

# SUPREME COURT OF QUEENSLAND

CITATION: *Australian Securities & Investments Commission v Mortgages North Pty Ltd* [2017] QSC 267

PARTIES: **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
(applicant)  
v  
**MORTGAGES NORTH PTY LTD ACN 066 861 201**  
(first respondent)  
**PAMELA JOYCE DICKENSON**  
(second respondent)  
**IAN DAVID JESSUP**  
(applicant liquidator)

FILE NO/S: No 6066 of 2001

DIVISION: Trial Division

PROCEEDING: Application on the papers

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 16 November 2017

DELIVERED AT: Brisbane

HEARING DATE: Application decided on the papers

JUDGE: Davis J

ORDER: **1. The remuneration of the liquidator, Ian David Jessup for work performed during the period 17 January 2005 to 29 September 2017 for the purposes of winding up the Runout Mortgage Business is determined in the sum of \$20,680.44.**

**2. The costs of the Liquidator of and incidental to the application be paid from the proceeds of the winding up.**

SOLICITORS: Preston Law for the applicant liquidator

[1] Application was made without oral hearing by a liquidator (Mr Jessup) appointed to wind up an unregistered investment scheme for approval of his remuneration for work performed in the period 17 January 2005 to 29 September 2017.

[2] The matter has a long history.

- [3] The first respondent operated a managed investment scheme. Money was invested by the investors and then loaned to third parties on security of mortgages to the first respondent, as nominee or trustee.
- [4] On 5 July 2001 the Australian Securities and Investment Commission (ASIC) the applicant in the substantive application, applied for an order that the scheme be wound up.
- [5] On 16 July 2001 White J (as her Honour then was) in fact ordered that the scheme be wound up. Relevantly here, the orders made were as follows:
- “1. ...
- ‘Liquidator’ means a liquidator or liquidators appointed pursuant to section 601EE of the Corporations Law as an officer or officers of the Court to wind up the Runout Mortgage Business.
- ‘Runout Mortgage Business’ means the managed investment scheme pertaining to loans made by the First Respondent, which loans were secured by mortgages held by the First Respondent as nominee or trustee.
2. The Runout Mortgage Business be wound up pursuant to sub section 601EE(1) of the Corporations Law;
- ...
6. The Liquidators’ remuneration be approved by the Court and be calculated in accordance with the scale of remuneration recommended from time to time by the Insolvency Practitioners Association of Australia on the basis of time actually spent and the performance of such services by the Liquidator or any partner in or employee of the firm to which the Liquidator is attached, together with all reasonable out of pocket expenses, such remuneration and out of pocket expenses to be paid from the proceeds of the winding up, or in the event that such a scale is not recommended at such reasonable rate as the Court may approve.”
- [6] By the same order, Mr Jessup was appointed liquidator.
- [7] Her Honour’s order contemplates the calculation of remuneration at a rate recommended by the Insolvency Practitioners Association of Australia (IPAA). The IPAA no longer publishes a scale of recommended rates for practitioners. This possibility was contemplated by the order of 16 July 2001. The default position under the order is that the remuneration should be calculated at “such reasonable rate as the Court may approve”.
- [8] Although the IPAA no longer publishes a scale, it does publish guidelines to insolvency practitioners including its “Statement of Best Practice – Remuneration 1 July 2000”. That recommends that practitioners: “... should charge hourly rates in accordance with their own internal costs structures, having regard to the complexity and demands of each appointment”. The remuneration which is claimed is calculated by reference to a scale of fees utilised by Mr Jessup and his firm. Of course Mr Jessup is in competition

with other liquidators for appointment as liquidator to insolvent companies and other entities under administration. Confidence can be had in the reasonableness of the rates as they are obviously set by market forces.

- [9] Exhibited to Mr Jessup's affidavit is a detailed account setting out the work done, identifying the member of Mr Jessup's office who did the work, specifying the date the work was done and the time taken. The total sum charged is \$18,800.40 which, when GST is added, totals \$20,680.44.
- [10] Notice of the application was given to ASIC and each of the interested investors and no one has sought to make submissions.
- [11] I determine that the rates used to calculate the remuneration are reasonable and that the sum of \$20,680.44 is reasonable remuneration for the liquidator for work done in the period 17 January 2005 to 29 September 2017.
- [12] I make the following orders:
1. The remuneration of the liquidator, Ian David Jessup for work performed during the period 17 January 2005 to 29 September 2017 for the purposes of winding up the Runout Mortgage Business is determined in the sum of \$20,680.44.
  2. The costs of the Liquidator of and incidental to the application be paid from the proceeds of the winding up.