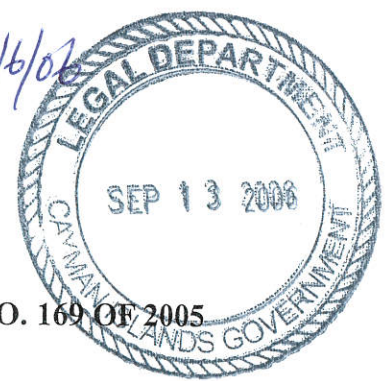


L. Joan

29/6/07



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

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

CAUSE NO. 169 OF 2005

IN THE MATTER OF THE COMPANIES LAW (2004 R) PARTS V, IX & X

AND IN THE MATTER OF DYOLL INSURANCE COMPANY LIMITED

IN CHAMBERS

Appearances: Mr. Robert Gardner of Walkers instructed by Mr. Kenneth Krys (Joint Official Liquidator) both for the Joint Official Liquidators
Mr. Stephen Hall-Jones instructed by Mr. Stuart Diamond of Diamond Law Associates both for the Petitioning Creditor Panton Realty

Before: Hon. Justice Henderson

Heard: June 29, 2006



RULING

The applicant seeks leave to appeal from an order of Madam Justice Levers of this Court made March 22, 2006. In the material part of that order, she said that the costs of the petitioning creditor described in the bill of costs exhibited to Mr. Diamond's affidavit dated 20 march 2006 should be allowed as "costs of and occasioned by the petition, subject only to taxation as to quantum".

Dyoll Insurance Company Limited is in liquidation in the Cayman Islands. A related company is in liquidation in Jamaica.

1 The Cayman petitioning creditor took a number of steps (at some cost to itself) in
2 Jamaica and relating to the Jamaican liquidation. It says that it has done so for the
3 purpose of advancing the cause of the Cayman Islands liquidation and in the interests of
4 the general body of creditors in the Cayman Islands.

5

6 The liquidator, Mr. Kenneth Krysz, examined the invoice submitted by the Petitioner for
7 the purpose of determining whether those costs were properly payable to it from the
8 estate of the Cayman Islands liquidation. He determined that they were not.

9

10 Application was then made to Her Ladyship for a ruling. Apparently, the liquidator
11 advanced the position that none of the cost of steps taken in Jamaica, or relating to the
12 Jamaican petition, was recoverable from the local liquidation estate, while the petitioning
13 creditor advanced the proposition that all costs described in the bill of costs were so
14 recoverable.

15

16 Before me, it is contended that Her Ladyship has, in effect, taxed the costs and awarded
17 all of the costs of what I will call the "Jamaican Steps" to the petitioning creditor.

18

19 The order is not free of difficulty. I think one must take a step back and ask what a
20 Grand Court judge would ordinarily be called upon to do in relation to a bill of costs and
21 what part of the process would be left to the taxing officer.

22

1 The *Judicature Law*, section 24 (1), clothes the Court with a broad and general discretion
2 to make orders in relation to costs. Section 24 (2) provides that the Court may make
3 rules regulating such matters as the entitlement to costs, the taxation of costs, the powers
4 of taxing officers and the powers of judges to review decisions of the taxing officer.
5 Subsection (3) provides that the Court shall have full power to determine by whom and to
6 what extent the costs are to be paid.

7
8 The rules relating to taxation are found in Order 62. They set out in detail what is hinted
9 at in section 24 of the *Judicature Law* – a two-tier system in which the Grand Court judge
10 will ordinarily make broad declarations of entitlement in favour of a party and leave the
11 detailed assessment to the Clerk of the Court for taxation. The taxation itself will not
12 ordinarily be carried out before a Grand Court judge.

13
14 I agree with the proposition advanced by Mr. Hall-Jones that a Grand Court judge has, as
15 part of his or her broad inherent and general jurisdiction, a power to tax costs. In my
16 experience, it is virtually never done.

17
18 Order 62 provides (in Rule 29 (1) that “a taxation shall be inquisitorial in nature”. That,
19 of course, differs from the nature of a hearing in the Grand Court on the question of
20 entitlement to costs, which is always in the adversarial form.

21
22 Rule 29 (2) provides for the taxing officer to consider written submissions. Rule 29 (3)
23 provides for the adducing of oral evidence before the taxing officer. Rule 29 (4) sets out

1 the disclosure requirements which a taxing officer may impose. Rule 29 (6) provides that
2 the taxing officer shall not give reasons for any of his decisions. All of this constitutes a
3 small code of conduct for a taxation, and demonstrates how dramatically the process
4 differs from an *inter partes* application concerning costs in the Grand Court.

5
6 Finally, Rule 30 of Order 62 provides that a party dissatisfied with the taxing officer's
7 decision may apply to a judge of the Grand Court for review. Rule 30 (2) recognises the
8 possibility that a judge may have acted himself or herself as an *ex officio* taxing officer
9 and says that, in such a case, the review shall be conducted by a different judge.

10
11 I think it quite clear that the intended procedure is for the Grand Court judge to set the
12 broad parameters to govern an award of costs and leave the assessment of detail to the
13 taxing officer.

14
15 Our Insolvency Rules (which are, for the most part, the English Rules) recognise that the
16 taxation process must be a detailed assessment. They (quite sensibly) provide that, in the
17 first instance, the liquidator should conduct that detailed assessment and attempt, if he
18 can, to reach agreement with the party claiming its costs. In the absence of such
19 agreement, the liquidator is entitled (and would in fact have an obligation) to request a
20 detailed assessment of the costs by a taxing officer. In addition, any larger question of
21 entitlement to costs generally can and should be referred to the Court by the liquidator
22 when there is a dispute.

1 Justice Levers has, having sat on the Cayman Islands liquidation and become intimately
2 familiar with its progress, concluded that much of the work done in Jamaica and in
3 relation to the Jamaican proceedings did advance the cause of the Cayman Islands
4 liquidation. She has also concluded that this petitioner should be entitled to recover such
5 costs.

6
7 The taxing officer must now conduct a detailed assessment. It is not open to him to
8 disallow any item simply because the activity it represents took place in Jamaica, was
9 carried out by a Jamaican attorney, or related in some way to the Jamaican litigation. He
10 must ask whether the particular activity, or part of it, had the effect of advancing the
11 interests of the general body of creditors in the Cayman liquidation and was intended to
12 have that effect. He must also, of course, address the usual issues on a taxation: was the
13 time expended on each item reasonable? Are the hourly rates reasonable? Is the total
14 amount claimed reasonable, having regard to what was accomplished?

15
16 All of these considerations are part and parcel of an assessment of quantum, and must be
17 left to the decision of the taxing officer. They cannot be divorced from the process of
18 assessing quantum if it is to be a meaningful exercise.

19
20 I have taken some time to set out these views because I have concluded that, when the
21 order of Her Ladyship is properly understood and construed, the applicant here has no
22 reasonable prospect of success on appeal. I make no criticism of the applicant having
23 applied for leave to appeal. The impugned order is unusual and the parties will benefit

1 from having an interpretation of it. I am satisfied, however, that the application for leave
2 to appeal must be dismissed and the parties left to conduct a taxation within the
3 guidelines set out above.

4

5 Dated this 29th day of June, 2006

6

7 *Henderson, J.*

8

Henderson, J.

9

Judge of the Grand Court

10

11

12

13

