



**THE COURT OF APPEAL  
CIVIL**

**Court of Appeal Record No. 2021/146  
High Court Record No. 2019/122 COS  
Neutral Citation No. [2022] IECA 33**

**NO REDACTION NEEDED**

**Whelan J.  
Costello J.  
Murray J.**

**BETWEEN**

**ANTHONY FITZPATRICK**

**APPLICANT/APELLANT**

**- AND -**

**AIDEN MURPHY (AS OFFICIAL LIQUIDATOR)**

**RESPONDENT**

**- AND -**

**THE REVENUE COMMISSIONERS**

**NOTICE PARTY**

**Ex tempore JUDGMENT of Mr. Justice Murray delivered on the 7<sup>th</sup> of**

**February 2022**

1. In his judgment of 24 March 2021 ([2021] IEHC 204) Keane J. decided that Mr. Fitzpatrick should be paid a sum pursuant to s. 645 of the Companies Act 2014 (CA 2014) by way of remuneration for his work as provisional Liquidator of United Power Limited (*'the company'*). Mr. Fitzpatrick was provisional liquidator of the company from 8 April to 29 April 2019, although the fees he sought also included work undertaken by him between 30 April and 31 May which, he said, had been undertaken to facilitate the official liquidator (Mr. Murphy). Section 645 provides that a provisional liquidator is entitled to receive such remuneration as is fixed by the court and, thus, mandates a court application before that remuneration can be paid.
2. Mr. Fitzpatrick claimed a total sum of €126,206.01. Keane J. fixed the remuneration at €48,804.12. Mr. Fitzpatrick's claim comprised fees and expenses of €91,877.57 (being €89,126.25 fees and outlay of €2,751.32 together with €21,131.84 in VAT at 23% on the foregoing). He also sought to recover a sum of €13,196.60 in respect of legal costs of a failed interim injunction application brought by him *qua* provisional liquidator. In total, Keane J. allowed €37,000 by way of fees, and €2,751.32 in respect of outlay plus VAT.
3. Keane J. disallowed the costs of the failed interim injunction application (which arose from an alleged detinue of some of the company's property) on the basis that this was not remuneration within the meaning of s. 645 and, in any event, that Mr. Fitzpatrick was not entitled to his costs of the injunction application. He explained the second basis for his conclusion in this regard as follows (at paras. 92 to 93):

*‘... it was the decision to institute those proceedings ultra vires, in the absence of any established urgency, shortly before the hearing at which Mr. Fitzpatrick knew his nomination as liquidator was to be opposed, in order to pursue a detinue claim of – to put it no higher – dubious merit, that deprived Mr. Fitzpatrick of the opportunity to apply in the ordinary way to have recourse to the assets of the company to pay his legal costs of those proceedings. Whether any such application could have succeeded had that opportunity been available is a question that, perhaps fortunately for Mr. Fitzpatrick, I do not have to consider.*

*It follows that I cannot accept the argument that, having missed out on that opportunity in those circumstances, Mr. Fitzpatrick should be permitted to apply to have the court fix his remuneration as provisional liquidator in a sum that includes those costs.’*

4. Mr. Fitzpatrick then sought his costs of making the application pursuant to s. 645. In a second judgment ([2021] IEHC 306) Keane J. refused that application, directing instead that Mr. Fitzpatrick pay the costs of Mr. Murphy and of the Revenue Commissioners (‘Revenue’) (a significant creditor of the company) incurred in connection with the application. The first judgment not having been appealed, this is an appeal by Mr. Fitzpatrick against the second.
5. Central to Keane J.’s reasoning in making these orders were the fact and terms of an offer made by Revenue to agree a specific level of remuneration for Mr. Fitzpatrick.

This arose as follows. Mr. Fitzpatrick's application pursuant to s. 645 issued on 19 July 2019. The application was based upon a report submitted by him which detailed a breakdown of costs incurred during the period of the provisional liquidation. Mr. Murphy prepared a report in response itemising the costs he believed to be reasonable for the work in question and expressing the view that an appropriate fee for the work done in that period would be €37,000, the fees for the legal action as claimed being deemed by him to be not unreasonable. He recorded his position on the fees that had been sought by Mr. Fitzpatrick in an affidavit sworn by him on 30 August as follows:

*'the claim for chargeable time of 429 hours at a cost of €89,126.25 incurred during the 22 days of the Provisional Liquidation is grossly in excess of that which would be reasonably expected in the liquidation of this Company.'*

6. Having regard to the position thus adopted by Mr. Murphy, on 5 September 2019 Revenue made an open offer to Mr. Fitzpatrick stating that, subject to the view of the court, it would not object to an order fixing his remuneration in a sum not exceeding €37,000 together with a sum of €13,196.60 as his legal costs in the failed application for an interim injunction and the application under s. 645. Altogether, this offer amounted to €58,706.60 (being €37,000, plus €13,196.60 plus VAT). On 30 September 2019, Mr. Fitzpatrick rejected Revenue's offer reiterating his claim for €91,877.57, plus VAT together with €13,196.60 in legal costs for the failed injunction application. He also insisted on his entitlement to seek a separate order for the costs of the s. 645 application.

7. The reasons Keane J. concluded as he did were these:

- (i) Revenue was entirely successful in its opposition to Mr. Fitzpatrick's application and he was entirely unsuccessful in persisting in his claim to have his remuneration fixed in a sum (greatly) in excess of that which Mr. Murphy and Revenue were prepared to accept as reasonable. Keane J. said that he could find nothing in the nature and circumstances of this case, or in the conduct of the parties, that would warrant the exercise of the discretion to depart from the general rule that a successful party is entitled to an award of legal costs against an unsuccessful opposing party.
- (ii) He rejected Mr. Fitzpatrick's submission that the figure of €37,000 proposed by Revenue was, or was intended to be, inclusive of fees and outlay and of VAT on that aggregate amount. In any event, Revenue's offer, which Mr. Fitzpatrick rejected, included a further €13,196.60 for the legal costs of the failed interim injunction application and of the s. 645 application, so that even on the construction of that offer for which Mr. Fitzpatrick contended (but which he did not accept) he had failed to beat it.
- (iii) He also rejected Mr. Fitzpatrick's submission that the all-in figure of €13,196.60 that Revenue was prepared to agree for his legal costs of both the failed interim injunction application and the application then in train for an order fixing his remuneration was, or has been shown to be, inadequate. He found that Mr. Fitzpatrick was not entitled to his costs of the injunction application and could not, in any event, have claimed such costs as part of his remuneration for the purposes of s. 645 of the 2014 Act.

(iv) He said that if Mr. Fitzpatrick had applied to have his remuneration fixed at the level proposed by Revenue (and ultimately accepted by the court), that application would have been brief and unopposed, and his legal costs in bringing it correspondingly modest. The report from a firm of legal costs accountants that Mr. Fitzpatrick produced to the court assessing the legal costs he has incurred in the protracted s. 645 application that he chose to make to have his remuneration fixed at a substantially higher level, could not avail him precisely because he was entirely unsuccessful in that application. In short, Mr. Fitzpatrick failed to beat Revenue's offer on costs as well as its offer on an appropriate level of remuneration.

8. The principles by reference to which this court will review a decision of the High Court on a question of costs were recently summarised by Collins J. in *O v. Minister for Justice* [2021] IECA 293 at para. 30, as follows (references omitted):

- (i) While costs orders are discretionary, this court nonetheless has “*full appellate jurisdiction in respect of such orders*”.
- (ii) It follows that the court “*may substitute its own discretion in place of that of the trial judge*”.
- (iii) The jurisdiction “*is not dependent on having to establish an error of law or otherwise on proving that in the exercise of such discretion the trial judge acted erroneously*”.

- (iv) At the same time, however, an appellate court “*will, in general, be slow to interfere with the exercise of a trial judge's discretion in awarding costs*”.
- (v) Furthermore, an appellate court “*should not simply substitute its own assessment of what the appropriate order ought to have been but should afford an appropriate deference to the view of the trial judge who will have been much closer to the nuts and bolts of “the event” itself*”.
- (vi) Absent some error of principle on the part of the trial judge, an appellate court should intervene only where it “*feels that the exercise by the trial judge of an assessment in relation to costs has gone outside of the parameters of that margin of appreciation which the trial judge enjoys*”. Where the costs order is “*within the range of costs orders which were open to the trial judge within the margin of appreciation which must be afforded to a High Court judge*”, there will be no basis for appellate intervention.

9. The sixth of these propositions is, in the circumstances that present themselves here, the key consideration, and reflects an approach that has been consistently stated and restated in this court, notably by Finlay Geoghegan J. in *Sony Music Entertainment (Ireland) Ltd. v. UPC Communications Ireland Ltd.* [2017] IECA 96 at para. 9:

*‘Whilst there is ... no a priori requirement that an appellant establish an error in principle for this Court to interfere, I nevertheless consider we should, in relation to costs orders, be very slow to interfere unless there are errors detectable in the approach of the High Court or, even without those errors, an*

*appellant satisfies this Court in the particular circumstances of the case that the interests of justice require that it should interfere in the High Court order for costs'.*

**10.** Central to the trial judge's reasoning was his conclusion that Mr. Fitzpatrick had failed to obtain more from the application he brought to court than Revenue had offered and he should not therefore obtain an order for the costs of proceedings that were thus unnecessary. That conclusion was based upon a factor that was clearly and critically relevant to the costs of the proceedings – that Revenue had made an offer that (had it been accepted) would have obviated the cost, expense and court time involved in hearing and adjudicating upon Mr. Fitzpatrick's contested application. That application (the court was informed by Ms. O'Neill, counsel for Revenue) involved 20 appearances and a hearing lasting a full day. This is in the context of the liquidation of a company with (the court was advised) total assets of €227,000.00, preferential creditors in excess of €883,000, and further creditors in an amount exceeding €2.7M.

**11.** In contending that Keane J. nonetheless erred in principle in the conclusion he reached and/or exceeded the margin of appreciation envisaged by this test, Mr. Fitzpatrick focusses his submissions on the decision of the Supreme Court in *Re Ballyrider* (Unreported, Supreme Court, 31 July, 2019), contending that the trial judge erred in the manner in which he applied the principles in that case to the facts in hand.

**12.** That case addressed two related issues arising where a liquidator unsuccessfully defended an application brought by a creditor for his removal as liquidator – (a) whether the 'normal' rules as to costs, entitling the successful applicant to obtain its costs from



the unsuccessful respondent, applied and (b) if so whether the liquidator was entitled to recoup any costs ordered against him from the assets of the company. There, the liquidator (as it happens, Mr. Fitzpatrick) was removed as liquidator of Ballyrider Ltd. on the application of a creditor (as it happens, Revenue). The removal order was made not because of any negligence or misconduct on Mr. Fitzpatrick's part, but because of his failure to conduct litigation in an efficient and cost-effective manner. Revenue sought its costs, these being awarded by this court in an amount of 50% - the deduction arising from the fact that Mr. Fitzpatrick had succeeded in resisting an application for certain consequential orders.

- 13.** In upholding this decision, the Supreme Court (McKechnie J. in a judgment with which O'Donnell, MacMenamin, Dunne and O'Malley JJ. agreed) distinguished between three different situations in which it might be contended that a liquidator was liable for the costs of legal proceedings. The first was where proceedings were initiated or defended by the liquidator in the name and on behalf of the company. In that circumstance, the liquidator incurred no personal liability as the action was brought by or against the company, the liquidator being merely the person designated by law as enjoying the power to determine whether to bring or resist the proceedings. The second was where the proceedings were brought by the liquidator in his own name. In that situation, if successful, usually (but subject to the normal rules governing the award of costs) the opposing party would be entitled to obtain an order for costs against the liquidator. Where such an order was made, the liquidator would – if acting on behalf of the company – generally be entitled to recoup those costs from the assets of the company but may not be able to do so if he had been responsible for acts or omissions amounting to misconduct.

**14.** The third situation was the focus of Mr. Fitzpatrick's submissions in this case.

Addressing the position of a liquidator who finds himself embroiled in litigation in his own name, McKechnie J. said the following (at para. 88(3)):

*'In this situation, a distinction exists between where the liquidator is the initiator of such proceedings and where such engagement is forced upon him. In the latter situation case law shows that he must be entitled to defend without the risk of a personal cost order being made against him: public policy so dictates'*

**15.** The basic point made by Mr. Fitzpatrick is that in seeking his costs as provisional liquidator he must apply to the court. Therefore, he says, the fee application was forced upon him under s. 645, and his application falls within the situation identified by McKechnie J. at para. 88(3) of his judgment. Thus, he should have been entitled to proceed with his application for payment of his remuneration without the risk of a personal cost order being made against him and, it follows, Keane J. erred in principle when he concluded otherwise.

**16.** In my view, this argument is misplaced. When McKechnie J. observed in the course of his judgment in *Re Ballyrider Ltd.* (at para. 88) that the principles he outlined there *'were of a generalised nature and may have to yield to individual but rather specialised circumstances'* he acknowledged that each type of application brought by or against a liquidator in his own name must be assessed having regard to its own particular features and the circumstances of an individual case. McKechnie J. was describing the general

principles by reference to which the costs of such proceedings should be borne. In doing so he was balancing various factors relevant to each of the three situations he addressed – the entitlement of the liquidator to cause the company to sue in its name in much the same way as it could do were it not in liquidation, the interests of those who are sued by a liquidator in his own name to recover their costs if they successfully resisted that application and the imperatives of public policy that are inevitably engaged where a liquidator who is discharging functions in accordance with law and for the general interest finds himself or herself in a situation where proceedings have been initiated that must be defended to protect the position of the company and its general body of creditors and contributories. He was also taking into account the right of the liquidator to have recourse to the company's assets where a costs order is made against him, subject to those circumstances in which his own conduct was such that, in equity, it was wrong for the general body of creditors or contributories to bear costs that ought never to have been incurred.

**17.** However, each of the situations thus addressed by the court in *Re Ballyrider Ltd.* concerned the position of a liquidator who acted in a representative capacity. Indeed, in that case orders for costs made by this court against the former liquidator were upheld because the liquidator was defending himself and his reputation so that the challenge was personal to him.

**18.** Thus, in *Re Cherryfox Ltd.* [2020] IECA 123, having described as '*questionable*' the extent to which these principles had any application where the liquidator came to court seeking approval of his or her remuneration, Haughton J. (at para. 11) observed that there (when, as in this case, the liquidator did not accept fees proposed by Revenue):

*‘It was personal interest, not the interest of the company or its creditors, that motivated the appellant to oppose the application and to bring and prosecute an appeal. It is for this reason it is doubtful that the principle at paragraph 88(3) applies, because it can hardly be said that these proceedings were ‘forced upon’ the appellant; it was the appellant’s excessive claims which prompted the application and he chose to defend his actions and to appeal an adverse result’.*

**19.** That said it must be borne in mind that for a provisional liquidator – for all practical purposes – an application to court for approval of his remuneration is an application he must bring, or at least must bring if he is to be paid for the services he has rendered to the company. His application is thus in one sense somewhat (but loosely) analogous to the third situation described above. It would be wrong if, as the price of being paid for those services, he generally had to face an exposure for the costs incurred in seeking recovery of that remuneration. Therefore, it seems to me that the starting point must be that he is entitled to recover the costs of bringing that necessary application.

**20.** However, when a former provisional liquidator embarks upon that process his position is different from the scenario contemplated by McKechnie J. in one important respect: here, the provisional liquidator is acting not primarily in the interests of the creditors and contributories, but in his own personal interests in seeking to obtain sanction from the court for what he believes to be the remuneration due to him. This was properly acknowledged by Mr. Hudson, counsel for Mr. Fitzpatrick in the course of his submissions. There is thus in this situation something in the nature of a *lis* between the former provisional liquidator personally, and the company, its creditors and contributories. To that extent, it is appropriate for the court to approach the question of

the legal costs of his application having regard to the general principles governing the award of costs as provided for in the Legal Services Regulation Act 2015.

**21.** So, if there is no opposition to a former provisional liquidator's fees and if the court approves them as sought by the liquidator, he should obtain his costs from the company because he has been wholly successful in a necessary application. If there is no opposition and if the court imposes a modest reduction to the remuneration claimed (as often occurs), I would expect that the legal costs he has incurred in bringing the application will still usually follow. If there is no opposition and the court reduces the remuneration sought significantly, then the position will be different with the judge having the power to reduce the legal costs awarded to the former provisional liquidator or in an extreme situation involving clear exaggeration of the fees claimed, to make no order for the costs of his application.

**22.** Where, however, the former provisional liquidator's application for remuneration is actively opposed, there is a '*proceeding*' in being within the meaning of s. 168 of the Legal Services Regulation Act 2015. This was also fairly accepted by Mr. Hudson in the course of his submissions. Costs in that situation are accordingly regulated by that section, section 169 and Order 99 RSC, and in accordance with the principles outlined in *Chubb v. Health Insurance Authority* [2020] IECA 183 at para. 19 and *Higgins v. Irish Aviation Authority* [2020] IECA 277 at para. 9.

**23.** Each of the protagonists in that dispute is thus liable to have costs awarded in favour or against them, in accordance with the provisions of that Act. If the liquidator obtains all of the remuneration he seeks, he has been *entirely successful* in his application and will generally be entitled to all of his costs in accordance with s. 169(1), subject to the

intervening factors under s.169(1)(a) to (g). If, for whatever reason, the liquidator obtains none of his remuneration, the parties opposing the application have been entirely successful and the same will apply. Where the liquidator, although opposed, obtains some but not all of the remuneration as sought by him or her the court will have a greater flexibility as it may (depending on the issues and circumstances) adopt the position that neither party has been '*entirely successful*' and thus that it should exercise a wider discretion in accordance with Order 99 R. 3(1) of the Rules of the Superior Courts by reference to the factors in s. 168(2) of the Act. Whether, and if so to what extent, this is so will depend upon the grounds of opposition and how they were disposed of by the court.

**24.** In this case, Mr. Fitzpatrick obtained some but not all of the remuneration he had sought. The difference between what he claimed and what he obtained was not *de minimis*. Keane J. imposed a very substantial deduction. Therefore, in the *lis* between Mr. Fitzpatrick on the one hand and the company and the liquidator and Revenue on the other, he had *not* been '*entirely successful*'. In obtaining any costs he was accordingly subject to the exercise by the court of its discretion under s. 168(2), that discretion to be exercised in accordance with s.169(1)(a) to (g).

**25.** Several aspects of that provision were relevant. Section 169(1)(a) allows the court to have regard to the conduct of the parties, s. 169(1)(b) envisages an inquiry as to whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings, and s. 169(1)(d) posits as relevant the question of '*whether a successful party exaggerated his or her claim*'. Each of these were engaged in one way or another by the manner in which Mr. Fitzpatrick had pressed his claim for remuneration.

26. However, critical to that exercise in this case were the provisions of s. 169(1)(f) which enables the court in allocating the costs of proceedings to take account of:

*‘whether a party made an offer to settle the matter the subject of the proceedings, and if so, the date, terms and circumstances of that offer.’*

27. The reason for this is obvious. By enabling a party to make an offer to resolve a dispute and to rely upon that in connection with costs, the Oireachtas has reflected long standing practice in the courts driven, in turn, by the policy of encouraging parties to seek to resolve litigation. Keane J. in his judgment proceeded on the basis that the provision knits in with the proposition that a party who has been entirely successful in legal action will have an expectation of obtaining their costs because a party in the position of Revenue here who agrees to the payment of remuneration at a specified level might fairly view itself as having been – colloquially speaking - *‘entirely successful’* when the court in an application to fix the remuneration agrees. For my part, however, I would incline to the view that the legislature when referring to a party being *‘successful’* was focussing on whether the litigant obtained or resisted all of the relief sought on the grounds claimed, with the effect of an offer of settlement being addressed separately *via* s.169(1)(f). It is not necessary to decide this issue conclusively here.

28. What is important is that s.169(1)(f) enables the court to take an offer of settlement into account in determining whether to award costs. The making of offers of this kind (either open or, as is enabled by Order 99 R. 3(2), served *‘without prejudice save as to costs’*) encourages settlement, reduces costs and saves court time. However, it only achieves these objectives if a failure to accept an offer carries with it some consequence. Mr.

Thullier, for Mr. Murphy, opened an apt passage from the judgment of Oliver LJ. (addressing the policy considerations underlying the legal efficacy of a *Calderbank* offer) in *Cutts v. Head* [1984] 1 All ER 597 at p. 605:

*‘As a practical matter, a consciousness of a risk as to costs if reasonable offers are refused can only encourage settlement, whilst, on the other hand, it is hard to imagine anything more calculated to encourage obstinacy and unreasonableness than the comfortable knowledge that a litigant can refuse with impunity whatever may be offered to him even if it is as much as or more than everything to which he is entitled in the action.’*

**29.** This reflects the exigency of policy referred to by Clarke J. in *Mooreview Developments Ltd. v. First Active plc* [2011] IEHC 117 at para. 4.12, [2011] 3 IR 615, p. 634 who referred to the need *‘to prevent parties having a ‘free ride’ as to how they conduct litigation, designed for their benefit, without there being any real risk of a meaningful costs order being made against them’*.

**30.** These imperatives explain the conclusion reached by Allen J. in *Re Lucca Foods Ltd.* [2019] IEHC 11 that the costs of an application for remuneration in a voluntary liquidation must be borne by the liquidator where he fails to obtain more than Revenue had agreed to. Contrary to a suggestion made by Mr. Hudson in the course of his submissions, that decision was not based on the fact that the liquidation was a voluntary one, but on the fact that the liquidator had proceeded in the teeth of an offer he had failed to beat. I do not believe that the necessity for court application in a provisional liquidation (or the absence of such a necessity in a voluntary liquidation) changes this:



in the latter case no application should have been brought while in the former the application that had to be brought would have been dealt with far quicker and with far less expense for all involved. In point of fact, as Ms. O'Neill noted in the course of her submissions, in *Re Lucca Foods Ltd.* the liquidator *had* to make an application to court because the meeting of the committee of inspection at which the liquidator's fee application was addressed had not been quorate (see para. 3 of the judgment of Allen J.).

**31.** The decision of Allen J. was upheld by this court in a judgment of Haughton J. (with whom Noonan J. and Ní Raifeartaigh J. agreed) ([2021] IECA 153). He usefully and importantly summarised the relevant governing principles as follows (at para. 22 of his judgment) (references omitted):

*'(1) The court's function is supervisory and its task is to fix remuneration that is reasonable for both the liquidator and the creditor(s). The court is not bound by scales.*

*(2) The liquidator as a fiduciary must justify the claim ... Thus the onus lies on the liquidator to establish the reasonableness of the fees in respect of which remuneration is sought, and the liquidator also bears the onus of establishing the necessity and value of the work carried out.*

*(3) The "client" is not the company – it is the creditor or creditors with a financial interest in the outcome (and in the instant appeal it is the Revenue alone).*

*(4) The court should bring to bear a vigilant scrutiny to the exercise of fixing fees and needs to be satisfied that the hours were actually worked, and that the work and time were necessary and reasonable, having regard to the creditor(s) whose funds are paying the liquidator's remuneration and costs.*

*(5) The court's role is not to simply approve an hourly charge-out rate. The court is to have regard not only to the hours spent and relevant hourly rate, but also "(i) the nature of the work carried out; (ii) the complexity of the work; and (iii) the importance or value of the work 'to the client'."*

*(6) Liquidators should expect to give full particulars and do more than merely list the total number of hours spent by them or their staff. They must explain the nature of each main task undertaken, the considerations which lead them to embark upon that task, and if the task proved more difficult or expensive to perform than at first expected, to persevere with it.*

*(7) ...*

*(8) Liquidators must keep contemporaneous records of what they have done and why they have done it, and in the absence of such records any doubts in relation to that work and those fees may be resolved against the liquidator.*

*(9) The court will apply a 'prudent person test' to a liquidator's dealings with the assets and affairs of the company – the liquidator is expected to deploy commercial judgment.'*

**32.** Although post dating the decision of Keane J. under appeal here, these factors are all reflected in the trial judge's conclusion in this case. The effect of the decision of Keane

J. was to attach the usual consequence – and the consequence envisaged by ss. 168 and 169 – to Mr. Fitzpatrick’s failure to ‘beat’ the offer made by Revenue. This was not merely an exercise of his discretion with which this court should not readily interfere, it is to my mind hard to see on the facts of this case that he could properly have exercised it any other way. Revenue made a timeous offer which it was open to Mr. Fitzpatrick to accept and which the court ultimately held to have represented a reasonable calculation of the remuneration due to Mr. Fitzpatrick. Rather than accepting this Mr. Fitzpatrick persisted in an application to recover a level of costs that were grossly excessive, which he did not properly particularise, which were not supported by adequate records, which included costs for work done to meet Revenue’s opposition to the company’s application to have him appointed as official liquidator of which, Keane J. said there was ‘*considerable doubt about whether that work should have been done at all*’, which included fees of retained consultants whose invoices were not produced and, as I have observed earlier, which included legal fees for a failed injunction application to which, Keane J. found, he had no entitlement of any kind to in the application he had chosen to bring. The consequence of Mr. Fitzpatrick’s failure to accept the figure offered by Revenue or to reduce the fees sought by him in any way was that Revenue and the liquidator had to incur further costs in defending the application for costs, and over one day of court time and resources were expended on an application that could, had the offer been accepted or even treated with, have been disposed of in a fraction of that time.

**33.** For these reasons, I would dismiss this appeal and confirm the judgment and order of the High Court judge.

*Whelan J. and Costello J. agreed with this judgment when delivered in open Court.*

