

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**COMMERCIAL DIVISION**

**2018/COM/bnk/00079**

**IN THE MATTER OF THE COMPANIES ACT, CH. 308**

**AND IN THE MATTER OF THE COMPANIES (WINDING UP AMENDMENT)**

**ACT, 2011**

**AND**

**IN THE MATTER OF MONTAQUE CORPORATE PARTNERS LTD.**

**(‘In Official Liquidation’)**

**Before Hon. Mr. Justice Ian Winder**

**Appearances:**      **Sophia Rolle-Kapousouzoglou with Valdere Murphy for the  
Official Liquidator**  
**Sean Moree with Erin Hill for Mauricio Verdier**  
**Cheryl Cartwright with Courtney Pearce-Hanna for  
Dr. Ronald Bernheim**

**23 October, 2019**

**RULING ON COSTS**

## WINDER, J

1. This is my brief decision on the question of costs following the hearing before me on 23 October 2019. The parties had agreed to lay over written submissions on the question costs.
2. The Official Liquidator had approached the court for the sanction of the decision with respect to the distribution of shares held by Montaque Corporate Partners Ltd., in a company called Loratay Real Estate Investment Limited, to a Dr Ronald Bernheim. The need for the sanction hearing arose as a result of claims by Mauricio Verdier that he was the owner of the shares.
3. At the hearing, Verdier, who had entered and appearance, engaged counsel to act for him and lodged an affidavit in support of his claim (and opposing the claim of Bernheim), withdrew his claim.
4. Verdier argues that the proper order to be made is for the costs of the application to come out of the assets held on trust on the basis, he says, that he is a not party to the action and the provisions of section 204(3)(e) of the CWUAA.
5. I did not accept this submission and found that the appropriate order was for Verdier to be made to pay the legal costs incurred by the liquidator as well as Dr Bernheim. Firstly, it cannot be said that Verdier was not a party to the application, having entered an appearance, had counsel advocate on his behalf, filed evidence in support of his position opposing the proposed position of the official liquidator and ultimately withdrawing his claim. Secondly, even if Verdier was not a party, I would order that he pay the costs. The facts of this case, in accordance with the principles set down in the Privy Council decision of *Dymocks Franchise Systems (NSW) Pty Ltd v Todd*, [2004] UKPC 39 would be exceptional. It is in my view, outside of the ordinary run of cases and it would be just to make such an order.

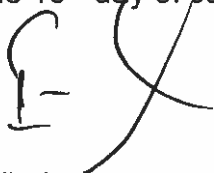
6. I therefore fully accept the submissions of Dr Bernheim, that

- (a) The costs incurred by the Official Liquidator and Dr Bernheim were completely avoidable;
- (b) Verdier battled the issue for a considerable period of time only to withdraw at the day of the hearing; and
- (c) Montaque wanted to transfer the shares since 2010 but were consistently impeded by the challenges of Verdier;

It would be unfair to permit Verdier who had entered an appearance, engaged counsel to act for him and lodged an affidavit in support of his position, to avoid having to compensate for the costs which have been incurred by his doing. To do otherwise would cause the diminishing of the trust assets and thereby penalizing Loratay Real Estate Investments Ltd and Dr Bernheim. This would not be a just result.

7. In the circumstances therefore I order Verdier to pay the costs of Dr Bernheim and the Official Liquidator.

Dated the 15<sup>th</sup> day of January, 2020

A handwritten signature in black ink, appearing to be 'I. R. Winder', written over a horizontal line.

Ian R. Winder

Justice