

THE HIGH COURT

[2016 No. 54 COS]

IN THE MATTER OF FINTRA TRAWLING COMPANY LIMITED

AND IN THE MATTER OF SECTIONS 210, 608, 610, 708, 738 AND 742 OF THE COMPANIES ACT 2014

BETWEEN

MINISTER FOR AGRICULTURE FISHERIES AND FOOD, IRELAND AND ATTORNEY GENERAL

APPLICANTS

AND

FINTRA TRAWLING COMPANY LIMITED

RESPONDENT

JUDGMENT of Mr. Justice White delivered on the 18th day of July, 2016

1. The applicants by motion of 16th February, 2016, originally returnable for 7th March, 2016, sought various reliefs in respect of the company which had been voluntarily liquidated.
2. By order of 14th March, 2016, the court declared, pursuant to s. 708 of the Companies Act 2014, the dissolution of the company to be void without prejudice to any issue to be made by the directors of the company and adjourned hearing the balance of reliefs sought by the applicants to 21st April, when the matter was heard on affidavit.
3. The applicants, by order of this Court on 22nd November, 2011 (Laffoy J.) were granted costs against the company in proceedings [2010 No. 472 P.]. The company filed a notice of appeal. There was no stay on the costs order. A summons to tax was issued and served on the solicitors and legal costs accountants for the company on 18th February, 2013.
4. In October 2013, a member's voluntary liquidation was commenced. A declaration of solvency was approved by the board on 10th October, 2013, and on 11th December, 2013, Joseph Gannon of Gilroy Gannon, Accountants, Sligo was appointed liquidator.
5. The directors of the company, Kevin Boyle, Lee Mooney and Celine Mooney did not notify the liquidator of the costs due by the company to the applicants and the solicitors for the company by letter of 10th October, 2013, incorrectly certified to the liquidator that there were no outstanding claims or litigation.
6. On 19th December, 2011, the company obtained an order for costs against the applicants in judicial review proceedings [2011 No. 665 J.R.], those costs were not taxed.
7. The appeal of the company to the Court of Appeal in the proceedings record number [2010 No. 472 P] was struck out on 9th November, 2015. The company was ordered to pay costs to the applicants to be taxed in default of agreement. At that time, the company was in liquidation and the applicants were on notice of this liquidation as the legal costs accountants retained by the applicants to tax the costs were informed about the liquidation.
8. Section 210 of the Companies Act 2014, states:-

"(1) Where a director of a company makes a declaration without having reasonable grounds for the opinion referred to in section 203 (1)(f), 204 (1)(f), 205 (1)(c), 206 (1)(b) or 207 (1)(b), as the case may be, the court, on the application of –

(a) a liquidator, creditor, member or contributory of the company or, in the case of the opinion referred to in section 206 (1)(b), of the successor company (within the meaning of Chapter 3 of Part 9), or

(b) the Director of Corporate Enforcement,

may declare that the director shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company or successor company, as the case may be.

(2) If a company or, as the case may be, a successor company (within the foregoing meaning) is wound up within 12 months after the date of the making of a declaration and its debts are not paid or provided for in full within 12 months after the commencement of the winding up, it shall be presumed, until the contrary is shown, that each director of, as appropriate –

(a) the company, or

(b) the merging companies,

who made the declaration did not have reasonable grounds for the opinion referred to in section 203 (1)(f), 204 (1)(f), 205 (1)(c), 206 (1)(b) or 207 (1)(b), as the case may be.

(3) If the court makes a declaration under subsection (1), it may give such further directions as it thinks proper for the purpose of giving effect to the declaration."

9. It would follow from the provisions of this section if the companies' debts are not paid or provided for in full within twelve months after the commencement of the winding up, it is presumed there were not reasonable grounds for a declaration of

10. solvency. This applies even though there were monies in the company to be paid to the directors.

11. An order for costs made by the High Court goes beyond a contingent liability. It is an actual liability which is capable of measurement but not measured unless costs are taxed in default of agreement.

12. The costs were subsequently taxed at €31,594 and a certificate issued on 26th March, 2015.

13. The fact that the order may have been made in error by the Taxing Master as the company was liquidated does not affect this court's jurisdiction pursuant to s. 210 of the Act.

14. It is appropriate to order that those directors repaid money, should now repay it to the company. Credit is due for the amount of costs that would have been due to the company on the costs award of 19th December, 2011.

15. It is not appropriate to make an order in respect of the claim for the costs of the appeal, as this order was made subsequent to the liquidation of the company and the debt did not arise at the date of the liquidation of the company.

16. While it would have been desirable that the applicants had responded to the liquidator's notice seeking claims from creditors that failure does not prevent the applicants from seeking relief.