

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
SUIT NO. E372 OF 1993

IN THE MATTER OF ADVANCED
PRODUCTS LIMITED

AND

IN THE MATTER OF THE
COMPANIES ACT

IN CHAMBERS

Mr. Hugh Wildman, Trustee in Bankruptcy
Mr. Gavin Goff instructed Myers Fletcher and Gordon

June 2 and September 3, 2009

STATUTORY INTERPRETATION - SECTION 15 (5) OF THE
BANKRUPTCY ACT - MEANING OF PRESCRIBED IN SECTION 15 (5)
OF THE BANKRUPTCY ACT

SYKES J.

1. A preliminary issue has arisen which must be addressed before the application in paragraph 2 can be addressed. The question is what is the proper interpretation of section 15 (5) of the Bankruptcy Act. This will be detailed below.
2. DEG Deutsche Investitions Und Entwicklungsgesellschaft MBH ("DEG") is seeking the following orders:
 1. The Trustee in Bankruptcy is to restore to the trust for the benefit of the creditors of Advanced Products Limited (in Liquidation) the sum of \$580,138.96, or such other amount as this Court thinks fit.

2. The Trustee in Bankruptcy is to issue a further dividend to the creditors of Advanced Products Limited (in Liquidation) forthwith representing the balance of funds held in trust.

Why the application was filed?

3. According to the affidavits, on October 13, 1994, DEG petitioned the Supreme Court for a winding up order against APL. The application was heard on April 7, 1994, and the order was granted. The Trustee in Bankruptcy ("the Trustee") was appointed as the provisional liquidator.
4. The preliminary report of the Trustee revealed, unsurprisingly, that the assets of the company were valued at \$5,000,000.00 with liabilities at \$8,039,187.20.
5. In due course a number of creditors came forward and the total value of claims that were admitted to rank for dividend was \$7,831,236.25.
6. At a first meeting of creditors held on May 10, 1995, the Trustee was appointed liquidator of the company.
7. By an affidavit dated April 30, 2007, the Trustee stated that he has realised all the assets of APL and has distributed dividends of 90.842 cents in the dollar. This was done on May 25, 2004. He swears that he has done all that is required by the Companies Act and so he is asking for an order dissolving the company under section 269 (1) of the Companies Act.
8. This application by the Trustee led to the application by DEG who are contending that the sum of \$580,138.96 which was identified by the Trustee as the sum spent by him during his efforts to wind up the company was not authorised by law. This led to an inquiry as to the proper construction of section 15 (5) of the Bankruptcy Act.

Section 15 (5) of the Bankruptcy Act

9. Section 15 (5) of the Bankruptcy Act provides as follows:

Such remuneration shall be for the time and responsibility of the Trustee in the general administration of the estate or trust, and the estate or trust shall not be subject to any other charge in respect therefore, but any expenses in respect of any other matters, including traveling expenses relating to any estate or trust, may be charged against the estate or trust in such manner and to such extent as may be prescribed or specially sanctioned or allowed by the Court.

10. Mr. Wildman submitted that *prescribed* in this provision should be read as if the words "by the Minister or other authority" appeared immediately after the word *prescribed* and before the word "or." This would mean that the words "specially sanctioned or allowed" would be qualified by the expression "by the Court."
11. The reason put forward for this construction was that section 15 (5) makes allowance for traveling and other expenses relating to the general administration of the estate or trust to be charged against the estate or trust "in such manner and to such extent as may be prescribed." Apparently, the practice of the Trustee has been to use the rates set for traveling officers in Central Government as his rates.
12. Mr. Goffe on the other hand contends that the words "by the Court" applies to the entire expression, that is to say, it governs "as may be prescribed" as well as "or specially sanctioned or allowed."

Resolution

13. It is a cardinal rule of statutory interpretation that in order to properly interpret a provision it is advisable to read through the entire statute. One of the purposes of this exercise is to see what the overall purpose of the Act is always bearing in mind that a statute can have multiple purposes and reflect multiple policies. It would be wrong to treat statutes as having a single purpose or believe, particularly in the modern world, that a statute cannot reflect more than one policy.

14. The court is also looking to see how the particular word or expression is used throughout the statute. I have looked through the entire statute and in particular where the word *prescribed* is used. This is what I have seen. In the first place, the word *prescribed* is found in the interpretation section of the statute (section 2 (1)) and there it is defined as meaning, "prescribed by the rules of court."
15. It is obvious that the word *prescribed* is not used only in the way it is defined in section 2 (1). For example, section 13 states that the "fees to be charged for any business under this Act shall be according to a scale to be *prescribed* by the Minister" (my emphasis). Prescribed here could not possibly have the meaning given in section 2 (1) of the Act. In other provisions, the word *prescribed* is referring to procedural matters which would be governed by rules of court (see section 39 (2)).
16. Because the various ways in which *prescribed* is used in the statute, it is not possible to say that wherever it appears it has the same meaning. This means that I have to look at the specific context of section 15 and subsection 5 to see what the word means since there is no consistency in the use of the word throughout the Act.
17. Section 15 is empowering the trustee in bankruptcy to appoint a "proper person to act as his agent in respect of any estate vested in or administered by him under this Act" (see section 15 (1)). To put the entire thing in context I set out section 15 (1). It reads:

The Trustee may, on such terms as to remuneration and otherwise as may be prescribed, and with the approval of the Court, appoint a proper person to act as his agent of any estate vested in or administered by him under this Act, or in respect of any part of the business thereof.
18. Section 15 (2), (3) does not concern us. Section 15 (4) deals with commission from dividends to which the Trustee is entitled.

19. It seems from a reading of sections 14 to 16, the Act is making provision for the payment of expenses relating to the administration of the estate or trust. Section 14 (2) provides that the Trustee shall be provided with an office in Kingston by the Minister and all expenses of that office including salary and all expenses incurred in the performance of his duties shall come out of the Consolidated Fund.
20. Section 15 appreciated that it may be necessary for the Trustee to appoint agents to assist him in his functions. The Trustee is authorised to appoint agents on such terms as to remuneration as may be prescribed. However the approval of the Court is necessary before the appointment of the agent becomes effective. Section 15 (1) does not expressly who prescribes the remuneration but the clear intention is that the Court should have a say in the matter of the appointment and the remuneration. This does not mean that the Court dictates the remuneration but it is implicit that some evidence of the proposed remuneration and how it was arrived at is presented to the Court.
21. Where the Trustee is appointed by the Court he is under the control of the Court and has to account to the Court for his stewardship. It must be remembered that the estate or trust is being administered so that the creditors get back as much of their money as is possible. The estate or trust is not for the benefit of the Trustee or his agent.
22. Section 15 (5) makes provision for the remuneration to be charged on the estate or trust because it says that "the estate or trust shall not be subject to any other charge." Up to this point, the only charge in view is the remuneration of the agent. There is no "any other charge" other than the remuneration. Then the provision goes on to say that any expenses including traveling may be charged against the estate or trust. What this means is that the only charges that can come from the estate or trust are (a) remuneration and (b) any expenses including traveling.
23. Section 15 prevents the Trustee from being his own gatekeeper. The provision wishes to have independent scrutiny of the remuneration and appointment of the Trustee's agent. The provision also wishes to have

control and scrutiny of the other expenses that may be charged against the estate or trust.

24.If this is the rationale of section 15 then it makes perfect sense for section 15 (5) to be read as Mr. Goffe contends.

Disposition

25.I conclude on this preliminary point that the *prescribed* is controlled by the last three words "by the Court." It does not mean *prescribed* by the Minister as contended for by Mr. Wildman.