

## CAYMAN ISLANDS GRAND COURT

### ***Hinds (Phillip) -v- Hinds (Clive) and Others (Unreported) (5 December 2014)***

CIVIL PROCEDURE - GCR O.62, R.4 - INDEMNITY BASIS - COURT'S DISCRETION TO AWARD INDEMNITY COSTS BASED ON CONDUCT OF LOSING PARTY - SEGREGATING COSTS - COSTS AGAINST ADMINISTRATOR OF ESTATE

This was a Ruling that concerned the appropriate form of order to be made on a Judgment (which the Plaintiff did not pursue) and also the appropriate order to be made in respect of the costs of the proceedings.

The original proceedings concerned a dispute between members of the Hinds family and a Claim by the Plaintiff in relation to seven parcels of land of significant value in the Cayman Islands. The Plaintiff and the Defendants' deceased mother had apparently wished all four of her sons to share the properties concerned equally.

The Judgment had concluded that the Plaintiff's claims were both misconceived and barred by limitation. It was also held that the Plaintiff had acquiesced in the matters of which he complained and that it would be unjust and inequitable in the circumstances to permit him to assert the rights which he sought to enforce by his claims.

Notwithstanding the overriding object that the successful party should recover his reasonable costs from the losing party, and the express provision in the GCR that costs should follow the event, the Plaintiff argued that he had succeeded "on major issues" concerning the devolution of assets from his father to his mother as administratrix. He claimed, therefore, that he should be awarded all of his costs against all of the defending parties. In the alternative that he should not be ordered to pay the entire costs of the proceedings because the Defendants had made arguments which were either subsequently abandoned or which were unsuccessful, and which took up a very large portion of the court's time.

Finally, the Plaintiff also argued that, because one of the Defendants was also the administrator of his mother's estate, he should have adopted a neutral role in the proceedings, and it was inappropriate for him to take the position he had which was adverse to the Plaintiff, which he did. The Plaintiff contended that in the circumstances the Defendant, as administrator, should not be awarded his costs because they were incurred in breach of his duty as an administrator.

Justice Foster held that in the Plaintiff's assertion that he had succeeded on "major issues" was surprising and misconceived: all of his claims had been dismissed entirely. He also found that the Defendants' arguments, which were subsequently amended, were based on a reasonable inference in the circumstances, and that the issue to which the Plaintiff referred as wasting the Court's time was actually only one of several significant issues, some of which took up considerably more time. In the circumstances, the Judge found it inappropriate to segregate part of the proceedings in respect of costs, and that the exceptions to the usual rule that costs should follow the event should not be applied (as referred to in *Elgindata Ltd. (No.2)* [1993] 1 All ER 232).

In respect of the Plaintiff's arguments as to costs of the Defendant as an administrator, Justice Foster highlighted that the application was not for an indemnity for the administrator's costs out of the estate, but instead simply for his costs as a successful litigant against the losing third party. The Plaintiff's claim was not made in his capacity as beneficiary of his mother's estate, but instead as a beneficiary of his father's estate; it was a proprietary claim to the assets in his mother's estate, which the

Plaintiff claims were absolutely his. In the circumstances, the Judge found it coincidental and irrelevant that the Plaintiff was also a beneficiary of his mother's estate, and held that the Defendant, as administrator, should have his costs of successfully defending his mother's estate against the Plaintiff.

Justice Foster then went on to consider whether the costs should be taxed on an indemnity basis, as argued by the Defendants, following the recent decision in *Ahmad Hamad Alghosaibi and Brothers Company -v- Saad Investments Company Limited & Ors* [2013] 2 CILR 344. In that decision, the Chief Justice had clarified that GCR O.62, R.4 (order for costs on indemnity basis) provided an exception to the normal rule, and that there must be something in the conduct of the action or the circumstances of the case which takes it out of the norm in a way that justifies an order for indemnity costs.

In the present case, the Plaintiff's claims were wrong in principle, misconceived and barred by limitation. The Plaintiff had been warned of this in advance by his attorney and was also encouraged by the Court to reach a compromise in respect of the proceedings, but refused to do so. He was also found, through cross-examination, not to have been truthful in respect of facts on which his claim was based. Finally, the Judge found that the Plaintiff had deliberately delayed the matter by standing by for many years until after his mother's death before commencing proceedings. The Judge therefore held that the circumstances of the case were exceptional, and that the Court would mark its disapproval of the losing party's conduct by an award of indemnity costs against the Plaintiff.

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