

## CAYMAN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

***Renova Resources Private Equity Limited -  
v- Gilbertson et al Cause No. FSD 61 of  
2011-AJEF, Foster J., 26 October 2012***

**COSTS - AWARD OF COSTS WHERE NEITHER  
PARTY WHOLLY SUCCESSFUL - INTERPRETATION  
OF GRAND COURT RULE ("GCR") O.62**

After judgment in the protracted and contentious litigation pertaining to the ownership of shares in Fabregé Limited, the parties returned to the Court with a number of sweep up issues, as well as a request for an order on costs. The Court took the view that there was no obvious event for the costs to follow: each party had victories and defeats on different issues over the four year battle. The Plaintiff had succeeded in establishing the Defendant's breach of fiduciary duty, but failed to establish any consequential loss. Further, the Plaintiff's improper conduct with respect to discovery was considered relevant to the issue of costs as blameworthy and culpable conduct entitled to be taken into account by the Court. As such, the overriding objective of GCR O.62 as set out in Rule 4(2): "*that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting the proceeding in an economical, expeditious and proper manner*" was not applicable at all or should be departed from in the circumstances of the case. It was held that each party should therefore bear their own costs of the proceedings.

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