COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

2019/COM/bnk/00077

IN THE MATTER of The Companies Act, 1992 Ch 308

AND

IN THE MATTER of the PACIFICO GLOBAL ADVISORS LTD.

Before Hon. Mr. Justice Ian R. Winder

Appearances: Simone Morgan-Gomez with Philisea Bethel for the Official Liquidator

Gail Lockhart-Charles with Lisa Esfakis for the Liquidation Committee

Arimanthea Hepburn for the Securities Commission of The Bahamas

18 and 24 November 2020

RULING

WINDER, J

This is the application of the Official Liquidator (OL) seeking the sanction of the Court for the payment of certain liquidation costs from trust accounts/assets being held by Pacifico Global Advisors Ltd. (PGA).

Background

1. PGA is a Bahamian Company which was incorporated on 30 September 2011. PGA was registered and licensed by the Securities Commission of The Bahamas (SCB) from 2012 to 2014 to provide investment advisory services and discretionary investment management services to its clients. On 11 September 2015 the SCB issued to PGA a broker-dealer license and thereafter the principal activities offered to clients were managing securities, dealing as agent or principal, arranging deals in securities and advising on securities.

2. PGA, as investment manager and custodian on behalf of its clients, maintained bank accounts in PGA's name at various Custodian Banks ("Trust Accounts").

3. In 2015 PGA was introduced to a new trading platform by Deltec Bank & Trust Limited ("DBT") and Deltec Fund Services Limited which allowed PGA's clients to invest in various segregated accounts through the Lyford Fund, an open-ended investment fund incorporated in The Bahamas.

4. PGA was placed in liquidation on 2 October 2019 (voluntary liquidation) and by an Order of this Court dated 28 October 2019. The commencement date of the liquidation was set at 2 October 2019.

5. Between October 2016 and June 2017, PGA sponsored approximately twenty Sub Funds. Fifteen of the Sub Funds were put into receivership by Lyford Fund prior to the commencement of the PGA liquidation.

6. The OL says that at the commencement of this liquidation he encountered four categories of clients on whose behalf PGA was holding assets:

   (1) clients with investments solely in the Sub Funds in receivership;

   (2) clients with investment holdings in a Sub Fund not in receivership;

   (3) clients with investment holdings independent of the Sub Funds;

   (4) and clients with investments both in and outside of the Sub Funds.

7. According to the OL, PGA currently holds Trust Assets in omnibus accounts in PGA's name at Banca CredInvest SA, Swissquote Bank Limited, DBT and the North International Bank and Ansbacher (Bahamas) Ltd. (collectively the "Custodian Banks"). PGA's investment manager and custodian relationship with its clients are based on different documents than those used by PGA and the Sub Funds.

8. The OL had earlier, unsuccessfully, sought to obtain the sanction of the Court for the payment of liquidation costs out of the fifteen trust funds which had been placed into receivership by Lyford Fund. ***McKay J***, in a 17 September 2020 decision had determined that the OL could not recover any liquidation expense from the trust funds.

9. The Liquidator asserts that he and his team have worked on this liquidation for over 13 months without being remunerated.

The Application:

10. The OL has applied by Summons dated 6 November 2020 for an Order that:

> "...pursuant to sections 204 (3 - 4), section 205(3)(a); section 7 of Part I of the Fourth Schedule of the Companies (Winding Up Amendment) Act, 2011 and Rule 10 of the Insolvency Practitioners' Rules, 2012 FOR AN ORDER THAT:
>
> 1. The Court sanctions the Official Liquidator deducting or causing to be deducted from the trust accounts/assets being held by PGA (excluding trust assets concerning the 15 segregated accounts/sub funds, of the Lyford

Diversified Global Fund SAC, that are in receivership) ("Trust Assets"), such costs in the liquidation that are solely attributable to the identification, realization, preservation, protection, recovery, distribution and administration of those trust accounts/assets ("Trust Costs")

2. The Court sanctions the Official Liquidator deducting or causing to be deducted from the Trust Assets a percentage of the balance of the liquidation costs that are not solely attributable to the Trust Assets ("General Liquidation Costs") since the Trust Assets currently constitute approximately 79% of the assets in PGA's name and the General Liquidation Costs maintain the liquidation process thereby enabling the Official Liquidator to attend to the Trust Assets.

3. The Official Liquidator shall apply to the Court regarding the specific percentage of the General Liquidation Costs to be paid out of the Trust Assets.

4. The Trust Costs and a percentage of the General Liquidation Costs are to be apportioned amongst the various Trust Assets on a pro rata basis such that each asset contributes a percentage equal to the percentage of that asset of the entire group of Trust Assets.

5. The Official Liquidator, his team (including but not limited to Intelisys back office support to the Official Liquidator) and Callenders & Co. (General Counsel to the liquidation) are authorized to receive a payment on account of 80% of the Trust Costs and the General Liquidation Costs, once the Official Liquidator has filed the appropriate court documents requesting such remuneration from the Court and requested a hearing date from the Court."

11. The Application is supported by the 6th and 11th affidavits of the OL.

12. According to the submission of the OL:

"It is submitted that the costs of identification, realization, preservation, protection, recovery, distribution and administration of the trust

accounts/assets being held by PGA (excluding trust assets concerning the 15 segregated accounts/sub funds ("Sub Funds") of the Lyford Diversified Global Fund SAC ("Lyford Fund") that are in receivership) thereby incurring costs ("Trust Costs") should be reimbursed by the Trust Assets on the following grounds:

(a.) This Honourable Court has jurisdiction to grant leave based on ss. 204(3) & (7) of Part 1 of the Fourth Schedule to the Companies Winding Up Amendment Act, 2011 ("CWUAA") 1 and Orders 11 and 24 of the Companies Liquidation Rules, 2012 ("CLR") 2 and the authorities set out herein.

(b.) The Trustee Act recognizes that a trust need not be express, but can be implied, constructive or resulting.

(c.) The documents between PGA and its clients whereby the clients gave PGA control and sometimes actual possession of the clients' assets clearly show that the clients retain beneficial ownership of the assets and limit PGA's control of the assets and create an implied trust relationship (resulting or constructive). Therefore the assets being held by PGA in its name and under its sole control with custodian banks qualify as trust assets subject to s.204(3) CWUAA or subject to common law principles of a trustee being indemnified from trust/fiduciary assets.

(d.) The OL has done many of the tasks referred to in s.204(3) of the CWUAA concerning the Trust Assets.

(e.) PGA's proprietary assets are extremely limited and insufficient to cover the Trust Costs."

"It is further submitted that this Honorable Court should sanction the OL being reimbursed for liquidation costs incurred that are not solely attributable to the Trust Assets including the OL's remuneration, costs and disbursements ("General Liquidation Costs") pursuant to ss. 204(1) & (3); 205(3) (a) and 7 of Part I of the Fourth Schedule of the CWUAA and the authorities set out herein. The General Liquidation Costs should be paid by the Trust Assets on the following grounds:

(a.) The Trust Assets constitute approximately 79% of PGA's assets (cash and securities) and therefore are benefitting from at least 79% of the General Liquidation Costs.

(b.) The Trust Assets are beneficially owned by PGA's clients and are held by PGA in its name in a fiduciary capacity.

(c.) The General Liquidation Costs have to be paid to maintain the liquidation so that the OL can continue to identify, realize, preserve, protect, recover, distribute and administer the Trust Assets per his liquidator duties.

(d.) PGA's proprietary assets are extremely limited and insufficient to cover the General Liquidation Costs incurred from the commencement of this liquidation to date.

"If this Honourable Court deems that the assets are not trust assets, then it is submitted that the only other legal analysis of a company holding assets in its name and control would be that the assets are proprietary assets and the OL could use them to pay the General Liquidation Costs without the leave of the Court. The OL has not found any evidence that the Trust Assets are secured assets."

13. The Liquidation Committee opposes the application. No evidence was filed in support of the opposition and the LC relies on the affidavits of the OL. According to the Submissions of LC:

The OL ... filed an application by summons dated 26 May, 2020 claiming payment of 90% of the general liquidation costs out of the assets of the Sub-funds in receivership. This Summons, which is discussed in further detail below, was heard and ruled on by Justice McKay.

By the 26 May, 2020 Summons the OL sought the following relief:

...

2. The Court sanctions the Official Liquidator deducting or causing to be deducted from the Sub Fund Trust Assets approximately 90% of the balance of the liquidation costs that are not solely attributable to the Sub Fund Trust Assets ("General Liquidation Costs") since the Sub Fund Trust Assets constitute approximately

90% of assets in PGA's name and the General Liquidation Costs maintain the liquidation process thereby enabling the Official Liquidator to attend to the Sub Fund Trust Assets.

The 26 May 2020 Summons was dismissed by Justice McKay, who, by ruling dated 17 September, 2020, rejected the OL's attempt to pay his costs and the general liquidation costs out of the assets of the Sub Fund. Justice McKay recites the basis of the OL's claim to be entitled to pay himself out of the sub-fund assets in paragraphs 42 to 45 of her Judgment as follows:

42. By his Eighth affidavit filed 27th May, 2020, the OL stated, inter alia, that the trusts costs which were sought in the OL's Costs Summons included the OL identifying, realizing, recovering and investigating losses and whether they could be recovered, all of which included the Sub Funds assets and that the General Liquidation Costs included the OL notifying known custodians of assets held in PGAL's name, dealing with clients and creditors, managing the assets and carrying out statutory duties and other tasks.

43. He added that it was counterproductive for the LC to attempt to hinder the OL from being paid from the Sub Fund Trust Assets when there was insufficient proprietary assets to pay liquidation costs only to turn around and request that the Sub Fund Trust Assets be lawfully disbursed by OL. The OL further stated that at the time the Affidavit had been sworn, PGAL had $171,000 in proprietary cash however, the OL's fees and General Liquidation Costs were approximately $715,119.79 which was the reason behind the OL's Costs Summons.

Justice McKay determined that the OL was not entitled to deduct his costs from the sub-fund assets as he sought to do. In coming to her conclusion Justice McKay cited the following facts at paragraphs 82 to 86 of her ruling:

82.1 By Unanimous Resolutions of the Board of Directors of Lyford Diversified passed 7th March, 2019 and 8th April, 2019, fifteen of the Sub Funds were placed into Receivership and the Receiver and Manager was appointed. In April and May 2019 the Receiver and Manager made an application for the Receivership to be placed under the supervision of the Court, which has become the subject of fifteen different actions pending before the Supreme Court.

82.2 Following the Receiver and Manager's appointment on the 20th May, 2019, the Receiver and Manager terminated all of investment management agreement for all of the Sub Funds by the 28th May, 2019.

82.3 On 19th July, 2019, Phoenix Capital Ltd. ("Phoenix") and Luca Lanciano ("Luca") by way of their attorney Messrs. Gail Lockhart Charles & Co., entered appearances in each of the fifteen receivership actions. On 17th September, 2019 Phoenix and Luca applied for the Sub Funds to be liquidated forthwith.

82.4 On 28th August, 2019 the COO of PGAL enclosed copies of its instructions to its sub-custodians Credinvest and Swissquote to transfer the assets of the Sub Funds to the Sub Funds' respective accounts at DBT. On the same date DBT sought confirmation from PGAL that further instructions would be sent by PGAL for the assets of the Sub Funds to be distributed to the respective Sub Funds' accounts. PGAL confirmed that the instructions were given to its custodians to transfer the assets of the Sub Funds and that no further instructions would be required and also confirmed that all other inquiries should be made to the addressee of the instructions.

82.5 Based on the instructions, the assets held by PGAL's sub-custodians Credinvest were transferred to DBT. PGAL faced issues with the transfer and requested that Deltec open an omnibus account for the sole purpose of facilitating the distribution of the assets of the Sub Funds from PGAL to the Sub Fund. The omnibus account was opened and existed for that sole and exclusive purpose. PGAL went into liquidation while the Sub Funds were passing through the omnibus account.

82.6 By Orders made in October 2019, the Court ordered that the Receiver and Manager disburse the assets of the Sub Funds with respect to the application made by Phoenix and Luca. Deltec was involved with the remaining orders which led the Court to order that it be served, to give Deltec the opportunity to be heard. Deltec was served and retained Mrs. Rolle Q.C., who in turn filed a Notice of Appointment of Attorney on Deltec's behalf in each of the fifteen receivership actions.

82.7 By Order made 28th October 2019 and filed on 8th November 2019, the voluntary liquidation of PGAL was placed under the supervision of the Court and Mr. Ed Rahming was appointed as the Official Liquidator and Intelisys Ltd. and Callenders & Co. were appointed the back-office service provider and legal counsel to the liquidation respectively.

82.8 On 6th December, 2019, Phoenix and Luca filed a Summons to discharge the Receiver and Manager on the ground that he had not disbursed the assets of the Sub Funds and for Deltec to instead be directed to disburse the Sub Fund assets. On 16th December, 2019, at the hearing of Phoenix and Luca's discharge application, the parties advised the Court that they had arrived at an agreement for the disposal of Phoenix and Luca's application. They additionally advised the Court that Deltec would be authorized to disburse the Sub Fund assets and Deltec and the Receiver and Manager would work together to do so.

82.9 The Receiver and Manager was not discharged and by paragraph five of the Consent Order, Deltec was authorized to liquidate the Sub Funds and to disburse the Sub Fund assets. Additionally, in the receivership actions the Court directed that the only deduction that should be made from the Sub Fund assets by Deltec were for the costs and expenses of the Receiver and Manager once determined by the Court.

82.10 Based on the Consent Order, Deltec, Phoenix and Luca had already successfully achieved the liquidation and disbursement of the WIK Sub-Fund, EUR Conservative Portfolio Sub-Fund and the Spectator Sub-Fund.

82.11 In December 2019, Deltec and the Receiver and Manager made a request to the OL for the immediate release of the Sub Fund assets which were still in the possession of PGAL and confirmed for the OL that they were not assets of PGAL. In response, the OL informed Deltec that he would review the matter and revert to him on a position after January 2020. However, the OL never confirmed to the Receiver and Manager what he had concluded with respect to the Sub Funds' assets. Instead, the OL filed the OL's Cost Summons which sought to deduct the General Liquidation Costs from the Sub Funds' assets.

83. As I have accepted the facts set out above, I find that while there was a contractual relationship that existed between PGAL and Lyford Diversified prior to PGAL's liquidation, that contractual relationship was terminated. Therefore, it was not the intention of Lyford Diversified for the assets to remain with PGAL. As a result, there could be no trust formed over the assets.

84. Oddly enough, the OL chose to ignore the Receiver and Manager and Deltec. The Receiver and Manager posited and I accept, that he reached out to the OL to request the immediate release of the assets of the remaining Sub Funds which were still in the possession of PGAL. Accordingly any question with respect to the assets could have been posed to the Receiver and Manager. The OL, despite his promise to revert to the Receiver and Manager never did and instead instituted these proceedings. I accept Mr. Davis Q.C.'s submission that he who seeks equity must do equity and sadly it appears as if the OL was on a frolic of his own.

85. Accordingly, I will accept the submissions of Deltec, the Receiver and Manager and the Liquidation Committee and dismiss the application of the Official Liquidator and direct that the Sub-Fund Assets be released to Deltec to be disbursed consistent with the Disbursement Orders and the Consent Orders which the Court has already made.

86. The final issue for the court's consideration is that of costs. The general rule is that costs follow the event. I see no reason to depart therefrom. As such, I order that the Official Liquidator shall bear the costs of and incidental to the proceedings of the Receiver and Manager and Deltec which costs I certify fit for two Counsel and are to be taxed if not agreed. Additionally, I order that the Official Liquidator is to bear one third of the costs of the Liquidation Committee which are also to be taxed if not agreed.

Notwithstanding S 204(1) of the Act which provides that "The expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets" each of the Summonses filed by the OL seeks to have the general liquidation costs paid out of assets which the OL recognizes do not belong to the Company.

Other than stating that there are insufficient assets belonging to the Company to pay the liquidation costs, the OL does not explain how the costs that he seeks to have paid are either reasonable or relate to work that was of benefit to the owners of the non-client assets. Nor does the OL explain why he did not moderate his expenditure so that he did not exceed the assets on the books of the company.

Aside from the apparently excessive and unjustified running up of expenses, there is significant cause for concern as to the manner in which the OL is conducting the liquidation generally. In this regard the LC highlights the following points:

a. *The OL states that of the amount of $2,474,008.58 which he identifies as assets belonging to PGA as of 30 September, 2020, $1,950,251.90 represents funds held back from the client assets that Justice McKay ordered the OL to hand over to the Receiver of certain sub-funds. The LC is very concerned as to the OL's breach of Justice McKay's order in failing to turn over all funds that the court has ordered to be turned over to the receiver for return to the investors. The LC is also very concerned that the OL has apparently co-mingled these funds with the funds of PGA by placing the holdback amount of $1,950,251.90 on the PGA balance sheet as is evident from paragraphs 17 and 18 of the OL's 11th Affidavit.*
b. *The OL has failed to disclose the details of the cancelation of investment management agreements and requests from the clients (other than the funds in receivership) for the return of funds prior to the commencement of the winding up. Apart from the OL's failure to execute the client's instructions for the return of their assets, the LC is concerned that the amount of costs claimed by the OL (in excess of 1 million) would represent approximately 10% of the clients' assets. This reduction would be of absolutely no benefit for the clients but only an unreasonable depletion of their capital in addition to the damages which they have already*

incurred as a result of having their capital blocked and not at their disposal for nearly two years.

c. *The LC is concerned that, after 13 months, the OL has failed to produce a statement to the clients showing their balances, yet he has charged huge sums of money for work which he claims was for the clients' benefit and he claims that even further sums will need to be paid before statements can be issued and the clients' assets may be returned.*
d. *The OL states at paragraph 25 of the Affidavit (note: there are two paragraph 25, we refer here to the paragraph 25 on page 10) that the trust claims exceed the trust assets received in the liquidation. Again, the LC is concerned that the OL is comingling the clients' assets with PGA's assets. The reality is that the OL was custodian of several assets inclusive of cash and securities, therefore it is wholly inappropriate for him to group all assets in one dollar amount as he has, as the value varies day by day and the OL is required to return to the clients their assets as they are and not something different. Furthermore, the statement "that a significant amount of the Trust Assets are illiquid or may face other recovery issues" is worrisome in light of the OL's obligation to return the assets to the clients as they are and not in some other form. These assets are not assets on the balance sheet of PGA but only in custody therefore the OL cannot dispose of them or change their nature.*

Analysis and Disposition

14. There is no doubt that the Trust Accounts do not belong to PGA notwithstanding they stood in the name of PGA and the date of the making of the Winding Up Order. Section 204 of the Companies Act provides:

> 204. Remuneration of official liquidators
> (1) The expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.
> (2) There shall be paid to the official liquidator such remuneration, by way of percentage or otherwise, that the court may direct acting in accordance with Rules made under section 252; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the court directs.
> (3) Where in the course of the reasonable exercise of his functions as liquidator in relation to assets which the company in liquidation held upon a trust, expressed or otherwise, the liquidator—
> a) identifies or attempts to identify;
> b) recovers or attempts to recover;

c) realizes or attempts to realize;
d) protects or attempts to protect; or
e) distributes such assets to the person or persons beneficially entitled,

the liquidator to the extent of such activities (or other activity in relation to such assets considered by the court to be beneficial to those entitled to them) shall be regarded as having acted in the administration of trust assets and the liquidator, subject to the approval of the court, shall be entitled to be indemnified out of those assets in respect of costs that are allocable to the said activities.

(4) Where the court, approves the indemnification of a liquidator out of trust assets pursuant to subsection (3), it shall be done on such equitable basis as against the relevant assets as the court may direct.

(5) For the avoidance of doubt, nothing in subsections (3) and (4) shall affect the principle of law that assets held by a company in trust for another person shall not be divisible in the liquidation of that company.

15. Section 204 codifies what existed at common law under the ***Berkeley Applegate*** principles. In ***Re Berkeley Applegate (Investment Consultants) Ltd. (In Liquidation) [1989] Ch. 32*** the English High Court held that as the company's assets were insufficient to adequately compensate the liquidator for the skills extended and tasks performed in relation to Berkeley Applegate's client trust assets, the liquidator's costs should be paid out of the trust assets. This rule has been approved in this jurisdiction in the Supreme Court ***In the Matter of Dominion Investments (Nassau) Ltd. (In Liquidation) [2008] 6 BHS J No. 22***. In that case a significant amount of the assets held by Dominion, were held on trust for its investor clients and a significant amount of the work performed related to those assets. ***Lyons J.*** held that as the liquidated company's assets were inadequate to meet the general costs of the liquidation and the majority of the work performed by the liquidator was in relation to and for the benefit of client trust assets, the liquidator was entitled to Berkeley Applegate relief, i.e. payment of remuneration of general liquidation costs out of trust assets. According to ***Lyons J:***

> 42 It is an increasingly common practice with financial service providers that investors money is treated in the manner that Dominion treated it - i.e. that the beneficial interest in the invested monies does not pass from the investor to the financial services provider. This creates therefore a fiduciary or trust relationship between the financial services provider and the investors. The nature of many financial service providers is that they operate sometimes only for a specified period of time. Often, as is the nature of investment, the investment matures or proves to be unsuccessful.

> Sometimes the course of the investment programs undertaken simply comes to an end. The financial service provider then has to wind up the operation. Sometimes this can be done by the financial service provider itself but this is not usually the case, particularly in times of volatility in the investment markets. Often the assistance of a liquidator is required. The liquidator has to be paid. No one expects a man to labour for nothing or next to nothing. ***Where the assets available to pay the liquidator are not company assets but trust assets, then, on a strict legal interpretation of the Companies Act, the liquidator would not be paid. This is hardly equitable.***" [Emphasis added]

16. I accept the submission of the OL that:

> *"if the OL did not perform the general liquidation tasks, which incur General Liquidation Costs, such as: liquidation reports, taking control of PGA's bank accounts and PGA's accounts holding Trust Assets, administrative duties regarding reporting to the SCB, Registrar General and the Supreme Court; taking possession of PGA's books and records, calling creditors' meetings, establishing the Liquidation Committee and other tasks, he would fall short in his duties as liquidator. His presence was necessary to assess, identify, recover, realize, protect and distribute the Trust Assets which are in the name of PGA and can only be dealt with by him since PGA is in liquidation."*

17. I am satisfied that the OL has demonstrated an entitlement to receive payment for services provided directly towards the benefit of the Trust Assets. To accept otherwise would be wholly inequitable. I therefore grant the first prayer in the Summons, with the caveat that the fees attributable must be in accord with the fees which PGA would otherwise have levied had they not been placed in liquidation.

18. Insofar as the payment of general litigation expenses are concerned, whilst I accept that the state of the law permits the OL to receive a contribution from these trust assets towards the general liquidation costs, I also accept that much of the complaints of the liquidation committee are valid. The amounts which are said to be attributed to the Trust Assets, not in receivership, have been inconsistently

stated over the several applications made by the OL for payment of these fees. This application, at this stage, does not require me to assess what percentage will be allocated. If I were required to make such a determination at this stage, in my view it could not exceed 15%, but I reserve my determination until such an application is brought. These are Trust Assets and cannot be unduly burdened with the general liquidation costs for PGA, when the assets are merely in PGA's custody as custodian. In the circumstances I see no need to consider the prayer in paragraphs 2, 3 or 4 of the Summons at this stage.

19. What is in fact required is a plan to secure a replacement trustee for these funds as the OL cannot efficiently administer them or be expected to manage them. Such a process would thereby minimize the burden to these assets and unnecessary liquidation costs.

20. Paragraph 5 of the Summons seeks an order that:

> The Official Liquidator, his team (including but not limited to Intelisys back office support to the Official Liquidator) and Callenders & Co. (General Counsel to the liquidation) are authorized to receive a payment on account of 80% of the Trust Costs and the General Liquidation Costs, once the Official Liquidator has filed the appropriate court documents requesting such remuneration from the Court and requested a hearing date from the Court.

21. Section 10 of the Insolvency Practitioners Rules (IPR) provides:

> 10. Introduction.
> (1) Subject to sub-rule (2), an official liquidator and his agents are not entitled to receive any remuneration out of the assets of the company in provisional or official liquidation (including a liquidation under the supervision of the court) without the prior approval of the court.
> (2) An official liquidator may receive a payment on account, the amount of which shall not exceed eighty percent of the remuneration sought in the report and accounts prepared in accordance with rule 12(2).
> (3) In the event that the amount of remuneration approved by the court is less than the amount paid on account, the official liquidator shall forthwith repay the balance to the company.

22. Section 12 of the IPR provides:

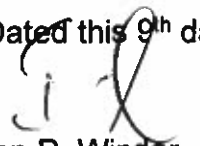
> 12. Consideration of remuneration by the liquidation committee.

(1) ...
(2) The official liquidator shall prepare a report and accounts containing all the information reasonably required to enable a creditor or contributory to make an informed decision about the reasonableness of the proposed basis of remuneration and amount for which the official liquidator intends to seek the court's approval.
(3) ...

23. In my view there is no basis for prayer 5 in the Summons principally because the OL has not filed the report referred to in Section 12 and more importantly because the process does not include the Court until an approach is made for the sanction of the remuneration of the OL. In the premises I am not minded to grant this prayer for relief.

24. In the circumstances I make no order for costs and reserve further consideration until the appropriate application (referred to above) has been placed before me.

Dated this 9th day of March 2021



Ian R. Winder
Justice