

CAYMAN ISLANDS

GRAND COURT

In the Matter of the Companies Law (2011 Revision) and In the Matter of Emergent Capital Limited (In Liquidation) between KTC and RAAL Limited Cause No. FSD 29 or 2011, per Jones J (5 January 2012)

COMPANIES - WINDING UP - TRANSACTION
APPROVAL PROCEEDING COSTS

The Company's official liquidators brought a sanction application seeking directions in respect of a dispute about the respective shareholdings of the Company's only two shareholders. Pursuant to the directions of the Court in that application, the matter was conducted as though it were an action, *inter partes*, between those two shareholders. The official liquidators had no ongoing involvement in the application: One shareholder defended against the other's claim in its own interest.

At the conclusion of the matter, the Court held that costs should follow the costs in the cause. Leave to appeal of the order for costs was sought and denied. The decision turned on the proper characterisation of the application. If properly characterised as a sanction application, principles contained in *Companies Winding Up Rules* ("CWR") Order 24 would apply, in which case costs would ordinarily be payable out of the assets of the company. If properly characterised as an, *inter partes*, application between the shareholders, the principles contained in GCR O. 62, R.4 would apply, under which costs would generally follow the event.

The Court found that as a matter of procedure the application was a sanction application. However, in substance, this application was conducted as an action between the only parties in interest. CWR Order 24, R.9(5) permits the Court to have regard to the substance of the matter and not merely its procedural form.

Given the substance of the matter, it was appropriate to order costs as though this were an action *inter partes*. Despite the fact that KTC lost (or withdrew its pleading) on all but one of the

issues, it was nevertheless correctly identified as the successful party overall. The issues on which KTC lost did not add to the costs of the application in a very material way. As such, it was appropriate to treat KTC as the successful party and it should have the whole of its costs of the application.

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