.

32. The picture had changed significantly by December 2007, when the Liquidator made his second application for approval of €348,379 in respect of fees and outlay for the period from 1st March, 2006, to 30th September, 2007. The estimated outcome as at 30th September, 2007 (included in the report upon which the December 2007 application was based), discloses that the only additional expected receipt was deposit income of approximately €140,000. As the notes indicate, that interest was then at a rate of 3.42% per annum and the cash on hand was €4,132,266. Hence, it appears that the Liquidator may have anticipated completing the liquidation within approximately one year.

33. The 30th September, 2007 estimated outcome, however, also includes, amongst future anticipated payments, Liquidator's costs fees and expenses of €725,000. There does not appear to be any explanation in the report of the increase from the estimate in February 2006. The relevant comparison is the additional €300,000 already explained. Having regard to the amount claimed for the period ending 30th September, 2007, it appears that the Liquidator was estimating a further €375,000 approximately in fees and expenses after September 2007.

34. It is undisputed that all realisations were complete by 30th September, 2007. Also, by that date, the following work appears to have been completed:

- The removal of all plant and equipment and the handing back of premises to the landlords, both in Dublin and the Czech Republic. There was considerable work involved in the dismantling of equipment and the handing back of premises.

- The examination of the sale and lease of the Company's premises in June 2005 (prior to winding up) and the distribution of its funds. The sale price was €11.5 million. The Liquidator considered it necessary to examine in great detail the transaction and the distribution of funds therefrom to ascertain that there were no preferential payments, having regard to the proximity to the date of commencement of the winding up. He obtained advice from counsel in relation thereto. This work appears to have been justified in the interests of the creditors and completed by September 2007.

- Examination of a potential claim against Sony. The background to this appears to have been a claim threatened prior to winding up by the Company against Sony for the sum of €4.2m in relation to alleged loss and damage suffered by reason of Sony's announcement in June 2005 that it was withdrawing from its UK base manufacturing. The claim was formulated primarily in reliance upon Sony's production plan for 2005/2006. The examination of this claim was ongoing in December 2007.

- The adjudication of preferential creditors. This was almost complete. The Liquidator sought liberty to pay a dividend of 50% in the December 2007 application.

35. The estimated outcome as at 30th September, 2007, still projected a small shortfall, 5%, in the dividend to preferential creditors and absent a successful claim against Sony, a distribution to unsecured creditors was not envisaged.

36. In respect of this period, subject to one matter relating to the rates applied to individuals who had been promoted within FGS, I propose allowing the fees claimed in respect of the period up until 30th September, 2007. From a consideration of the Liquidator's report at the time, it appears to me that the time taken for the additional work done and the work done is such that the fees claimed are, in general, reasonable. As with the earlier period, certain of the rates claimed are higher than would currently be considered reasonable, but are in line with those being allowed at the time.

37. The third claim for fees was made in May 2009 in respect of the eighteen months ended on 31st March, 2009. The fees and expenses claimed were €211,522. The Liquidator had previously been paid as appears from the figures given and the summary receipts and payments account €1,086,828 on account of the total remuneration claimed. In the estimated outcome as at 31st March, 2009, the future anticipated payments included €320,000 for the Liquidator's costs fees and expenses. When the amount to be paid pursuant to the claim (€211,522) is deducted, this leaves a balance of approximately €110,000 for future payments. That was the estimate made in March 2009.

38. The report of the Liquidator as at April 2009 refers to some additional work done in relation to the Integrated Pollution Prevention and Control Licence from the Environmental Protection Agency subsequent to April 2007. There was also some additional work in relation to the adjudication of preferential creditors which appears to have been completed in December 2007, and a final report to the Director of Corporate Enforcement. However, that apart, the main work done by the Liquidator between 1st October, 2007, and 31st March, 2009, related to the potential claim against the Sony Group. I accept that this was both a complex claim and significant in amount such that if it were to succeed, it would have been of considerable benefit to the unsecured creditors. It required collation of facts in this jurisdiction and also, on counsel's advice, the obtaining of both expert evidence and legal advice from Japan. On the facts before me, the time spent up until the end of March 2009 appears to be reasonable. The position in April 2009 is summarised by the official Liquidator in the final paragraph of the section of his report on page 4 dealing with the Sony claim in the following terms:

> "I subsequently met with Mr. Nangle on 27th March 2009 and advised him that on the basis of advices received from Senior Counsel I would not apply to the Court to seek liberty to commence proceedings against the Sony Group unless Mr. Nangle was willing to fund the action. Mr. Nangle subsequently sought and was given 21 days in order to consider funding the action. As at 31 March 2009, the date to which this report is made up, I am still awaiting a response from Mr. Nangle in this regard."

39. In the estimated outcome as at 31st March, 2009, the preferential creditors are estimated to be paid in full; included was an application to pay the balance of the 50% dividend. The funds estimated to be available for unsecured creditors was €459,034. On the basis of unsecured creditors of just in excess of €5m, it was estimated that a dividend of 9% would be paid.

40. In respect of this period, likewise, it appears to me that having regard to the complexities associated with the Sony claim, the time taken may be considered reasonable, and subject to the promotions issues and some reservation in respect of the rates applied for the first three months of 2009, the fees appear reasonable. I will come back to the question of the precise rates and individuals promoted.

41. The final period in respect of which fees are claimed is from 1st April, 2009, to 30th September, 2011. The total remuneration and expenses claimed is €196,081 (and the post-costs of €8,264) and may firstly be compared with the Liquidator's estimate in April 2009 of additional costs of approximately €110,000 to complete the liquidation. The fees charged in this period were the subject of query on behalf of Plastronix, and in my judgment, the fees claimed exceed what is reasonable, having regard to the following matters.

42. In April 2009, there were essentially three outstanding matters apart from the preparation of the final report and small matters relating to the completion of the liquidation. The three were:

> (i) A final decision in relation to the Sony claim;
>
> (ii) The Willis preferential claim;
>
> (iii) Adjudication of unsecured creditors.

43. As already stated, a decision had been made by the Liquidator prior to the end of March 2009, that unless Mr. Nangle funded the Sony claim, he would not make an application to the Court for liberty to commence proceedings. In his second affidavit sworn in this application, the Liquidator states at para. 22 to 24 that his consideration of pursuing the Sony claim continued until 11th November, 2009, and that until he received an opinion from counsel in June 2010 (on, I believe, the question of assignment to Mr. Nangle), the Sony claim remained an issue which he and his staff continued to pursue. Notwithstanding the need for further negotiation with Mr. Nangle after March 2009, I cannot accept as reasonable that any significant work had to continue in relation to the claim until June 2010, which was in excess of a year after the Liquidator had stated in his April 2009 report that he had formed the view based on Senior Counsel's advice that he would not apply to the Court for leave to commence proceedings unless the matter was funded by Mr. Nangle. Whilst I accept that Mr. Nangle may well have contributed to this delay, Plastronix and Mr. Nangle are not the only unsecured creditors and the Court must objectively determine the reasonableness of the fees claimed by the Liquidator. The final decision on the issue was for the Liquidator.

44. The length of time that the consideration of the Sony claim continued appears to have delayed the adjudication of unsecured creditors. The Liquidator's final report indicates that advertisements were placed for unsecured creditors on 2nd June and 9th June, 2010. The April 2009 report had indicated a projected dividend for unsecured creditors and the tasks to be completed, the advertisement and adjudication of unsecured claims. An earlier advertisement should have been placed on those facts.

45. It is axiomatic that delay in finalising a winding up leads to increased costs, particularly where the remuneration is sought by reference to time spent. Routine matters in the liquidation continue to require to be done and the lapse of time since commencement probably makes finalisation more time consuming.

46. It appears probable, on the Liquidator's report that most unanticipated additional work since April 2009, related to the Willis preferential claims. The facts relating to these are complex. It is only proposed to summarise the position in this judgment. Willis, formerly Coyle Hamilton Ltd., is the scheme administrator of two relevant pension schemes: the Mouldpro International Ltd. Management Retirement and Death Benefits Scheme ("the Management Scheme") and the Mouldpro International Ltd. Pension and Life Assurance Plan ("the Staff Scheme"). Each of these had claims for unpaid amounts against the Company at the date of commencement of the winding up. The amounts fell under three different headings: Under Funding, Risk Costs Paid by the Fund, and Expenses Outstanding. It is now accepted that the Liquidator's office received claims under these headings in relation to each of the schemes between 2005 and 2007. The Liquidator states that Willis never made clear that the total claims were being made as preferential claims. There also appears to have been some confusion between the amounts claimed in respect of each of the schemes.

47. Initially, unpaid pension contributions in relation to the Staff Scheme were admitted as a preferential debt. However, a portion of this was attributed to the Management Scheme leading to further confusion. Ultimately, at the time of advertisement in relation to unsecured creditors and on exchanges in relation to unsecured creditors, Willis appears to have taken up the accuracy of the earlier treatment. The Liquidator has exhibited a full exchange of emails between his staff and Willis in the period between 2005 and November 2011. On 21st February, 2011, an affidavit of debt was sworn by Shane Wall in relation to the claim of the Management Scheme, and in May 2011 by Gavin Howlin in relation to the Staff Scheme. The Liquidator, in his second affidavit herein, states that in April 2011, he took advice from Arthur Cox on the status of the claims, who advised that the full claims were preferential claims. The Examiner, as the claims were out of time, required the matter to be brought to the attention of the Court. The Liquidator, having regard to the advice obtained, consented to the admission of the claims as preferential and an order has been made admitting these claims in full as preferential claims in the aggregate amount of €112,191 and €97,067, respectively.

48. Whilst I accept that the failure of Willis to identify at the outset that the respective claims were in full preferential claims may have led to some confusion in the Liquidator's office, nevertheless, it appears to me that the Liquidator must accept some responsibility for the level of confusion which appears to have arisen, and what appears to me, upon a reading of the exchange of correspondence, and having regard to the affidavits of debt and averments of the Liquidator, to have been an unnecessary extra amount of work. The Liquidator is an experienced insolvency practitioner and it must be expected that he would have amongst his staff persons who would identify potential issues arising in respect of claims by pension funds against a company in liquidation and the need, if necessary, to obtain legal advice in a timely manner. Whilst the nature of these claims, even if fully considered at the appropriate time, would have taken time, it appears to me that as a matter of probability, there was unnecessary additional work of a protracted nature during approximately one year following August 2010, for which the Liquidator must accept partial responsibility,

and in respect of which there should be some deduction from the fees claimed on a time spent basis.

49. Taking all of the above into account, and having regard to the further deduction set out below, it appears to me that the reasonable remuneration in respect of the fourth period requires a reduction of 20% of the amount claimed of €195,213 (excluding outlay and VAT) i.e. €39,043. Accordingly, the reasonable remuneration is €156,170 (€195,213 - €39,043) plus €868 for outlay which is €157,038.

50. The final matter relates to the hourly rate charged for persons in the Liquidator's firm who were promoted during the period of the liquidation. This arises, in particular, in relation to two persons who worked on this liquidation and who, subsequent to their promotion, worked significant hours. The first is Mr. Declan Taite, who, at the commencement of the liquidation in the claim made in respect of the first period, is listed as a director between 22nd July, 2005, and 31st December, 2005, and an hourly rate applied to him of €275 *per* hour. From 1st January, 2006, he is listed as a Partner and the hourly rate claimed is €350 *per* hour. Subsequent to 1st January, 2006, Mr. Taite worked a total of 424 hours on the liquidation. The hourly rates were increased to €375 *per* hour in 2007 and €405 *per* hour in 2009, and reduced from 1st April, 2009, to €365 *per* hour, which is the maximum rate allowed for a partner by Kelly J. in *Re ESG*. In the years 2006 to 2009, other individuals with the status of director, worked on the liquidation at hourly rates of between €275 and €310. The increase in the hourly rate between 31st December, 2005, and 1st January, 2006, from €275 to €350 i.e. €75 is an increase of 27.2%. Whilst there were small increases (presumably related to cost of living) in certain of the grades, though not all, between 2005 and 2006, these were less than 5%.

51. A similar issue arises in relation to Mr. Sean Carr, who commenced work on the liquidation in 2006 as a senior assistant, and progressed in the course of the liquidation through being an executive, a manager and, ultimately, a senior manager. There were, likewise, significant increases in his hourly rates between being a senior assistant and an executive and executive, manager and senior manager.

52. Whilst I appreciate that it may be efficient in the management of a liquidation to retain people working in the liquidation who have been promoted within a firm, it does not appear to me that such a decision automatically justifies remuneration for the Liquidator based upon the full increased charge-out rate which the firm now attributes to such persons by reason of their promotion. Presumably, when they commenced working on the liquidation, they were thought fit to carry out the particular tasks. In the case of Mr. Taite, when he became a Partner, he did not replace the Liquidator. The Liquidator continued to work significant hours. There was a further director brought in through certain of the years. In the case of Mr. Carr, it does not appear from the Schedules to the reports that he replaced someone at a more senior level.

53. In this application, objection was made to the overall level of fees sought. The significantly increased charge-out rates applied to promoted persons has contributed to this. In accordance with the principles set out in this judgment, the Court must take into account the value to the client *i.e.* the creditors, of the work done. Notwithstanding the experience and abilities of Mr. Taite in 2006, it is not credible that by reason of his promotion in the firm, the unit value of work done by him in this liquidation increased by a factor of more than 25%. Similar reasoning applies to the increased charge-out rates on Mr. Carr's promotions.

54. It does appear appropriate that the firm be entitled to reflect a promoted person's ability, and presumably, efficiency in carrying out the work of the liquidation by some increase in charge-out rates, but the very significant jumps in charge-out rates do not appear objectively reasonable in determining the total remuneration of the Liquidator, and accordingly, I should make some reduction in respect of same. This must, of necessity, be done in a reasonable but simple way. As regards the hours worked by Mr. Taite, I propose applying a reduction of €30 per hour to all hours since 1st January, 2006, which, from Schedules, appear to be 424 hours *i.e.* a sum of €12,720. In the case of Mr. Carr, I propose applying a reduction of €20 per hour to all hours worked since 1st January, 2009, which, from Schedules, appear to be 240 hours i.e. a sum of €4,800. Accordingly, there will be a further reduction from the overall fees determined of €17,520. Notwithstanding that those deductions apply to a number of periods, I propose making the deduction in the period from 1st April, 2009, to 30th September, 2011, in respect of which the remuneration has not yet been paid. Accordingly, the amount allowed for that period will be €139,518.00 + VAT [€157,038 - €17,520].

55. This conclusion is not intended as any criticism of the work done by Mr. Taite or Mr. Carr. It is accepted that their promotions signified a recognition of their abilities, expertise and quality of work which contributed to the value of the work done in the liquidation. It is only a question of the extent to which the significant increases to their charge-out rates applied by the firm is objectively justified as part of the reasonable remuneration of the Liquidator in this liquidation.

Relief

56. There will be an order determining the remuneration of the Liquidator as provisional and official Liquidator in the amount set out in the table at para. 4 of this judgment, save that in respect of the period from 1st April, 2009, to 30th September, 2011, the amount will be €139,518.00 + VAT.