THE HIGH COURT

[2022] IEHC 507

2016 No. 2326 S

BETWEEN

MARGARET BEST AND CARMEL BEST (AS JOINT COMMITTEE OF THE PERSON AND THE ESTATE OF KENNETH BEST, A WARD)

Plaintiffs

AND

PRAMIT GHOSE, NIALL JOSEPH TINNEY, PATRICK THOMAS FINNEGAN, PETER ALPHONSUS COSTIGAN, PATRICK DEMPSEY, RAYMOND DEASY, TADHG FRANCIS GUNNELL, ANGUS MCDONNELL, DAVID HARLOWE, MARTIN HARTE, AIDAN SHEERIN, ARTHUR QUINLAN, JOHN MARTIN MAGUIRE, ANNE BARRETT AND LEGACY INVESTMENT HOLDINGS LIMITED, TOGETHER FORMERLY TRADING AS BLOXHAM STOCKBROKERS PARTNERSHIP, BLOXHAM STOCKBROKERS PARTNERSHIP (IN LIQUIDATION) AND NORTHERN TRUST (IRELAND) LIMITED

Defendants

(COSTS)

COSTS RULING of Ms. Justice Baker delivered on the 5th August 2022

1. This ruling concerns the costs of proceedings in which the substantive judgment was delivered on 27 June 2018 ([2018] IEHC 376), and the supplemental judgment delivered on 9 June 2020 ([2020] IEHC 355).

2. Mr. Kenneth Best is a Ward of Court, and the proceedings to which this ruling relates were commenced by his mother and sister, the joint Committee of his Person and Estate

("the Committee"). The Committee seek an order for the payment for costs of the proceedings. In the circumstances, an issue arises as to whether they should be entitled to all of the costs, having regard to at least some aspects of the final outcome of the hearing. The further question also arises of whether orders for costs should be made against those defendants against whom no order was made for the reasons in the principal judgment.

3. In the principal judgment it was determined that Bloxham Stockbrokers Partnership, now in liquidation, and of which the first to fifteenth named defendants were, at some time during the time the fund of the ward was managed by the firm, partners, owed to Mr. Best a duty to account in respect of the management of his funds ("the Fund") lodged in court. Some of the Bloxham partners had retired by the time the proceedings came on for hearing, and in some cases, they retired many years ago. They were sued because the firm traded as a partnership.

4. Where appropriate in the course of the principal judgment and the supplemental judgment I used the term "Bloxham" and its cognates to signify the firm where it was unnecessary to identify any difference in approach to those defendants or when I was then unable to make a differentiation. I propose to use that nomination here, save when I expressly do otherwise later in this ruling. The argument of the plaintiffs that I had, by using that term in the earlier judgments, intended, or should be seen as having intended, to preclude the argument and decision now made on the allocation of costs is a misreading of the meaning and context.

5. When the principal judgment was delivered no argument had been directed towards the distribution of the liability for costs as between the fifteen natural persons named as defendants. It would have been premature and pointless to have engaged that question

until a determination was given regarding the rights of the plaintiffs, and to whom the obligations to the plaintiffs were owed.

The subsequent hearings

6. In the principal judgment I determined that Bloxham did owe a duty to account, further hearings were had to deal with the assertion that an account had been made in the past and as such that the duty had not been breached. Thereafter further queries were raised, and further hearings had in order to review documentation requested of the Office of Wards of Court ("the Office"), and documentation held by the liquidator. In all, the matter came back for four further hearings, some of them short and some involving the hearing of oral evidence from the experts.

7. A further judgment was given on 9 June 2020 ("the supplemental judgment") following the evidence from the experts.

8. As is apparent from an examination of the papers in this case, the account ultimately furnished in respect of the management of the estate of the ward is detailed, lengthy and complex. The preparation and examination of the account required an input from professional accountants and the engagement of counsel, solicitor, and of the court with those details.

Costs

9. The starting point on liability for costs in litigation was, until October 2019, O. 99, r. 1(4) of the Rules of the Superior Courts, that costs "follow the event". The court retains discretion and may depart from these principles in the light of the particular nature and circumstances of the case and the litigation, the number and extent of the issues raised and whether it was reasonable for the parties to raise them

10. It does not seem to me that it is necessary to consider whether any materially different approach is warranted by reason of the coming into operation of Part 11 of the Legal

Services Regulation Act 2015, and whether the statutory regime has any impact on the allocation of costs in this litigation which concluded before the operative date of the Act, as no difference in approach or likely difference in result is apparent or has been canvassed.

The Event

11. The leading case regarding the manner by which to characterise an "event" is that of Clarke J. (as he then was) in *Veolia Water UK plc v. Fingal CC (No. 2)* [2007] 2 I.R. 81, considered in *MD v. ND* [2015] IESC 66, [2016] 2 I.R. 438. Clarke J. identified an approach to the ascertainment of an "event" that required in some instances that a court would examine the course of the hearing and the issues raised with a view to a consideration of whether a party who has succeeded in litigation can be said to have succeeded fully.

12. These proceedings were brought by summary summons in the High Court and came for hearing before me grounded on a notice of motion seeking various reliefs, but primarily an order that an account be furnished of the dealings in the funds of the ward. It became necessary to determine the logically prior question of whether a duty was owed by Bloxham to account in respect of its management of the funds, and thereafter to consider whether, as asserted by some of the defendants, such an account had already been furnished, and depending on the answer to these questions, whether the documentation that ultimately emerged from this process was sufficient to meet the obligation.

13. Thus the primary question arising required a consideration of the case law regarding the duty to account, and whether the relationship was one akin to a fiduciary or trust relationship from which that duty has emerged in the authorities. The ultimate decision was that a duty to account did exist, and that the relationship between Bloxham and the ward, and its duty to manage the funds of the ward, had sufficient indicia of the

fiduciary duty, as recognised in the authorities, to require that such an account be furnished.

14. To that extent the plaintiffs succeeded and obtained an order and declaration that an account be furnished.

15. The proceedings to that point are not ones in which it could be said that there were a number of events, or a number of issues raised in the proceedings as commenced or in the legal issues canvassed in which the plaintiffs did not succeed. The plaintiffs sought an order for an account, that required a consideration of the legal principles involved, and the plaintiffs succeeded in obtaining that declaration and order.

16. I accept that in the course of the subsequent hearings the first-named defendant, Mr. Pramit Ghose, through counsel, indicated his willingness to assist in whatever way he could, but he maintained the defence that he did not owe an obligation to account. Mr. Ghose, in fact, offered considerable professional assistance in the analysis of the documentation and books after the principal judgment was delivered, and his professional skill and courtesy to the court in the course of the proceedings were of great assistance. Nonetheless the question here is liability for costs of litigation and the event giving rise to the making of a costs order against Mr. Ghose and the other defendants, and for the later parts of the case where he was the sole remaining defendant, arise in the context of adversarial litigation which he must be seen to have lost.

17. Put another way, the fact that by the principal judgment I found that a duty to account did exist means that the defendants cannot be said to have succeeded. The later hearings proceeded on the basis that an account was being assembled and is to be seen as performance of an obligation arising from a duty which had been found to exist. As became quite apparent in the course of the subsequent hearings there was a material

difference between having documents, including financial statements, and the rendering of an account in compliance with the order.

18. In those circumstances it seems to me that the plaintiffs are entitled to their costs of the proceedings which includes the costs of the pleadings, submissions, and the hearing on the substantive case leading up to the delivery of the principal judgment and order. The issue of whether a duty to account was owed was contested and the plaintiffs had made attempts in the months leading up to the institution of proceedings to secure an acknowledgment of the existence of the duty.

19. Some of the defendants succeeded in obtaining an order that no order be made against them, and I deal later in this ruling with individual defendants, the salient fact at this point in my consideration is that the partnership defendants (the first to fifteenth-named defendants) in the proceedings, some of whom entered a memorandum of appearance and were represented by solicitor and counsel, did have opportunity to concede the entitlement, and thus obviate the need for the litigation against them. Insofar as they did not, they must be held liable for the costs of the proceedings, subject to the following.

The position between the defendants

20. Whilst I accepted that the position of some of defendants, including those who had long since retired, was to be distinguished from that of Mr. Ghose, the proceedings were not dismissed against them. Rather, no order was made against any defendants except the first defendant who was managing partner and who most actively engaged with the litigation, although I did note that the ninth and thirteenth defendant could at some point be called upon only if necessary to fill a gap in an explanation of a transaction or series of transactions (para. 140 of the principal judgment).

21. I already dealt at para. 134 of the principal judgment with the fact that as a matter of law and in particular by reason of s. 17(2) of the Partnership Act 1890 ("the Act of 1890"), a retired partner does not thereby cease to be liable for partnership debts or obligations. I accept that in principle retired partners may have a continuing obligation in respect of matters that arose during the partnership and their retirement did not extinguish that obligation. Still less can it be said that the partners who had no direct involvement with the management of the fund of the ward could be relieved of liability on that account, as the firm traded as a partnership with the legal consequences of joint liability.

22. That proposition guides the award of costs, subject only to the fact that I do not propose to, nor could I, rule on the impact of any indemnity that might exist as a result of a retirement agreement entered into with retiring partners, or indeed a contribution or indemnity agreement between them in other circumstances. No formal notices for indemnity or contribution were served and the appropriate order is that the costs of the proceedings be borne by the defendants jointly and severally. The eighth defendant has states that he obtained an indemnity upon retirement in January 2018 from the remaining partners in respect of debts and liabilities, including for proceedings, costs, claims and demands. The tenth defendant states that on 27 September 2010 in a document titled "Terms of Settlement" he obtained an indemnity which includes an indemnity in his favour against the costs of future litigation. Neither indemnity is at issue here and the issue of contribution or indemnity between the defendants *inter se* could have been resolved by the service of notice for indemnity or contribution. That this did not happen seems to me to have been a prudent choice as it would have prolonged the litigation.

23. Those defendants against whom the action no order was made after delivery of the principal judgment could at an early stage have either agreed some means by which Mr. Ghose would formally act as a representative defendant or could in the alternative have applied before the hearing commenced to have the action against them dismissed. While the later engagement with, and orders made, were against the first defendant only this was because he was a managing partner, and in a position, to deal with the substantive questions arising. It would have been futile at that point in time to have kept the other Bloxham partners in the case for the purpose of the exercise of examining the documents and coming to a conclusion on the defence raised by Mr. Ghose that an account had in fact already been provided.

24. But all of the defendants (except the fifteenth and sixteenth defendants) were as a matter of law, obliged to meet the obligation to account to the plaintiffs. They must in those circumstances be responsible for the costs of the litigation.

25. As to the second defendant, he did not enter a memorandum of appearance and after the proceedings were served, he indicated in correspondence that he would not be contesting the order for an account. He did not participate in any way in the proceedings. This defendant has no standing to now argue that he be entitled to the costs of the litigation. However, the costs order against him must reflect the fact that the claim against him was undefended.

26. As to the third defendant, this defendant may have misinterpreted the order made as a result of the supplemental judgment which, as I have already indicated above, was to the effect that Bloxham (used there without the intention of distinguishing between the defendants, and as shorthand for the partnership) be responsible for the *expense* of making an account. The order against this defendant is that he be liable for the costs of the proceedings up to the delivery of the principal judgment on a joint and several basis.

27. The fourth and fifth defendants entered appearances personally and took no part in the litigation. They did not concede the relief either before the case commenced or thereafter. Costs are to be awarded against them up to the date of the delivery of the principal judgment.

28. The fifth defendant made written submissions on the issues of costs and argues that the litigation was unduly extended and that there was "an unfortunate use of time and effort" is involved. I cannot entirely disagree with that proposition, but nonetheless the plaintiffs were found to be justified in instituting these proceedings, their entitlement to relief was contested, they did obtain the relief sought, and as a result of the subsequent hearings, a statement of account was prepared which was in the circumstances as good as could be achieved having regard to the passage of time. The order for costs reflects this and as I will explain more fully below, the costs of the subsequent hearings are to be ordered against the first defendant only.

29. No submissions on costs were made by the sixth defendant.

30. The seventh defendant was adjudicated bankrupt. It is not clear if he has been discharged. He confirmed he was not contesting the order. (see para. 125 of the principal judgment). From what I can discern the Official Assignee has not consented to be issue of proceedings against this defendant, and I do not propose making any order against him partly on that basis and also because he agreed before the proceedings issued that he was not contesting the order. However, I do not propose to make an order in his favour insofar as such is sought.

31. As to the eighth defendant, he contends that no order for costs should be made as the application against him was dismissed. I have already dealt with this proposition and agree with him but the costs order against him is to be limited to the costs to the date of the delivery of principal judgment.

32. As to the ninth defendant he retired in 2006, he says he never had any involvement with the Fund, and must be seen to be in the position of those defendants who were liable to the plaintiffs as having been partners at one time in the firm. Costs against him are limited to the costs to the date of the delivery of principal judgment.

33. As to the tenth defendant, much of his argument concerns the expenses and costs of the subsequent hearings and examination of documents. He contends that s. 9 of the Act of 1890 and the joint liability thereby created is referable to contractual obligations of a partnership, and that, as the present case was not decided on a contractual basis, I cannot now assess costs against the partners jointly and severally, or against retired partners. In the alternative this defendant argues that as the principal judgment did not make finding of fault-based liability, the joint and several nature of partnership obligation does not arise. He argues, in essence, because on his retirement from the partnership in May 2006 he was relieved of liability to the plaintiffs.

34. The finding of the principal judgment was that an account was required by reason of the relationship between the ward and Bloxham, and a finding that this had not been done. The case was never argued, nor decided, on the basis of contract, although incidentally it was conceded in the course of the subsequent enquiry that it was good and common practice that a running account be furnished to a client of a financial firm such as Bloxham on a regular basis. However, the case was argued and decided on liability arising from the nature of the relationship. This is not a suitable case in which to analyse, in detail, the difference in approach that may be warranted as a result of ss. 9 and 10 the Act of 1890, and the commentary thereon in Twomey on Partnership (Bloomsbury Professional, 2nd edition, 2019). That notwithstanding, it is clear that s. 10 of the Act of 1890 provides for liability for "wrongful act or omission", and is not limited to a claim for breach of contract. The submissions on behalf of the tenth-named

defendant put particular emphasis on the House of Lords case of *Dubai Aluminium v. Salaam* [2002] UKHL 48, [2002] 3 WLR 1913, the quotation relied on is that of Millet L.J. at para. 103:

> "Like the Judge and the Court of Appeal, I too reject the argument that section 10 of the Partnership Act is confined to torts or other common law wrongs. There is nothing to be said for such a limitation. The section is in its widest terms. It applies whenever injury is caused to a non-party or any penalty is incurred 'by any **wrongful** act or omission of any partner.' The section is concerned only it is concerned with **fault-based liability** but there is nothing in its wording to indicate that the liability must arise at common law." [emphasis of tenth-named defendant]

The submission then highlights, Millett L.J.'s comment on section 10 at para. 111:

> "The firm (section 10) and its innocent partners (section 9) are vicariously liable for a partner's conduct provided that three conditions are satisfied: (i) **his conduct must be wrongful, that is to say must give rise to fault-based liability** and not, for example, merely receipt-based liability in unjust enrichment (ii) it must cause damage to the claimant and (iii) it must be carried out in the ordinary course of the firm's business" [emphasis of tenth-named defendant]

It is clear that when Millet LJ uses the term "fault-based liability", he intends to contrast it with receipt-based liability that might arise in circumstances where the principle against unjust enrichment arises. Unjust enrichment can arise in the absence of *mala fides,* for instance, where there is a total failure of consideration or a mistaken payment. The gravamen of the tenth-named defendant's submission is that the court in its principal judgment and supplemental judgment did not find that the firm or its partners

were at fault and therefore s. 10 is not engaged, however, with respect, this is a misreading of those judgments. The defendants have been found to have a duty and ultimately it was determined that the duty had not been met, and on any reasonable reading this falls squarely within the scope of s. 10.

35. As to the twelfth defendant he asserts he should not have been a party to the proceedings, his position may therefore fairly be said to be materially identical to that of the other defendants regarding liability for costs up to the date of the delivery of the principal judgment.

36. As to the thirteenth defendant, he retired in 2007, and says he was never involved with the administration of the Fund, but nonetheless must be considered to have been a partner at some material time during the management of the fund by the partnership. He did not "win" the issue between himself and the plaintiffs, but he was relieved of the requirement to engage further after the delivery of the principal judgment.

37. At the outset of the hearing the plaintiffs confirmed that no order was sought against the eleventh or seventeenth defendants, and no costs order is to be made against them.

38. With regard to the firm in liquidation (sixteenth defendant), whilst the plaintiffs had not, prior to instituting the proceedings requested sight of the 504 boxes held by the liquidator, the proposal by the liquidator that there be no order as to costs meets the justice of the case for four reasons: first, as is apparent from para. 112 of the principal judgment, I could find no legal basis on which I could import any obligation on Mr. Wallace, whether as agent or trustee or fiduciary or person acting in any capacity akin to such; second, it was also the case that, insofar as Mr. Wallace might technically have had control over the documentation relating to the fund for a period of 10 days, he did not have any "dealings" with the Fund; third, the liquidator might on one version of the case be entitled to costs against the plaintiffs for his having been joined without

justification, and the plaintiffs have wholly failed in the action against this defendant and presumptively should have a costs order made against them; finally, the difference of the financial resources of the parties is a factor of some importance.

39. Mr. Wallace proposes that no order for costs be made against him or in his favour in the proceedings in the light of the weak financial position of the plaintiffs. I agree that this proposed order meets the justice of the case.

40. No order was sought against the eleventh or seventeenth defendants and the order is to reflect this fact.

The subsequent events

41. What is less straightforward however, are the costs of the subsequent hearings. Directions were given by me following the delivery of the principal judgment, including that the plaintiffs inspect the documents held by the liquidator and those in the Office of Wards of Court. It could be said that the plaintiffs ought to have at an early stage, and before the proceedings issued, sought sight of all the documents that were held in that Office, but as the plaintiffs had for a long number of years been in contact with that Office, and as the search for documentation after the written judgment was delivered did not result in the provision of any information of value, it does not seem to me that the justice of the case would be in any way be met were I to depart from my general view that the plaintiffs be entitled to the costs of the proceedings up to the date of the delivery of the principal judgment as it was apparent that no statement of account prepared on an annual or other equivalent basis was prepared and furnished.

42. I did require to hear evidence from the experts of both the plaintiffs and the first defendant as to the format or contents of an account, and as to whether the documentation prepared was sufficient to meet the requirement and obligation identified in the written judgment.

43. The costs order must take account of the fact that after the principal judgment was delivered the case came on for hearing against the first defendant only on a number of occasions. The costs of those hearings on 13 December 2018, 7 February 2019, 4 April 2019 and 10 May 2019 were concerned with the adequacy of the documentation, narrative or account given and costs must lie against the first defendant only. I do not preclude by this order any possible claim by him against his former partners for indemnity or contribution, but that is not a matter before me here.

44. Correspondence was had between the parties after the delivery of the first judgment to reduce the amount of work that the making of an account would involve and by the end of November or early December 2018 the inspection carried out by the solicitors, and later by the financial expert acting on behalf of the Committee, resulted in the production of an expert report by Mr. Croft dated 27 November 2018 and a hearing a short time thereafter.

45. In that period too, documentation was obtained from the Office. It was clear by then that there was an amount of documentation not entirely complete but sufficient to enable an account to be created. Both experts at that point in time agreed that there were gaps. It appeared too at that juncture that the costs incurred by the first-named defendant (who at that point was the only defendant remaining who continued to take an active part in the proceedings) involved the cost of time spent by him, as he himself had the necessary expertise and personal knowledge of the file.

46. In my first judgment (at paras. 1-5) and in the light of the only available Irish authority on the point I considered that the cost of making an account was one that was to be met in the first instance by the Committee of the Ward. The issue that arises now is whether the judgment of Kenny J. in *Chaine Nickson v. Bank of Ireland* [1976] I.R. 393 is determinative of the issue of the costs of the proceedings, and it seems to me that it is

not. That case concerned the expense of the taking of an account, not the legal costs of proceedings which concern the question of whether an account has been furnished or the legal and factual arguments regarding the form the account was to take, and the point at which it could safely be said that the making of any further order would be futile or not justifiable because of the expense it would necessarily involve.

47. The judgment of Kenny J. in *Chaine Nickson v. Bank of Ireland* deals with the expenses or time incurred in the inspection and analysis of documents and records and was concerned with quite a different type of expense or cost, the cost or expense of taking copies. It was not concerned with legal costs.

48. Counsel, fairly, were unable to point to any authority but as a matter of first principle it seems to me that there are two questions concerning the costs of this litigation after the delivery of the principal judgment: first, who should bear the costs of the hearings concerning the sufficiency of the documentation and analysis done by the experts; and second, who should bear the expense of actually inspecting and reporting on the records disclosed as a result of the declaration and order made by me.

49. The latter question can be dealt with first. The expense, cost of time expended or expert advice in the giving of an account is one that may be one for which a fiduciary or other person in an equivalent relationship can be responsible, and such a duty can arise either as a matter of contract or by implication from the nature of the relationship. This litigation did not concern that question, but it is apparent that some commission or other form of fee was paid from time to time as a matter of contract for Bloxham's management of this account. The principal judgment in this case makes it clear the making of an account or furnishing of information regarding the activity on the fund is a matter intrinsic to the relationship. As the issue evolved after the delivery of the principal judgment it became clear that both experts agreed that regular periodic reports

or "accounts" would generally be furnished to the beneficiary of a fund and that this was "standard practice". Mr. Ghose accepted that no account was found among the paperwork in Bloxham, nor in the voluminous papers which were inspected after the delivery of the principal judgment. In those circumstances a contractual obligation could be said to exist, but this litigation was not about that contract but about a quite different question, and the basis on which the plaintiffs succeeded was not contractual, and at no point was I asked to make any determination on the indicia of the contract, nor may I do so now.

50. The litigation did not explore the fees charged by Bloxham through the years, nor was that an issue in respect of which any relief was sought in the pleadings. The pleadings sought an order that the named defendants account to the plaintiffs for a dealing in the fund and that they provide documents.

51. The supplemental judgment concerned the adequacy of the account given, that issue arose because the defendants had said, and continued to assert until some accommodation was reached between the two experts, that the documentation furnished before the case commenced was sufficient. The conclusion I drew was that the documents were incomplete, and that further documentation was required to be given so that it could be said that a complete or sufficiently adequate account had been given (see in particular para. 6 of the supplemental judgment).

52. The final document or report prepared by Mr. Ghose was one on which I made comments in the supplemental judgment and where I noted his expertise and considerable experience. Mr. Croft, the financial expert employed by the Committee, was not entirely satisfied with the report but his complaint *inter alia* was that the report of Mr. Ghose would not inform a "layman" as to how the Fund was performing. As I noted in para. 29 of the supplemental judgment the test is not, and was not in this case,

whether a lay person reading the report or account prepared by Mr. Ghose would have fully understood it. As I set out at para. 41 of the supplemental judgment, I am satisfied that the report, narrative and reconciliation carried out by Mr. Ghose was sufficient and complied sufficiently with the order that I had made. Mr. Ghose contends that the hearings of 7 February 2019, 4 April 2019 and 10 May 2019 were unnecessary because he had furnished documents that were ultimately deemed to be adequate to meet the obligation to make an account. I cannot accept that argument, as the later hearings on those do on those days involved an analysis of what Mr. Ghose had furnished and whether that met the reasonable requirements of my order and that was to be done in the light of the approach proffered by Mr. Croft. However, it is the case and cannot be ignored that the preparation of all of documentation and statements by Mr. Ghose considerably reduced the work that was to be done by Mr. Croft and by the solicitors for the plaintiffs and ultimately by the court. That should be reflected in any adjudication on the plaintiffs' costs in the absence of an agreement.

53. The costs of the hearings leading to the delivery of the supplemental judgment are to be borne by the first defendant but must take account of the fact that Mr. Croft wrongly asserted that the obligation to account had not been met, and as the plaintiffs continued with the litigation and pressed for further statements and documents they must be seen to have added unnecessarily to the time and effort involved. To have regard to this factor, to the fact that the plaintiffs did add to the number of hearings by not seeking the 504 boxes and any documents held by the Ward of Court Office until after the principal judgment was delivered, and also to reflect the fact that the work carried out by Mr. Ghose directly relived the plaintiffs and their expert from an even more burdensome analysis, I propose to award the plaintiffs 65% of the costs of the subsequent hearings against Mr. Ghose only.

54. I have already dealt in the supplemental judgment with the expenses incurred in engaging the experts and at para. 51 of the supplemental judgment determined that these were to be met by Bloxham. The order made there was clear, and insofar as the plaintiffs seek now to argue that this was an interim order, they are incorrect. But that order concerned the expenses and not legal costs which remain to be determined here.

Summary

55. The net result of these deliberations therefore is the following:

(a) The plaintiffs are entitled to their legal costs up to the date of delivery of the principal judgment against all defendants except the seventh, eleventh, fifteenth, sixteenth and seventeenth defendant. The order will be on a joint and several basis. For clarity this means the costs of the pleadings, legal representation, pre-trial correspondence etc. The action was tried on affidavit and oral evidence of the first defendant and the two experts. The legal costs include costs of Mr. Croft. These latter costs were an essential element of the analysis of the defence offered by the defendants to the orders sought, as the defendants had continued to argue that an account did exist and had been given from time to time. The costs against the second defendant are to be assessed on an undefended basis.

(b) 65% of the costs leading up to the delivery of the supplemental judgment on 5 June 2020 are awarded to the plaintiffs against the first defendant only, subject to the observation above.

(c) The expenses of engaging the experts to carry out the examination of the books and papers are to be met by the first defendant as provided in the supplemental judgment.

(d) Costs to be adjudicated in default of agreement.