

THE HIGH COURT

[2014 No.391 COS]

IN THE MATTER OF THE COMPANIES ACTS 1963 TO 2012 AND BALLYRIDER LIMITED (IN VOLUNTARY LIQUIDATION)

THE REVENUE COMMISSIONERS

Applicant

AND

ANTHONY J. FITZPATRICK

Respondent

Judgment of Ms. Justice Murphy delivered the 27th day of October, 2015

1. This application arises following the Court's judgment in the above matter, delivered on 21st July, 2015, in which the Court ordered the removal of the respondent as liquidator of Ballyrider Limited, for cause shown. The reasons for that decision are set out in full in the Court's previous judgment. The applicants now seek an order that the costs of these proceedings be awarded against the respondent. The applicant also seeks a declaration pursuant to s. 280 of the Companies Act that such costs were not costs properly incurred in the liquidation and accordingly should be awarded against the respondent personally.

2. The main application sought alternative remedies. The applicant asked that the Court make certain declarations on specific issues arising in the liquidation or alternatively that the Court remove the respondent for cause shown. Having found that the respondent had not conducted the liquidation in an efficient or cost effective manner and that the applicant had raised multiple issues of genuine concern, the Court opted to remove the respondent as liquidator. The reasons for that decision are set out in the Court's judgment of 21st July, 2015. The Court is satisfied in this instance that applicant has been successful in its application and that the normal rule, that costs follow the event, should apply in accordance with the general rule under Order 99 of the Rules of the Superior Courts. The issue remaining therefore is whether those costs should be awarded against the respondent personally or whether they are costs properly incurred in the liquidation.

3. In defending this application the respondent was solely protecting his own interests. It was his conduct of the liquidation which was in issue. It was his conduct of the liquidation which the Court found to be deficient. In such circumstances he can not be characterised as acting as an agent of the company such as would render the company liable to defray his costs. This application was brought in order to preserve the assets of the company for the benefit of the creditors. It would be anomalous were the unsuccessful respondent allowed to recoup his costs and those of the successful creditor from that very fund. For these reasons the Court is satisfied to hold that the respondent is personally liable for the costs of the application and to further hold, pursuant to s. 280, that neither his costs nor those of the applicant are costs properly incurred in the liquidation.

4. The respondent has appealed the Court's original decision to the Court of Appeal and that Court has stayed the order of this Court on certain conditions. Counsel for the respondent has requested that the Court stay its order for costs pending the outcome of the respondent's appeal. The Court is not minded to stay its order as that would have the effect of preventing the applicant from raising and taxing its bill of costs until the appeal is concluded. What the Court is prepared to do is to put a stay on the payment of those costs when taxed or ascertained, pending the determination of the respondent's appeal and the Court so orders.