

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2021/CLE/gen/00621

BETWEEN

**NOMIKI DROSOS TSAKKOS**

**First Claimant**

**AND**

**PETER DROSOS TSAKKOS**

**Second Claimant**

**AND**

**PANTELIS TSAKKOS**

**(As Executor of the Will of the late Emmanuel Pantelis Tsakkos)**

**First Defendant**

**AND**

**ADITA BOY**

**Second Defendant**

**Before:** The Honourable Chief Justice Sir Ian R. Winder

**Appearances:** Michael Scott KC with Marnique Knowles for the Claimants  
Sophia Rolle-Kapousouzoglou with Valdere Murphy for the First Defendant  
Kelli Ingraham for the Second Defendant

**Hearing date(s):** On the papers

**RULING**

## WINDER, CJ

[1.] This is my brief decision on costs arising from my ruling dated 30 September 2024 on the Defendants' separate applications for the striking out of the action or alternatively summary judgment.

[2.] The First Claimant (Nomiki) and the Second Claimant (Peter) (together "the Claimants") are the children of the late Drosos Tsakkos ("DT") and the sole beneficiaries under his Will. The late Emmanuel Pantelis Tsakkos (EPT) was the brother, executor and trustee of DT. On EPT's death, the First Defendant (Pantelis) became his sole executor. The Claimants commenced this action against Pantelis alleging fraud, breach of trust and/or duty and/or devastavit by EPT. The Claimants later amended the claim to include EPT's widow, Adita Boy (Adita) as the Second Defendant.

[3.] The general principles are that costs are in the discretion of the court and generally follow the event, with the unsuccessful party paying the costs. These principles are helpfully set out by Lord Justice Nourse in the English Court of Appeal case of *Re Elgindata Ltd (No 2)* [1992] 1 WLR 1207. Nourse LJ stated at page 1214:-

(i) Costs are in the discretion of the court. (ii) They should follow the event, except when it appears to the court that in the circumstances of the case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. (iv) Where the successful party raises issues or makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party's costs.

[4.] In my ruling, at paragraphs [58] and [59], it was determined as follows:

[58] The application for striking out and for summary judgment as against Nomiki is dismissed.

[59] The application for striking out and for summary judgment in relation to Peter is granted in the limited context as identified at paragraphs 54 and 55 above as it relates to claims which asserts losses flowing from THL, by Peter.

[5.] The Claimants argue that the appropriate order for costs is as follows:

- (1) Pantelis pay Nomiki's costs of his application on a standard basis;
- (2) Adita to pay Nomiki's costs of her application;
- (3) Peter shall pay 50% of Pantelis' costs of Pantelis' application insofar as it related to Peter;

[6.] Pantelis argues that the appropriate order for costs is as follows:

- (1) That the Executor is entitled to his costs of the Strike Out Application on an indemnity basis to be borne by the Estate, to be assessed if not agreed (with the co-executor once appointed).
- (2) Peter shall pay the Executor his costs of and occasioned by the Strike-Out Application, to be assessed if not agreed. Those costs shall be paid into the Estate by the Executor upon receipt of same from Peter.
- (3) Nomiki's costs of and occasioned by the Strike-Out Application ought to abide the outcome of the trial.

[7.] Nomiki was entirely successful on the application brought against her. Following the usual rule, that costs follows the event, she ought to be entitled to her costs. Pantelis argues that she ought to be deprived of her costs as a result of her conduct and says at paragraph 37 of his submissions that:

37. Given among other things, Nomiki's conduct (both before and during) in these proceedings, it is contended that making any payment to her at this interlocutory stage would be both inappropriate and unjust, especially considering the possibility that Nomiki may ultimately be unsuccessful at trial once all the evidence and legal submissions have been fully examined and ventilated. Considering the success against Peter in the Strike-Out Application, it is not unreasonable or fanciful to suggest that the Executor may ultimately succeed at trial when this Honourable Court has the benefit of, among other things, Nomiki's cross-examination (in addition to the other witnesses) to determine whether the rule against recovery on reflective loss applies, whether the claims are statute-

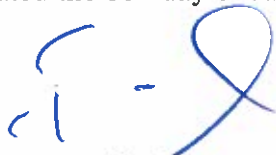
barred, or whether the defences of laches, acquiescence, or otherwise defeats Nomiki's claim (i.e., Issues 1-4).

[8.] I did not accept this submission. The application was a hotly contested time-consuming affair and it would be unjust for Nomiki not to recover her costs after being forced to defend herself on the application. She should be entitled to her costs only in so far as it related to her defence and not Peter's. Such costs to be the subject of a detailed assessment.

[9.] In respect of the application against Peter, notwithstanding he succeeded on some of the issues I am satisfied that the Defendants were the overall winners as between them and Peter and should be entitled to their costs. Applying the principles enunciated in **Re: Elgindata**, and having found that Peter was successful on some of the issues he defended, it would not be fair and just that he bear all of the costs of the applications. I therefore Order that Peter pay to the Defendants 60% of their costs of their application in so far as it related to him.

[10.] All costs awarded are to be the subject of detailed assessment if not agreed.

Dated the 16<sup>th</sup> day of January 2025



Sir Ian R. Winder  
Chief Justice