

27/3/2007

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

4 CAUSE NO. 205 OF 2005

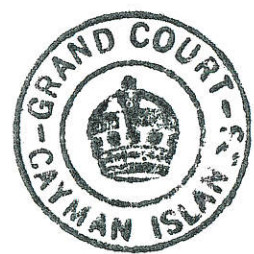
7 IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

9 AND IN THE MATTER OF SEGOES SERVICES LTD. (THE COMPANY)

12 **Appearances:** Mr. Alistair Walters of Campbells for the Joint Official
13 Liquidators
14 Mr. Simon Dickson of Quin & Hampson for the Liquidation
15 Committee

18 **Before:** Mr. Justice Henderson

21 **Heard:** March 26, 2007



23 JUDGMENT

25 After the collapse of Segoes Services Ltd., Mssrs. Kenneth Krys and Christopher Stride
26 were appointed Joint Provisional Liquidators (initially) and Joint Official Liquidators
27 (subsequently) of the company. A committee of creditors was formed to oversee the
28 liquidation.

30 A dispute has now arisen between the JOLs and the committee over fees. To resolve the
31 impasse, the JOLs have applied to this Court for approval of their fees under Section 107
32 (2) of the *Companies Law* (2004 Revision), which reads:

34 "There shall be paid to the official liquidator such salary or remuneration,
35 by way of percentage or otherwise, as the Court may direct; and if more
36 liquidators than one are appointed such remuneration shall be distributed
37 amongst them in such proportions as the Court directs."



1 Doubts about how and in what circumstances this section is to be applied have now been
2 resolved by the Privy Council in its recent decision in *Attorney General v. James Cleaver*
3 *and Company (as liquidators of Liberty Capital Limited and Sun Holding Limited) et al*
4 2006 CILR 222. Shortly after that decision, Practice Direction Number 1 of 2006 was
5 issued by the Chief Justice to set out some procedural considerations applicable to
6 approval of fees. An earlier Practice Direction on the subject (No. 2 of 2003) was
7 revoked.

8

9 The Creditors' Committee says it has not been given sufficient information upon which
10 to base its decision whether to approve the fees of the JOLs. The JOLs say that the
11 information already provided is sufficient for a considered decision by the committee
12 members; they resist the application for further disclosure on the ground that it is
13 unnecessary and likely to lead to unproductive but time consuming debate.

14

15 A number of interim reports have been rendered by the JOLs to the creditors. These, of
16 course, describe in significant detail what has been and is being done to get in and
17 distribute the assets of the company. Appended to these reports are spreadsheets entitled
18 "Analysis of Hours per Activity per Professional" and "Analysis of Fees per Activity per
19 Professional" for the particular periods of time under consideration. These schedules
20 show the name of each professional who has worked on the Segoes liquidation in the
21 applicable time period, the total number of hours worked by the professional on certain
22 task categories and the amount billed for the time spent by each professional on those
23 tasks. The headings are relatively general: examples include "Assets and Records

1 Collection Cayman”, Assets and Records Collection U.S.”, “Directors and Related Party
2 Claims”, and “Proof of Debts.”

3
4 The committee members ask for invoices or statements of account from the JOLs which
5 set out, in detail, how the time has been spent. The typical invoice for professional
6 services rendered (where the fee is being calculated on an hourly rate basis) contains line
7 entries showing the date work was done on the file, the time spent (in hours and tenths of
8 an hour), the identity of the professional doing the work, and a short description of what
9 was done.

10
11 The JOLs say it is not customary to provide this sort of information. They rely upon “*A*
12 *Creditors Guide to Liquidators’ Fees*” issued by the Rules Committee on June 30, 2003.

13
14 While this guide contains useful guidelines for liquidators and creditors, it must now be
15 read subject to the recent Practice Direction (No. 1 of 2006) which asserts that “all
16 relevant information” must be provided to the creditors’ committee with respect to
17 liquidators’ fees and expenses. Nothing in the guide derogates from this overarching
18 principle. The disclosure must be sufficient to enable the committee members to come to
19 a considered and independent decision on the reasonableness of the fees claimed. The
20 Segoes Creditors’ Committee asks only for invoices in the format used on a daily basis
21 by major law and accounting firms. That is a modest request. It is evident that the data
22 has been collected by the JOLs and exists in their computer system. I direct that invoices
23 in the requested format be delivered to the Creditors’ Committee within 14 days.

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2 Substantial amounts have been paid by the JOLs to their Cayman and U.S. attorneys. All
3 that has been disclosed to the creditors concerning these payments is a list of the
4 attorneys and paralegal assistants working on the Segoes liquidation, their hourly rates,
5 and the total amount claimed by the firms in fees. The Creditors' Committee now asks
6 for disclosure of the engagement letters and the invoices and statement of account
7 rendered by these law firms.

8

9 Again, this is information which the Creditors' Committee will need to consider before it
10 makes a decision on the reasonableness of the joint official fees. Section 107 (2) of the
11 *Companies Law* gives this Court jurisdiction to approve "salary or remuneration" paid to
12 official liquidators. That is not a question which can be assessed in a vacuum;
13 arrangements to refer work to law firms and fees claimed from the JOLs by those firms
14 are questions which bear upon the reasonableness of the fees charged by the JOLs
15 themselves. In light of the size of some of the payments made to and claimed by law
16 firms in the Segoes liquidation, the Creditors' Committee is entitled to disclosure of the
17 documents it requests. I direct that all engagement letters, invoices, and statements of
18 account to and from law firms be disclosed by the Joint Official Liquidators to the
19 Creditors' Committee within 14 days.

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21 Where the total amount (including fees and disbursements) claimed by a law firm to date
22 is less than U.S. \$50,000 dollars, no disclosure need be made.

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1 The JOLs will have to review the material to be disclosed in order to redact anything
2 which should not be communicated to a creditor because of a conflict of interest.

3

4 Dated this 27th day of March, 2007

5

6 *Henderson, J.*

7 Henderson, J.
8 Judge of the Grand Court

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