1997

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 436 OF 1991
CAUSE NO. 399 OF 1992
CAUSE NO. 40 OF 1994
CAUSE NO. 41 OF 1995
CAUSE NO. 167 OF 1992

IN THE MATTER OF CONSOLIDATED APPLICATIONS FOR THE GRANT OF INCREASES IN THE LIQUIDATORS FEES.

APPEARANCES:

Mr. Guy Locke of W.S. Walker & Co. for the Liquidators.
Ms. Lisa Agard, Crown Counsel, as amicus curiae.

ADDENDUM TO REASONS

Before the perfection of my order in this matter I received further written submissions from Mr. Locke inviting me to reconsider my ruling on the basis that sub-section 6(2) of the Companies Law precludes the application of the Insolvency Rules in these circumstances.. It further offered that the sub-section would require me, as the Judge hearing the application, to arrive at a decision whether or not to grant an increase in the Liquidators' fees and not refer this matter to the creditors or other interested parties to be resolved on an inter partes basis.

The submissions proceed on the basis that the manner of appointment of liquidators and of the initial setting of their rate of fees is different in Cayman than in England for which latter context the rules were designed. An important difference cited is that in England the official Receiver is often appointed Liquidator upon a compulsory winding-up and that he would shortly thereafter call a creditors' and contributories' meeting at which a Liquidator in his stead would be appointed and that Liquidator's remuneration set. By contrast, in Cayman the official Liquidator would in a

case of compulsory winding-up be appointed in the first instance by this Court which would at the same time set his remuneration. It followed that this Court would be responsible for reviewing his remuneration thereafter under sub-section 106(2).

From my reading of it that sub-section is no bar to the application of the relevant Insolvency Rules here.

While it vests the judge with the authority to set the remuneration, it does not mandate a procedure for so doing. It does not preclude the application by the judge of the relevant Insolvency Rules in appropriate cases.

And the fact that the rules have their provenance in the context of the English practice does not detract from that view of them.

Among the very matters before me, some involved voluntary windings-up which have proceeded under the supervision of the Court. In the first instance, in those cases, the Liquidators' fees would have been respectively agreed with and set by those in charge of the company. There appears no good reason as a matter of principle now that the court supervises, why it should not have the benefit of knowing that they have agreed to increases, or, at least, have been consulted in the process.

And even in the context of compulsory windings-up, no obvious obstacle to preclude the involvement of creditors or contributories appears.

The fact that they are often if not invariably overseas, is nothing to the point. They are known and should be contactable nonetheless. And nothing to the contrary has been suggested.

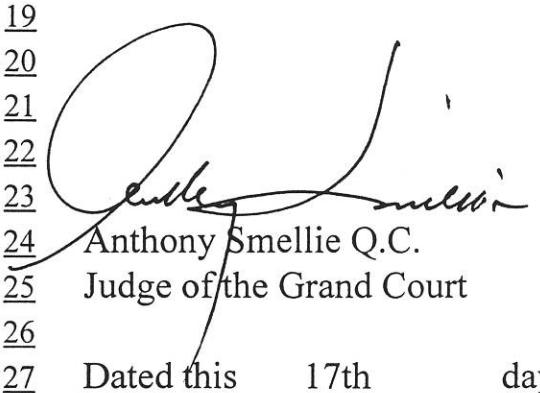
For the purposes of meeting the requirements of the Rules, it is permissible for them, in each case, to appoint a few from amongst themselves to be select committees for the review of the Liquidators' fees.

That approach could be adopted equally in this jurisdiction, irrespective of the context of the Liquidators' appointment in the first place.

These liquidations, although some are small by the measure of many others before the Court, may well be better served nonetheless by proceeding in that way. The alternative of the court simply setting the fees without any recourse to the views of the beneficial interests, could arguably result in costs to the liquidations about which, those interested and having detailed knowledge of the liquidation, might disagree. At all events, only after it proves impracticable to have recourse to the Rules should the Court, in my view, bypass them. That stage has not yet been reached.

In conclusion I must note that I have discussed this matter with my colleagues on the bench and I am to record their common views expressed in agreement with the foregoing and also that to their knowledge there exists no settled and established practice in this jurisdiction to the contrary.

For these and the reasons earlier given, the ruling of the 19 December 1996 remains unchanged.



Anthony Smellie Q.C.
Judge of the Grand Court

Dated this 17th day of March 1997