



AG OF TRINIDAD AND TOBAGO V CL FINANCIAL LTD

[2025] UKPC 41

KEY TAKEAWAYS:

1. The Board could not approve the remuneration requested by the liquidators as they had to provide a fuller analysis of the tasks undertaken, and the levels of staff by whom they were undertaken, so as to put the court in a position to be satisfied that the work was reasonably undertaken.
2. A line by line examination by the court is not necessary, but rather sufficient information so that the court has a clear view of the work done and by whom.
3. The level of information provided should be proportionate to the size of the insolvency and to the cost of preparing the information.

ISSUE

The sufficiency of the information provided by liquidators in support of their application for approval of their remuneration.

FACTUAL BACKGROUND

CL Financial Ltd ("the Company"), a company incorporated in Trinidad and Tobago, is the holding company of a group of companies with interests in a range of diverse international businesses. When the Company encountered financial problems in 2008, the Government of Trinidad and Tobago ("the Government") provided financial support to prevent its collapse. The Company subsequently tried to realise its investments in some subsidiaries, with a view to reducing its liabilities to the Government. However, the group continued to operate in five areas of business in several companies, with some 24 active subsidiaries. In July 2017, the Government presented a petition to wind up the Company. The Company was wound up by the Court on 15 September 2017 on the grounds of insolvency. The Company applied to the court for the approval of the remuneration of its liquidators for the calendar year 2019 and the application was opposed by the Attorney General on behalf of the Government, the largest single creditor of the Company. The High Court approved the remuneration, but its decision was reversed by the Court of Appeal.

APRIL 2018 ORDER PROVIDING FOR THE REMUNERATION OF THE LIQUIDATORS

"The remuneration of the Liquidators and their reasonable expenses or disbursements including legal costs or fees, may be drawn and paid on account of the total on a monthly basis from the assets of the Company including cash and deposits on hand, on the basis of the **reasonable time expended** by the Liquidator and his staff or the staff of the professional services firm he is associated with at the following hourly rates for such work, subject to such amounts being taxed from time to time as the Court may direct."

FIRST INSTANCE

THE REMUNERATION REPORT

(paras 119-122 PC Judgment)

The main supporting evidence filed by the Liquidators was their **Remuneration Report** for the year 2019.

This comprised a **narrative section of 11 pages** and **four appendices**.

The **first page** refers to the **April 2018 Order** and the charge out rates for partners and staff specified in that order.

The **middle eight pages** contained a **narrative account of the work undertaken** by the Liquidators in 2019, **divided into eight work streams**.

The **total number of hours** and the **resulting charge** shown for each work stream.

Under each work stream there appeared a series of **bullet points** - many were one line, a fair number were two or three lines, and a small number were four or more lines.

The **longest section (three pages)** concerned overseeing and assisting subsidiaries.

This section contained longer entries and was divided into a number of sections with the work described in a number of bullet points.

The work was **not separately attributed to each subsidiary**.

The **last two pages** set out details of the **appointments of directors to subsidiaries**, in support of the application for approval of the fees and expenses in respect of those arrangements.

Only one of the appendices, Appendix A, related to the Liquidators' remuneration.

This was a **one-page schedule** showing for each of the eight work streams the total number of hours worked (and the resulting charge) for each grade of staff as per the April 2018 Order.

This was **supplemented by affidavit evidence**.

High Court

The Judge **APPROVED** the remuneration, expenses and fees paid to the corporate directors of the subsidiaries, as asked for in the Liquidators' application, and made an order to that effect.

The Judge announced his decision in an email to the parties and gave very brief reasons for his decision. The Judge then gave full written reasons in a High Court Judgment including the following (paras 34-36):

- "the Court **must strike a fine balance** between properly compensating experienced professionals and their authorised staff and preventing a 'feeding from the trough' scenario"
- "**A proper reading of the authorities does not suggest that a line by line time sheet is required, but rather sufficient information so that the court can ascertain the work done and by whom.** The remuneration report in the court's view provides this information"
- "The GORTT submitted that in a complex liquidation such as this, more detail is required and therefore, greater particularisation should be provided. With respect, the Court does not accept this submission...The GORTT submits that it is impossible to assess the reasonableness of the charges without these itemised particulars, but the Court is of the view that **they can be reasonably particularised without necessarily providing every item**"
- "In the circumstances, while the sums claimed by the liquidators are indeed substantial, the Court is not persuaded that they are unreasonable or that they have not been reasonably justified in the materials provided by the JLS in their report and affidavits"

FIRST APPEAL

Court of Appeal

The Court of Appeal **OVERLOOKED the High Court Judgment** and, as a result, **set aside the Judge's order** principally on the grounds that the Judge had not given a proper judgment and had failed to analyse the evidence or provide cogent reasons for his decision.

Therefore, **the principal ground for the Court of Appeal's decision was WRONG** (para 22 of the Privy Council Judgment).

Despite this, notably, the Board noted that the Court of Appeal said that the Judge's reading of the authorities was wrong and that those authorities "suggest that **an exercise akin to a line by line examination is necessary** if the choice is made by the JLS to engage in a time approach rather than a job or piece approach to their task" (para 23(2) CA Judgment).

GENERAL PRINCIPLES

The Board considered **authorities from a number of common law jurisdictions** (including England and Wales, Ireland, Australia, New Zealand, Singapore and Hong Kong) and found that there exists a **largely common approach** to dealing with the problems concerning the assessment of remuneration for insolvency officeholders.

The **GENERALLY ACCEPTED PRINCIPLES** were laid out by the Board as follows (in paras 103-115 PC Judgment):

1. At least in large insolvencies, **TIME SPENT** is either the only means by which remuneration is assessed or, more usually, it is a major component and the **STARTING POINT**.

- Although time may be the basis for remuneration, there is an **overriding requirement** that the remuneration should be **FAIR AND REASONABLE**.
- This not only acts as an **OVERALL CONTROL** but may also **benefit the liquidators** in that it may lessen to some extent the level of detail required to support their claims.

2. While the officeholder must establish that the hours claimed were indeed worked, that is rarely the issue with a **reputable officeholder** who has maintained proper time records.

- **Courts should proceed on the basis that officeholders have acted with INTEGRITY**, unless there is reason to believe otherwise.

3. Crucially, **the officeholder must establish that the time costs were REASONABLY INCURRED**.

- This depends principally on two factors:
 - Whether the work in question was **reasonably undertaken**; and
 - Whether the work was performed by a **person of appropriate seniority**.

The court should NOT be burdened with an overwhelming amount of detailed evidence, nor should the estate be burdened with the cost of producing it. As such, there is near unanimity in all comparable jurisdictions that **the court should NOT engage in a line by line analysis of the officeholder's claim**.

In view of the **BURDEN** that it would impose on the resources of both the court and the (usually insolvent) estate, this would be a **WHOLLY DISPROPORTIONATE** way to proceed.

Ferris J in *Mirror Group Newspapers plc v Maxwell* (No 2) [1998] 1 BCLC 638, at 649

Level of Information Required

"If they seek to be remunerated upon, or partly upon, the basis of time spent in the performance of their duties...**They must explain the nature of each main task undertaken, the considerations which led them to embark upon that task and, if the task proved more difficult or expensive to perform than at first expected, to persevere in it.** The time spent needs to be linked to this explanation, so that it can be seen what time was devoted to each task. The amount of detail which needs to be provided will, however, be **PROPORTIONATE** to the case."

Record-Keeping

"...**office-holders MUST KEEP PROPER RECORDS** of what they have done and why they have done it...**Office-holders whose records are inadequate are liable to find that DOUBTS ARE RESOLVED AGAINST THEM** because they are unable to fulfil their duty to account for what they have received and to justify their claim to retain part of it for themselves by way of remuneration."

Officeholder Considerations

"...the test of whether office-holders have acted properly in undertaking particular tasks at a particular cost in expenses or time spent must be **whether a REASONABLY PRUDENT MAN, faced with the same circumstances in relation to his own affairs, would lay out or hazard his own money in doing what the office-holders have done**...They are **expected to deploy COMMERCIAL JUDGMENT**, not to act regardless of expense."

SECOND APPEAL

Privy Council

GROUND OFS OF APPEAL

Grounds 1 and 2

- The Court of Appeal failed to take account of the High Court Judgment.
- The Board found that these grounds were MADE OUT and that the Court of Appeal's order could not be upheld without examination of the merits of the Judge's order.

Ground 3

- The Court of Appeal adopted an approach to the approval of a liquidator's fees and expenses which was UNSUPPORTED IN LAW and WRONG IN PRINCIPLE, in that:
 - it required a line by line examination by the court;
 - it required too much detailed information to be placed before the court; and
 - it required a similar approach to be taken to expenses incurred by a liquidator.
- These were the CENTRAL ISSUES in the appeal.

Ground 4

- The Court of Appeal erred in making a non-party costs order against the liquidators personally.

FINDINGS

The Board found that the discussion in the case law of many jurisdictions as to the level of information which should be provided to the court could NOT be reduced to a single formula and will always be dictated by the circumstances of the particular case.

Despite this, they found that there exist the following two high-level principles:

1. There must be SUFFICIENT INFORMATION to enable the court to have a clear view of what the officeholder has done; and
2. The information should be PROPORTIONATE to the size of the insolvency and to the cost of preparing the information.

Applying the principles developed in the authorities, the Board held that the remuneration report, supplemented by the affidavit, provided "far from sufficient information to support their application" (para 123) as:

- the description of work undertaken was very general and brief;
- it was impossible to identify the tasks the Liquidators had undertaken and, therefore, to assess whether they had done so reasonably;
- it was impossible to see how long was spent on particular tasks and, therefore, to assess whether the time spent was reasonable;
- it was impossible to assess whether the tasks were undertaken at the right level as there was no breakdown as to the grade(s) of partners and staff working on any task; and
- only the most generic information was supplied.

The Board held that more detail is, or is likely to be, required in a complex liquidation and emphasised the need for PROPORTIONALITY.

The Board also held that the necessary level of information can be "reasonably particularised without necessarily providing every item" and clarified that a line by line analysis is NOT necessary.

Ultimately, the Board concluded that the Judge was WRONG to approve the remuneration claimed by the liquidators. Therefore, despite disagreeing with significant parts of the Court of Appeal's judgment, it AFFIRMED THE ORDER and DISMISSED THE APPEAL, save for costs.

ALEXANDER'S PRACTICE ENCOMPASSES
INSOLVENCY, ARBITRATION AND
COMMERCIAL CHANCERY. THIS
INCLUDES CONSIDERABLE CROSS-
BORDER AND OFFSHORE EXPERIENCE.

IF WE CAN ASSIST FURTHER, PLEASE
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