

THE HIGH COURT

[2001 No: 53 COS]

IN THE MATTER OF TIPPERARY FRESH FOODS LIMITED
(IN LIQUIDATION)
AND IN THE MATTER OF
SECTION 150 OF THE COMPANIES ACT, 1990
AND
SECTION 56 OF THE COMPANY LAW ENFORCEMENT ACT, 2001

BETWEEN

WILLIAM O'RIORDAN

APPLICANT

AND
JOSEPH COLEMAN O'CONNOR JOSEPH PETER O'CONNOR
AND DONAL O'CONNOR

RESPONDENTS

JUDGMENT RE COSTS OF INVESTIGATION

Judgment of Ms. Justice Finlay Geoghegan delivered on the 5th day of May, 2005.

1. Declarations of restriction pursuant to s.150 of the Companies Act of 1990 were made in respect of each of the respondents herein. On the 18th March, 2005, I concluded that s.150 (4B) of the Act of 1990 applies to this application. Following that decision, the solicitors for the official liquidator furnished details of the claim on behalf of the official liquidator for the costs incurred by him in investigating the matter. The claim includes a claim in respect of the remuneration of the official liquidator in respect of the time spent by him, a senior manager and a senior associate of his firm in investigating the matter. It also includes a claim in respect of legal costs incurred by him in investigating the matter. These are sums due by him to his solicitors for advices and work done by them.

2. The respondents oppose the claim for the remuneration of the official liquidator in respect of the time spent by him and his colleagues in investigating the matter upon the basis that such sums are not "costs incurred by the applicant" within the meaning of s.150 (4B). The same point was taken on behalf of the respondents in the matter of *Mitek Holdings Limited (In Liquidation) and Ors.* I had already heard submissions on the issue in that application and reserved my decision. Accordingly I arranged for submissions on the same issue in this application prior to my determining the issue.

3. The submissions made by counsel for the parties in these proceedings were substantially the same as the submissions made by the parties in *Mitek Holdings Limited (In Liquidation)* albeit perhaps put in a slightly different way. I have considered the submissions made by counsel in both sets of proceedings.

4. I have concluded that s.150(4B) of the Act of 1990 cannot be construed so as to include in the phrase "costs incurred by the applicant in investigating the matter" the amount claimed by the official liquidator as remuneration in respect of the time spent by him and his colleagues in investigating the matter. The reasons for which I have reached this conclusion are fully set out in the judgment delivered to-day in the matter of *Mitek Holdings Limited (In Liquidation) and Ors.* [2002 No: 438 COS].

5. In this application, I will disallow so much of the claim as relates to remuneration for the time spent by the official liquidator and his colleagues in investigating the matters. The claim for the legal costs is allowable in principle.