

**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 18th November, 2014**

1. The court has already delivered judgment in this matter on 21st February, 2014. Before the court is a motion originally returnable for 10th December, 2013, seeking payment of fees to a receiver appointed by this Court to manage the partnership assets of the plaintiffs and the defendants. The receiver also seeks payment of legal costs incurred by him in the discharge of his duties. Other ancillary reliefs were claimed in respect of certain ongoing proceedings which have been finalised. The outstanding issues are the receiver's and legal fees.

2. The receiver is seeking payment of €180,437, professional fees inclusive of VAT , and legal fees of €281,142.28, inclusive of VAT and outlay.

3. By order of 21st February, 2014, the court directed payment on account to the receiver of €77,490 inclusive of VAT, and payment of legal fees of €110,700 inclusive of VAT together with some outlays and counsel's fees.

4. In its earlier judgment of 21st February, 2014, the court raised certain issues that required clarification. The court will now finalise the issues insofar as it can.

5. The court notes that the fees in the Circuit Court proceedings against Ms. Su Pin Chen have been isolated. The court has directed these fees should not be allowed. Credit should be given to the partnership of legal fees of €6,197.98 inclusive of VAT and receiver's fees of €958, inclusive of VAT.

6. Following the court's intention to review the fees due in the High Court proceedings against Ann Byrne, the court notes the fees have been isolated in the sum of €18,876.50, legal fees inclusive of VAT and €1,603 receiver's fees inclusive of VAT. The receiver should have been more decisive in the disposal of these proceedings in view of the difficulty of getting proper instructions from the first named defendant and the objection of the plaintiffs to the first named defendant's involvement. A decision should have been made on the reality of maintaining proceedings and enforcement. I will reduce the fees claimed by allowing €6,000 legal fees inclusive of VAT and €600 inclusive of VAT for the receiver's fees.

7. The costs of the High Court action against Nova Travel Limited, John O'Donohue and Maureen O'Donohue should be dealt with as a discrete issue. According to the affidavit of Ken Fennell, the total sum due for legal fees is €48,272.34, being €39,245.58 for the solicitor's party and party costs and VAT of €9,026.53. O'Grady's Solicitors in their letter of 22nd May, 2014, identified these costs as solicitor and client costs. Proceedings were issued for a well charging order so the costs of the original High Court proceedings should have been taxed. Credit should be given for the sum of €48,272.34. This matter will have to be finalised when the outstanding proceedings are finalised.

8. The court notes from para. 15 of the affidavit of Ken Fennell, that a credit of €35,551.65 rather than €23,503.12, should be given to the partnership for legal fees already paid.

9. Mr. Fennell has set out in the affidavit of 29th April, 2014, an explanation in respect of the sum of €59,003.28 legal fees from 2nd June, 2011 to 11th November, 2011. Payment on account of €12,100 and €23,451.65 was made by the partnership which has left the sum of €23,451.65 in dispute which has been referred to taxation. I have been asked to measure those legal costs but as an order has already been made for taxation, I will require clarification from the parties.

10. In this receivership, fees have already been approved in previous court orders and paid out. The receiver has been paid €260,404.47. Legal fees of €181,880.28 have been paid to the solicitors.

11. The receiver seeks approval for fees charged at an hourly rate at different rates. The total hours claimed are 711.75 hours. The receiver has now produced time sheets to reflect this which had not been done for the previous hearing.

12. The net fee sought is €145,854 together with outlay of €842, and VAT at 23% being €33,740. The total claim is for €180,437.

13. The receiver is also claiming a gross fee of €13,993 left over from an earlier application.

14. He has also made a claim for a gross fee for the estimated cost to completion of the receivership of €6,765.

15. In the previous judgment, the court explained the legal principles on the measurement of costs claimed by a receiver and his

agents. It has power to measure the solicitor's costs and is not bound by the time costed charge of the receiver. The court must have regard to the nature of the work carried out, its complexity and importance of the value of the work to the client.

16. This receivership took far too long to complete, with the first receiver appointed on 2nd April, 2009, and replaced by the present receiver on 27th July, 2009. The proceedings were compromised between the partners on 26th January, 2010. The court accepts the receiver and his legal advisers carried out substantial and difficult work,

17. This Court has also concerns about the system in place for insolvency fees. The problem arises when the costs of administering and liquidating assets in receivership become far too high a percentage of the realised assets. I have already referred in my judgment of 21st February, 2014, to the desirable practice of seeking tenders for this work. It is the court's opinion that the fees which have to be discharged in this receivership if not reduced are too high a percentage of the overall asset realisation, while accepting that the plaintiffs added to the cost burden.

18. The court reduces the receiver's professional fee by 25% which includes 5% voluntarily offered. The fee of €145,854 is reduced by €36,463. The fee allowed is €109,391 plus outlay of €842 plus VAT of €25,354, making a total of €135,587.

19. In respect of the outstanding fee from previous applications, the gross amount claimed is €13,993 which includes VAT at 23%. The net figure is €11,376 with VAT at 23% being €2,617. Applying the 25% reduction to the net figure of €11,376, there is a reduced figure of €8,532 together with VAT of €1,962. The fee allowed is €10,494.

20. In respect of the gross sum claimed of €6765 to complete the receivership, the net figure claimed is €5,500 plus VAT of €1,265. Applying the 25% reduction to €5,500, the net figure is €4,125, together with VAT thereon at €949. The total sum allowed is €5,074.

21. The total fee allowed is €151,155 inclusive of VAT.

22. The partnership is entitled to a credit of €958 being the gross fees of the action against Su Pin Chen, and also a credit of €1,003 the amount of receiver's fees disallowed in the proceedings against Anne Byrne. The reduced fee is €149,194.

23. €77,490 has been paid on account. The amount due to the receiver is €71,704.

24. The fees claimed by the solicitors for the period 2nd June, 2011 to 31st August, 2013, are €189,692.33 together with VAT of €43,629.24 being a total of €233,321.57.

25. The instructions fee without any breakdown is €169,700. The solicitors provided separate invoices in respect of conveyancing work.

26. Invoices of 22nd May, 2012 for €15,990, 13th January, 2012 for €3751.50 and €2890.50, and 8th March, 2012 for €1599.00 have been provided and the court has no difficulty with those.

27. The court has allowed €6,000 gross fees in the High Court proceedings against Anne Byrne, a deduction of €12,876.50.

28. The court has directed that the costs of €48,272.34 in respect of the Nova Travel case are dealt with separately

29. When you strip out the various invoices for conveyancing and examine the bill of costs prepared by legal costs accountants the instruction's fee is too high. Apart from the credits due to the partnership of the Su Pin Chen costs and Anne Byrne costs, the sum of €40,000 should be deducted from the instructions fee. The fee after deduction of €40,000 is €149,692.33, together with VAT of €34,429.23 making a total of €184,121.56.

30. Further deductions have to be made from €184,121.56 as follows: the sum of €6,197.98; the fees disallowed in the Su Pin Chen legal action; the sum of €12,876.50; the fees disallowed in the Anne Byrne action; and the sum of €48,272.34 in the Nova Travel case which has to be dealt with separately. The amount due is €116,774.74. The sum of €110,700 has been paid on account, and there is now due €6,074.74.

31. In respect of the work in progress claim for €34658.50, that is too high and is reduced by €6,000. The court allows €28,658.50 fees with VAT thereon at €6,591.45, together with the postage and sundries of €3,000 and VAT of €690 and also stamp duty and Commissioner's fees of €1,500.76 making a total amount of €40,440.71. The total sum for outstanding legal fees is €46,515.45. When credit is given for €35,551.65 already paid, there is now due a balance of €10,963.80.