

1971. February 22. ADDRESSON, J.

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Costs.—Attorney and client.—Costs incurred in finding provisional liquidator.—Not costs incurred in winding-up of company.

Costs incurred by attorneys in attempting to find a provisional liquidator before a final order of winding up of a company is granted, or in consultation with the liquidator advising on the affairs of the company generally, or discussing the future course of liquidation and the possibility of a compromise under section 103 of Act 46 of 1926, as amended, are not costs in connection with the winding-up of the company.

Review of taxation.

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ADDRESSON, J.: This matter comes before me under Rule of Court 48 on review of certain items disallowed by the Taxing Master in a bill of costs as between attorney and client taxed on 30th June, 1970, in connection with an application for the winding up of the respondent company. The items in question are fourteen in number and all relate to charges made by the attorney for the applicant in connection with the appointment of a provisional liquidator to the respondent.

The total amount in issue is R39,29.

The applicant contends that these costs were properly chargeable as costs of liquidation of the respondent. They were incurred according

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to the applicant.

"soon after the issue of the provisional order of liquidation"

when the appellant's attorney was

"instructed by the Master to find a suitable person who would be willing to accept appointment as provisional liquidator to take charge of the assets of the respondent immediately, that is prior to the issue of a final order".

The costs in question were incurred in taking the above "instruct-

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tions", in various abortive attempts to obtain a provisional liquidator, in finally obtaining a person willing to act, in advising the Master there-of and in various consultations with the provisional liquidator with a view to the preservation and realisation of the respondent's assets, all prior to the granting of the final order of liquidation (except as to one item).

The Master in his report to this Court states categorically that he does not instruct a petitioning creditor to find a provisional liquidator

but that, in the present case, he followed his usual procedure of giving the applicant an opportunity of nominating a suitable person, before he exercises his discretion in appointing the provisional liquidator. He

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therefore denies the applicant's assertion that the present costs were incurred on behalf of the Master and on his instructions. This is a factual

dispute which it is not for me to resolve on a review of taxation but, in the light of the statement made by the Master and the fact that the applicant's attorney conceded that there may have been a misunderstanding on their part as to the Master's intention, I can see no grounds

on which I could have disturbed the Taxing Master's decision that the

costs were not in fact incurred by the applicant as the agent, or on the instructions, of the Master. *Botha v. Themistocleous*, 1966 (1) S.A. 107 (T) at pp. 110-111, and *van Reenen v. Ocean Accident and Guarantee Corporation Ltd.*, 1962 (4) S.A. 232 (C) at p. 234.

A That being so, it does not appear to me that the Taxing Master exercised his discretion improperly, or did not bring his mind to bear on the question in issue, or acted on a wrong principle in disallowing the costs in question and I cannot therefore, in terms of *Koch v. S.K.F. Laboratories (Pty.) Ltd.*, 1962 (3) S.A. 764 (E), interfere with his decision. His view was that the costs of liquidation are those costs which are incurred by a petitioner in connection with the application for the winding up of the company or which are reasonably incidental to such application; and that the granting of such an order is not dependent on the question of whether or not a provisional liquidator is appointed.

C This view is fully supported, by analogy, by the decision in *Waud and Blackman (Pty.) Ltd. v. Petersen*, 1966 (1) S.A. 769 (C) at p. 771, and is in my view the correct approach. I am not persuaded by the applicant's submissions that costs incurred by attorneys in attempting to find a provisional liquidator, or in consultation with the liquidator "advising on (the affairs of the company) generally, discussing future course of liquidation and the possibility of a sec. 103 compromise"

D are costs in connection with the winding-up of the company. A considerable amount of space is devoted in the applicant's submissions to alternative contentions that the costs in issue are costs of administration which the Master has wrongly disallowed. It is however therefore be allowed and taxed by the Taxing Master. If the Master has erred in his refusal to allow these costs the applicant has another and more appropriate remedy. There is also reference to "directions" by previous Masters to the Taxing Master of this Court as to what charges he should and should not allow as costs of liquidation or sequestration. In my view it is not for the Master to direct the Taxing Master as to what fees the latter should allow. The Taxing Master is fully competent

F and is obliged to decide these matters for himself. Finally the applicant contends that the costs in issue should be allowed because the action of his attorney in finding a provisional liquidator was "in the interest of the general body of creditors". This may or may not be so in a particular case. It is conceivable that an applicant's nominee for the position of provisional liquidator may not be the choice of either the Master or the other creditors. In any event, even if the contention is correct in this case, that does not in any material respect relate to the question whether such costs were incurred in connection with the liquidation of the respondent. The process of winding-up a company *stricto sensu* is neither hindered nor helped by the appointment of a provisional trustee. On the other hand there seems

G no reason why the applicant's attorney could not successfully tax a bill of costs against the applicant himself for their charges in connection with the appointment of the provisional trustee.

H The application for review therefore fails and the Taxing Master's decision to disallow the items in question is accordingly confirmed.

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