

## (1) Cristiana Crociani v (1) Edoarda Crociani

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Sir Michael Birt, Jurats Nicolle, Ramsden
<b>Judgment Date:</b>	06 February 2019
<b>Neutral Citation:</b>	[2019] JRC 13
<b>Date:</b>	06 February 2019
<b>Court:</b>	Royal Court

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### Text

[2019] JRC 13

ROYAL COURT

(Samedi)

Before:

Sir Michael Birt, **Commissioner**, and Jurats Nicolle and Ramsden.

Between

(1) Cristiana Crociani

(2) A (by her Guardian ad-litem, Nicolas Delrieu)

(3) B (by her Guardian ad-litem, Nicolas Delrieu)

Plaintiffs

and

(1) Edoarda Crociani

(2) Paul Foortse

(3) BNP Paribas Jersey Trust Corporation Limited

(4) Appleby Trust (Mauritius) Limited

(5) Camilla de Bourbon des Deux Siciles

(6) Camillo Crociani Foundation IBC (Bahamas) Limited  
(7) BNP Paribas Jersey Nominee Company Limited  
(8) GFIN Corporate Services Limited  
Defendants

and

Ocorian Trustees (Jersey) Limited  
Party Cited

**Advocate E. B. Drummond for the Plaintiffs.**

**Advocate W. A. F. Redgrave for the Third Defendant.**

**Advocate A. D. Hoy for the Fifth Defendant.**

**Advocate J. M. P. Gleeson for the Party Cited.**

### **Authorities**

*C. Crociani, A and B v E. Crociani and Seven Others* [\[2017\] \(2\) JLR 303](#).

*BNP Paribas Ors v Crociani Ors* [\[2018\] JCA 136A](#)

*Francis v Jersey Financial Services Commission* [\[2018\] JRC 064A](#)

*Crociani v Crociani* [2014] (1) JLR 503 at [16]20

Trusts — re: Beddoe applications.

### **THE COMMISSIONER:**

- 1 On 2<sup>nd</sup> November, 2018, the Court sat to hear a number of Beddoe applications by the Party Cited (“the New Trustee”) seeking the Court’s approval to various steps which it wished to take in connection with the proposed settlement of this long running litigation in respect of the claims against the Third Defendant (“BNP”) and the Fifth Defendant (“Appleby Mauritius”). At the conclusion of the hearing, the Court approved all the applications.
- 2 One of the applications was referred to as the Assignment Agreement Summons. This summons sought the Court’s approval to the execution by the New Trustee of the Assignment Agreement described below.
- 3 The summons had convened the Plaintiffs and BNP but not any other party, although notice

of the summons had been given to Advocate Hoy on behalf of the Fifth Defendant ("Camilla"). Camilla subsequently sought leave to intervene in the hearing of the summons.

- 4 With the agreement of the parties, by analogy with the procedure often adopted in applications for leave to appeal against conviction or sentence in criminal cases, the Court announced at the beginning of the hearing that it would treat the application for leave to intervene as the hearing of the summons itself. In other words, the Court would hear all the arguments on the merits of the matters raised in the summons (including from Camilla) before deciding how to proceed. At the conclusion of the hearing, it might refuse Camilla leave to intervene, it might allow her to intervene but dismiss her objections, or it might allow her to intervene and agree with her objections so as to withhold approval of the proposal that the New Trustee should execute the Assignment Agreement.
- 5 At the conclusion of the hearing, the Court granted Camilla leave to intervene but dismissed her objections and authorised the New Trustee to execute the Assignment Agreement. What follows constitutes the reasons for that decision.

## Background

- 6 The background to this litigation is fully set out in the judgment of the Royal Court dated 11<sup>th</sup> September, 2017, reported at *C. Crociani, A and B v E. Crociani and Seven Others* [2017] (2) JLR 303. The proceedings relate to the Grand Trust of which at the relevant time BNP, the First Defendant ("Madame Crociani") and the Second Defendant were the trustees. The Grand Trust was divided into two trusts, namely Camilla's Trust and Cristiana's Trust. Camilla and Cristiana are the daughters of Madame Crociani.
- 7 In February 2010 ("the 2010 Appointment") the then trustees appointed most of the assets of the Grand Trust to a trust known as the Fortunate Trust. This was a revocable trust and was subsequently revoked by Madame Crociani. The result was that the assets appointed by the 2010 Appointment came into the ownership of Madame Crociani.
- 8 Amongst the assets appointed under the 2010 Appointment was a portfolio of investments and the single issued share in a BVI company called Twenty-Three Investments Limited ("the Company"), which owned eight valuable paintings.
- 9 In 2013, the Plaintiffs commenced proceedings challenging, *inter alia*, the validity of the 2010 Appointment. After a lengthy trial, on 11th September 2017 the Royal Court, *inter alia*, found the 2010 Appointment to be void and appointed the New Trustee as sole trustee of the Grand Trust in place of the former trustees. It ordered BNP to make an interim payment of equitable compensation in the approximate sum of US\$100m split equally between Camilla's Trust and Cristiana's Trust. The sum represented the value of the portfolio of investments at the time they were appointed out to the Fortunate Trust in the 2010 Appointment. BNP was ordered to make further payments to the Grand Trust following the

completion of inquiries concerning:—

The Royal Court also ordered that Madame Crociani should indemnify BNP against all sums payable by BNP under the order.

(a) the increase in value that the portfolio would have sustained between May 2011 and September 2017;

(b) certain loans owed to the Grand Trust; and

(c) the value of the share in the Company by reference to the value of the paintings.

- 10 The order of the Royal Court further provided that, upon payment by BNP of each of the sums due under the Act of Court, the New Trustee should execute such documents as may be necessary to assign to BNP any interest which it had in the property appointed under the 2010 Appointment. The order further provided that BNP should account to the New Trustee for any property it might recover from Madame Crociani in excess of the sum which it had paid to the New Trustee in reconstituting the Grand Trust.
- 11 BNP is seeking to recover the amounts which it has paid out from Madame Crociani pursuant to the indemnity ordered by the Court. It has traced some of the paintings, which previously belonged to the Company, to a store in Miami, Florida, where they are held in the name of an Anguillan company as trustee of a trust known as the Apollo Trust. BNP contends that this is all part of Madame Crociani's attempt to place her assets beyond BNP's reach and that she remains in effective control of the paintings. BNP has initiated proceedings in the courts of Florida and has obtained a freezing injunction in respect of the paintings. The Company had been dissolved but we were informed that the court in BVI has approved its restoration to the BVI company register.
- 12 BNP wishes the Assignment Agreement to proceed so that, upon its execution, BNP will become the owner of the Company, and the Company will be in a position to bring proceedings in Florida to regain the paintings.
- 13 On 31<sup>st</sup> July, 2018, this Court (Commissioner Clyde-Smith presiding) made an order authorising the New Trustee to enter into an assignment of the share in the Company to BNP subject to 14 days' prior notice being given to Cristiana and Camilla, with liberty to Camilla to seek leave to apply to this Court. The Court explained its reasons for making this order as follows:—

***“40. The Court was satisfied that for the purposes of the order it was being asked to make, the interests of the beneficiaries of Camilla's trust were adequately represented by Ocorian but we could see that if BNP Jersey were successful in its current appeal in respect of its liability to compensate Camilla's trust (which it has been), then it might be appropriate for her to be convened as***

***a party, subject to the Court being satisfied that she had fully complied with the disclosure orders made against her on 11th September 2017. Ocorian and the plaintiffs also suggested that Camilla be given notice of the terms of the proposed assignment to BNP Jersey .***

...

***42. We authorise Ocorian to enter into an assignment of the share in [the Company] with BNP Jersey on terms which Ocorian is satisfied with, subject to 14 days prior notice being given to Cristiana and Camilla, with liberty to BNP Jersey, Ocorian and Cristiana to apply and liberty to Camilla to seek leave to apply .”***

- 14 On 25th July 2018, *BNP Paribas Ors v Crociani Ors* [\[2018\] JCA 136A](#) (“the Main Appeal Judgment”), the Court of Appeal allowed BNP's appeal in respect of the Royal Court's order that it should reconstitute Camilla's Trust as well as Cristiana's Trust. The Court of Appeal held that BNP did not need to pay compensation to Camilla's Trust and that Camilla's Trust should be treated as having been paid out. On 7th August, in a supplementary judgment (“the Supplementary Judgment”) the Court varied paragraph 22 of the Royal Court order of 11th September 2017 to read:—

***“22. Ordered that upon payment by the Third Defendant of each of the sums specified in paragraphs 21(a), (b), (c) and (d) above, and upon the Third Defendant indemnifying the New Trustee in respect of its reasonable costs incurred in doing so, the New Trustee shall execute such documents as may be necessary to assign to the Third Defendant any interest, title or rights, proprietary or personal (against any person other than the Third Defendant), that the New Trustee has in respect of the property that was transferred pursuant to the 2010 Appointment. Promptly in the event that the Third Defendant shall make a recovery in excess of that which it has disbursed in the reconstitution of Cristiana's fund, but in any event no later than 31 July 2023, the Third Defendant shall produce a report to the Royal Court as to the progress of its recovery of property, specifying the assets which have been recovered (whether by way of the assignment to it of title or rights to the property transferred pursuant to the 2010 Appointment or otherwise), the price on disposal or otherwise the value to be attributed to such assets, whether its process of recovery has been completed and, if not, what proposals it has for any further procedures; with leave to the First Plaintiff, the Fifth Defendant and the New Trustee to apply as to the accuracy of the report and as to the appropriate recipient or recipients of any excess of value over the amount which the Third Defendant is entitled to retain in order to cover the whole amount paid by the Third Defendant in respect of the matters set out in paragraph 21(a), (b), (c) and (d) above .”***

On the same occasion, the Court of Appeal dismissed Camilla's application for leave to appeal to the Privy Council against the Main Appeal Judgment.

- 15 Camilla subsequently applied for leave to appeal to the Privy Council against the Supplementary Judgment on the basis that, if Camilla's Trust was to be treated as having been paid out, it followed that Camilla had a proprietary interest in the assets appointed out in the 2010 Appointment (as she was the principal beneficiary of Camilla's Trust) and accordingly the New Trustee could not assign all those assets to BNP. In a short judgment dated 4<sup>th</sup> September, the Court of Appeal rejected Camilla's application for leave to appeal and said the following at paragraphs 4 and 5:—

***“4. In order to provide Cristiana with a remedy, the First and Third Defendants are required to reconstitute her trust. The Third Defendant has a right of indemnity against the First Defendant. The orders made in the supplementary judgment of [7 August] give a remedy to permit the Third Defendant a better prospect of recovery against the First Defendant. We do not know as at today's date where the beneficial and legal ownership of the assets appointed by the 2010 Appointment now lie, but if the assets become available to the Third Defendant through the enforcement proceedings which it has commenced, it should not lie in the mouth of Camilla or the First Defendant to assert that they are as a matter of law still trust assets .***

***5. Camilla cannot complain because by her conduct she is disentitled to any remedy. The basis of [the Main Appeal Judgment] is that Camilla is to be treated as complicit in the removal of 100%, not just 50%, and until BNP is fully reimbursed for its reconstitution of Cristiana's trust, Camilla will have been overpaid and so has no interest in any recovery. Simply because the court has proceeded to deal with the issues between the parties upon the basis that Camilla's trust is deemed to have been paid out does not give Camilla good title to any portion of any former trust assets.” [Emphasis added]***

- 16 Camilla has since applied to the Privy Council for leave to appeal against both the Main Appeal Judgment and the Supplementary Judgment. We have seen the basis of the application for leave to appeal against the Supplementary Judgment.
- 17 In September and October, negotiations to settle all the claims in respect of Cristiana's Trust took place. BNP has now reached an overall settlement with the New Trustee and the Plaintiffs by which it will pay certain further sums in respect of the matters covered in the Royal Court order (as amended by the Court of Appeal order of 7<sup>th</sup> August), which the New Trustee and the Plaintiffs will accept in full and final settlement of any claims in respect of Cristiana's Trust.
- 18 One of the terms of the proposed settlement is that, in accordance with the order of the Court of Appeal referred to at para 14 above, the New Trustee should enter into the Assignment Agreement (in the form agreed and annexed to the summons) with BNP whereby the New Trustee assigns to BNP all rights and interest which the New Trustee



may have in any of the assets appointed under the 2010 Appointment. This includes the share capital of the Company. The Assignment Agreement is an important part of the overall settlement because it will assist BNP in seeking to recover monies from Madame Crociani pursuant to the indemnity ordered by the Court.

- 19 Although the New Trustee was given approval by this Court on 31<sup>st</sup> July to enter into an assignment agreement, the New Trustee wishes to have further specific authority. That is for two reasons. First, it is proposed that the Assignment Agreement will be executed very shortly before receipt of the full compensation for Cristiana's Trust from BNP (contrary to the provisions of paragraph 22 of the 11<sup>th</sup> September order as varied by the Court of Appeal which envisaged assignment after payment) and secondly, the decision of Camilla and her daughters to apply to the Privy Council for permission to appeal against the decision of the Court of Appeal means that, were they to succeed in their appeal, full equitable compensation will not have been paid by BNP for the assets which are the subject of the Assignment Agreement as Camilla's Trust would then be entitled to compensation as well as Cristiana's Trust.

### **This Application**

- 20 Notice of this application having been given to Camilla in accordance with the order of 31<sup>st</sup> July, Camilla now applies for leave to intervene and wishes to oppose the New Trustee's application for the Court's approval to its entering into the Assignment Agreement.
- 21 BNP opposes the application to intervene whereas the Plaintiffs and the New Trustee are neutral. However, all three of the other parties refute Camilla's objection to the Assignment Agreement and wish the Court to grant its approval to the New Trustee entering into the Assignment Agreement.
- 22 We would summarise Advocate Hoy's arguments as follows:—

(i) Now that the Court of Appeal has held that BNP does not need to reconstitute Camilla's Trust, Camilla has a legitimate interest in being heard in relation to the Assignment Agreement as envisaged by this Court in its judgment of 31<sup>st</sup> July referred to above. Camilla has complied with the disclosure order of 11<sup>th</sup> September 2017 to the best of her ability and therefore fulfilled the pre-condition referred to by the Court.

(ii) The appeal to the Privy Council (if leave is granted) against the Supplementary Judgment will be prejudiced if the Assignment Agreement goes ahead in the meantime. The application for leave to appeal against the Supplementary Judgment is made on the basis that, if Camilla's Trust is to be treated as having been paid out as the Court of Appeal states, Camilla must be regarded as being beneficially entitled to those assets as they are no longer regarded as being in Camilla's Trust and she is

the primary beneficiary of Camilla's Trust. Such assets cannot therefore be assigned by the New Trustee.

(iii) Camilla would be prejudiced by the Assignment Agreement because the sale of the paintings (if recovered) would be undertaken by BNP rather than the New Trustee. The New Trustee owes her a fiduciary duty and would therefore be under an obligation to obtain the best price reasonably obtainable for the paintings. If it failed to do so, she would have a remedy against the New Trustee. Conversely, BNP would be under no such duty. If, as a result of BNP selling the paintings at an undervalue, there was either no surplus or the surplus was less than it should have been, this would prejudice Camilla.

(iv) Alternatively, if there was to be an assignment to BNP, execution of the Assignment Agreement should be deferred until the outcome of Camilla's application for leave to appeal and (if granted) the appeal itself.

- 23 We agree that it was reasonable for Camilla to have an opportunity of putting forward her reasons opposing the present application (as envisaged by the Court in its order of 31<sup>st</sup> July). BNP submitted that Camilla had not complied with the disclosure order of 11<sup>th</sup> September 2017 and therefore had not fulfilled the pre-condition to any intervention envisaged by the Court on 31<sup>st</sup> July. Advocate Hoy rejected this contention. We heard some argument on whether or not Camilla has complied with her disclosure obligation under the order of 11<sup>th</sup> September but concluded that we were not in a position to resolve the dispute. We did not think that failure to comply with the pre-condition would therefore be a proper basis on which to refuse Camilla leave to intervene.
- 24 However, for the reasons put forward by BNP, the Plaintiffs and the New Trustee, we rejected Camilla's opposition and granted our approval to the New Trustee entering into the Assignment Agreement. We would summarise those reasons as follows.
- 25 First, to refuse consent would be to act contrary to the ruling of the Court of Appeal. The relevant part of paragraph 22 of the order of the Royal Court (as amended by the Court of Appeal) provides that, upon payment of the relevant sums, the New Trustee '*shall*' execute such documents as may be necessary to assign its rights in respect of the property appointed out in the 2010 Appointment. The wording is mandatory. The word is '*shall*' rather than '*may*'. The pre-condition is clearly satisfied in that BNP will be paying a sum acceptable to the Plaintiffs in respect of each of paragraphs 21(a), (b), (c) and (d) of the order.
- 26 The point now raised by Camilla concerning her supposed interest in the property appointed out in the 2010 Appointment was specifically rejected by the Court of Appeal in the underlined passage in its judgment of 4<sup>th</sup> September referred to at paragraph 15 above. Camilla has not made any application to the Court of Appeal (the only court with jurisdiction to do so) for a stay of paragraph 22 of the order. For this Court to refuse to



approve the Assignment Agreement at this stage (when it is otherwise in entirely satisfactory terms) would be in effect to grant a stay of the order of the Court of Appeal. We do not consider that that course is open to us. In any event, under the Assignment Agreement the New Trustee merely assigns whatever interest it has in the property appointed under the 2010 Appointment.

27 Secondly, for the Court to rule that any sale of the paintings should be undertaken by the New Trustee would in reality be likely to lead to considerable delay in recovering the paintings (to the benefit of Madame Crociani with whom Camilla is closely allied). Recovery of the paintings will no doubt involve hotly contested litigation in Florida. There are no assets in Camilla's Trust and accordingly the New Trustee would have no funds with which to conduct such litigation. Conversely, BNP would be in a position to fund such litigation from its own resources.

28 Thirdly, we see no real risk of prejudice to Camilla or Camilla's Trust if the Assignment Agreement proceeds at this stage.

(i) If Camilla is given leave to appeal to the Privy Council against the Main Appeal Judgment and such appeal is successful, BNP will be ordered to reconstitute Camilla's Trust. At that stage all the arguments (which were going to take place in relation to Cristiana's Trust before the matter was settled) as to valuation etc. will be open to Camilla's Trust, so that full restitution as determined by the Court will take place. There is, in our judgment, no risk of BNP not being able to meet any such order. There is additional protection in that BNP's obligations have been guaranteed by its parent company. There will therefore be no prejudice to Camilla or Camilla's Trust in those circumstances.

(ii) If an appeal against the Main Appeal Judgment is dismissed but the appeal against the Supplementary Judgment is allowed, there will in our judgment still be no real risk of prejudice. BNP has a clear self-interest in obtaining the highest possible price for the paintings. We were informed by Advocate Redgrave that it has paid out over US\$100m to Cristiana's Trust and that the highest valuation obtained in respect of the 8 paintings originally owned by the Company is \$60m. In fact only 4 of these paintings have been recovered in Florida and the sale price from these paintings is therefore highly unlikely to reach the amount paid out by BNP. BNP will therefore undoubtedly wish to recover the maximum amount which it can. Furthermore, it is at any rate arguable that, given its knowledge of the existence of the appeal against the Supplementary Judgment, BNP would be under an obligation to account to Camilla or Camilla's Trust. Additionally, in the unlikely event of there being a surplus, the Court of Appeal's order provides that the surplus is to be held to the order of the Royal Court. Putting all of these matters together, we do not see any real risk of prejudice to Camilla or Camilla's Trust if the Assignment Agreement proceeds even if she is successful in appealing the Supplementary Judgment.

29 Fourthly, we are satisfied that it is strongly in the interests of Cristiana's Trust that the

overall settlement should go ahead and that, as part of that settlement, the Assignment Agreement should be executed.

- 30 Fifthly, as to the suggestion that we should adjourn the question of whether to approve the Assignment Agreement until the outcome of the proceedings before the Privy Council, we see no reason to do so. The only beneficiary of putting matters off would be Madame Crociani (with whom Camilla is closely allied) as it would mean that nothing would happen in terms of recovery of the paintings until the outcome of the proceedings before the Privy Council.
- 31 Putting all these matters together, we had no hesitation in granting our approval to the New Trustee entering into the Assignment Agreement as requested.

### **Costs**

- 32 BNP applies for an order for costs against Camilla in connection with the hearing. Costs are a matter for me alone and what follows is my decision on BNP's application. BNP and Camilla were invited to make submissions in writing following the hearing. They have done so and I have determined the matter on the papers.
- 33 Although, as described above, there was a rolled-up hearing (i.e. all matters were dealt with at the same time), there were in fact two separate applications namely (i) Camilla's application for leave to intervene ("the Leave Application") and (ii) the summons issued by the New Trustee seeking the Court's approval to entering into the Assignment Agreement ("the Summons"). Camilla was unsuccessful in relation to the Summons but the Court granted the Leave Application despite BNP's opposition.
- 34 Once Camilla issued the Leave Application, it was clearly reasonable for BNP to prepare arguments in support of the Summons. If left to my own devices, I would have been inclined to grant BNP's costs on the standard basis in relation to the matter as a whole but then to make a deduction to reflect the fact that BNP had failed in its opposition to the Leave Application. The only matter which was specific to the Leave Application was the argument about disclosure and accordingly my deduction would have been intended to reflect that aspect of the preparation and the argument. All other matters raised were relevant to the Summons itself.
- 35 However, Advocate Redgrave has confined his application for costs to those incurred in connection with the Summons. On that aspect, BNP was wholly successful and I therefore order Camilla to pay BNP's costs of and incidental to the Summons on the standard basis. Camilla has not applied for her costs against BNP in connection with the Leave Application but, had she done so, I would have rejected such application. The work necessary to show that she was in compliance with her disclosure obligations under the order of 30<sup>th</sup> September would have to be done in any event as it was a pre-condition to her being able

to intervene. In any event, having regard to the lack of merit in her opposition to the Summons, I would not regard it as fair or just to order BNP to pay her costs in connection with the Leave Application as it was so closely related to arguments in connection with the Summons. Accordingly, I make no order as to the costs of Camilla and BNP in respect of the Leave Application with the consequence that each of them will be left to bear their own costs.

- 36 Advocate Redgrave then applies for an interim payment. He has prepared a one page summary of costs prepared on the Factor A and Factor B rates as recommended at paragraph 27 of *Francis -v- Jersey Financial Services Commission* [\[2018\] JRC 064A](#). His summary provides for a 75% Factor B uplift. The summary states specifically that it does not include costs incurred in connection with the Leave Application and therefore excludes work carried out in relation to Camilla's alleged non-compliance with the disclosure order. The total figure on this basis is £11,845.63. He says that if a 50% uplift were to be applied, the figure would be £10,411.25.
- 37 As Beloff JA said in *Crociani -v- Crociani* [2014] (1) JLR 503 at [16], the achievement of justice will usually require that a party entitled to its costs should be paid on account a percentage of the amount he is likely to recover on taxation calculated on a conservative basis to avoid any real risk of overpayment.
- 38 As set out at para 27 of *Francis*, where an order for standard costs is made, the starting point will be to order an interim payment of 50% of the costs claimed by the successful party on the standard basis i.e. Factor A and Factor B applied to the number of hours worked. Such a formula is felt to allow sufficient margin to cover any likely reduction of the bill on taxation.
- 39 I wish to emphasise that I am making no ruling on the percentage uplift. I have heard no argument on the matter and am not aware of what uplift has been applied in relation to other matters concerning the Crociani litigation, which was on any view extremely complex. Nevertheless, in order to be conservative when assessing an interim payment, I propose to proceed on the basis of a 50% uplift rather than a 75% uplift. I therefore start with the figure of £10,411. On that basis, BNP could reasonably have applied for an interim payment of some £5,205.
- 40 In fact, based on his figure of just under £12,000, Advocate Redgrave has applied for an interim payment of £4,000. That appears to be on the basis that one should discount the sum claimed on the Factor A and Factor B rate by one third and then take 50% of that sum.
- 41 Advocate Hoy submitted that the sum claimed, whether with a 75% or 50% uplift, was grossly excessive given the short timescale for preparation.
- 42 I do not consider the figure to be excessive on its face. It is clear that Advocate Redgrave's

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firm will have had to work as a matter of great urgency once it became aware of the Leave Application. It will be a matter for the Greffier on taxation to assess in the usual way whether the time spent was reasonable.

- 43 In the circumstances, I consider the application for an interim payment of £4,000 to be entirely reasonable and I make an order for payment of that sum on account of costs within 14 days.
- 44 Finally, given that BNP has been successful, I order Camilla to pay BNP's costs in respect of the costs application on the standard basis.