

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**COMMON LAW AND EQUITY DIVISION**

2013/CLE/gen/01699

**IN THE MATTER** of Order 17 of the Rules of the Supreme Court.

**AND IN THE MATTER** of an application by Edmond de Rothschild (Bahamas) Ltd. (formerly Banque Privée Edmond de Rothschild Ltd.) for interpleader relief against the claims of Dominique Queirazza Leday of the one part and Tommaso Queirazza of the other part in respect of the assets contained in certain accounts maintained at Edmond de Rothschild (Bahamas) Ltd. (formerly Banque Privée Edmond de Rothschild Ltd.) and valued at approximately EURO €1,651,671 which is equivalent to US \$2,255,852 or B \$2,244,569.

**BETWEEN:**

**BANQUE PRIVÉE EDMOND De ROTHSCHILD LTD.**

**Plaintiff**

**AND**

**DOMINIQUE QUEIRAZZA LEDAY**

**First Defendant**

**AND**

**TOMMASO QUEIRAZZA**

**Second Defendant**

**BETWEEN**

**TOMMASO QUEIRAZZA**

**Plaintiff**

**AND**

**DOMINIQUE QUEIRAZZA LEDAY**

**Defendant**

**Before The Hon Mr. Justice Neil Brathwaite**

Appearances: Attorney Tara Cooper-Burnside for the Plaintiff

Attorney Sean Moree and Erin Hill for the First Defendant

No submissions by the Second Defendant

## **DECISION (COSTS)**

### **FACTUAL SUMMARY**

1. 1. This matter involves the division of the estate of Mr. Francesco Queirazza, an Italian national of substantial wealth, who was survived by his wife Dominique Queirazza Leday and his only son, Tommaso Queirazza. The deceased left assets in account M maintained by ABL West Ltd., formerly Banquee Privée Edmond de Rothschild (Bahamas) Ltd, to which Dominique Queirazza Leday and Tommaso Queirazza both claimed beneficial ownership. These assets were the subject of a Declaration of Trust dated 12 July, 2011 for the benefit of Dominique Queirazza Leday. Following the death of her husband in 2011, Dominique Queirazza Leday attempted to transfer the assets in Account M to her personal account F at the Bank in accordance with the terms of the settlement. Tommaso Queirazza, the executor of his father's estate, challenged Mrs. Queirazza Leday's ownership of the assets in Account M.
2. On 17 October, 2013 the Bank filed an Originating Summons to determine whether the settlement was a valid and enforceable inter vivos trust, and to determine who was to be the beneficiary of the said assets. On 28 May, 2015, Justice Stephen Isaacs (as he then was) ruled that the settlement was valid and enforceable and that Dominique Queirazza Leday was the beneficiary of the assets. However, Tommaso Queirazza sought to appeal that ruling, and the decision of Isaacs J was stayed.
3. Banque Privee applied to the Supreme Court on 19 August, 2019 seeking further directions, due to a lack of concurrence of counsel which resulted in a failure to comply with an order of Stephen Isaacs J order that fifty percent of the assets be transferred to Dominique Queirazza Leday and the other fifty percent be held in a joint bank account by the parties' Counsels pending the appeal or further order. Banque Privee also sought to be released from any indemnity concerning the funds.
4. A reserved decision was delivered by this court in the matter, ordering that the assets held on trust by the Plaintiff be paid to the beneficiary of the trust, Dominique Queirazza Leday. The parties were invited to either agree a position on costs, or to lay over submissions.

### **SECOND DEFENDANT'S POSITION**

5. Following the invitation of the court to provide written submissions on costs, counsel for the Second Defendant wrote to the court on 24<sup>th</sup> February 2023, indicating that they had no instructions on the issue of costs and would not be providing submissions. They further indicated that the Second Defendant had been advised that the court would make a decision on the issue without the benefit of submissions on behalf of the Second Defendant.

### **FIRST DEFENDANT'S SUBMISSIONS**

6. The First Defendant notes the provisions of the following provisions of the Rules of the Supreme Court:

Order 30(1)

30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.

Order 59 Rules 2(2) and 3(2)

Order 59 Rule 2(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.

Order 59 Rule 3(2) (2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

7. The First Defendant cites the authority of *Monika Stubbs and another v Zamar Group Companies Ltd.* [2022] 1 BHS J. No. 11, in which the learned Charles J dealt extensively with the court's discretionary powers with respect to the award of costs, and said the following:

229. It is accepted that this discretion is not to be exercised arbitrarily but must be exercised judicially. Buckley LJ, in the Court of Appeal case of *Scherer and another v Counting Instruments Ltd.* and another [1986] 2 All ER 529 stated:

“The judge was required to exercise his discretion judicially, i.e. in accordance with established principles and in relation to the facts of the case and on relevant grounds connected with the case, which included any matter relating to the litigation, the parties' conduct in it and the circumstances leading to the litigation, but nothing else.”



230. The principle to be applied by the Court or Judge when exercising this discretion is that of reasonableness. In *McPhee (as Administrator of the Estate of Thelma Mackey) v Stuart* [2018] 1 BHS J. No. 18 at para. 8, this Court enumerated some factors which would be reasonable for the Court to consider when deciding the issue of costs, namely:-

1. any order that has already been made;
2. the care, speed and economy with which the case was prepared;
3. the conduct of the parties before as well as during the proceedings;
4. the degree of responsibility accepted by the legal practitioner;
5. the importance of the matter to the parties;
6. the novelty, weight and complexity of the case; and
7. the time reasonably spent on the case.

231. The general rule is that, in civil proceedings, the successful party is entitled to his costs. The Court may depart from this general principle if there are good and compelling reasons to do so.

8. In seeking to apply those principles to the instant case, the First Defendant submits that the present application was only made necessary because of the actions of the SECOND Defendant in seeking to obfuscate these proceedings, and in refusing to permit effect to be given to the order of Isaacs J in the substantive proceedings.
9. The First Defendant further submits that to follow the usual rule and to order costs to follow the event, would result in costs being paid from the fund held on trust by the Plaintiff, which would mean that the First Defendant who has been successful would in essence be paying the costs, as the ultimate order of the court was that the funds held on trust by the Plaintiff should be paid to the First Defendant. They submit that this would be an unjust result, and that the appropriate exercise of the court's discretion would be to order that the costs of the Plaintiff and the First Defendant be paid by the Second Defendant.

### **PLAINTIFF'S CASE**

10. The Plaintiff did not lay over submissions on the issue of costs, but instead filed the affidavit of Renai B. Martin on 5<sup>th</sup> April 2023. Exhibited to that affidavit is correspondence from counsel for the First Defendant to counsel for the Second Defendant, seeking to have the funds forwarded to their client following the determination of the appeal. That correspondence was followed by a letter from counsel for the Second Defendant to counsel for the Plaintiff, indicating that fresh proceedings

had been commenced, that an injunction was being sought, and seeking an undertaking that the Plaintiff not disperse the funds pending the hearing of that application for an injunction. That letter also states the following:

“Please note that your client is aware of the claims made in the present action not only against it but also against the other Defendants. It is therefore a constructive trustee regardless of whether the claims against it succeed provided they are successful against the other Defendants. This applies irrespective of any effect which the withdrawal of the appeal may have on the Order of Justice Isaacs and regardless of whether an injunction is or is not granted in the present proceedings.”

11. The Plaintiff therefore submits that both interpleader parties were laying claim to the funds, and as such the Bank was justified in seeking directions from the court. The Plaintiff therefore seeks an order that the costs of the Plaintiff be treated as costs in the cause between the Tommaso Queriazza the Interpleader Plaintiff and Dominique Queriazza Leday the Interpleader Defendant, to be paid from the funds held on account.

## **DISCUSSION**

12. In considering this matter, I accept that costs are in the discretion of the court, and that that discretion must be exercised reasonably. As a starting point there is no doubt that the First Defendant is entitled to costs, having been successful in the instant application. Mention has also been made of the matter heard and determined by the learned Isaacs J, who ordered that the costs of that matter be paid to Dominique Queirazza Leday. The appeal having been withdrawn, that order stands.
13. With respect to the instant application, the real question is whether costs should be paid to the Plaintiff as well as the First Defendant, and whether those costs should be paid from the fund held on trust by the Plaintiff, or whether they should be paid by Tomasso Queriazza.
14. Having considered this matter, I accept that, given the actions of Tomasso Queirazza, the Plaintiff was placed in an invidious position, being faced with the threat of further legal action if the funds were disbursed prior to the hearing and determination of the fresh proceedings commenced by Tomasso Queirazza, which have still not been resolved, and with respect to which there has been very little effort by Tomasso Queirazzo to seek resolution, despite the many years that have passed since the unfortunate demise of the deceased and the commencement of proceedings. In this situation, the Plaintiff's actions in seeking directions from the court were appropriate, and should not incur any costs penalties.

15. I also accept that to order that those costs of this application be paid from the funds held on trust by the Plaintiff, would have the effect of diminishing the funds to which the First Defendant is entitled, which would have the effect of requiring the First Defendant, who was successful, to pay the costs of the Plaintiff and her own costs. This cannot to my mind be reasonable.
16. In the circumstances of this case, as the instant application was necessitated by the conduct of proceedings by Tomasso Queirazza, I order that the costs of this application of the Plaintiff and the First Defendant be paid by Tomasso Queirazza, to be taxed if not agreed.

Dated this 20th day of September, A.D. 2023



Neil Brathwaite

Justice