Cristiana Crociani v Edoarda Crociani

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith
Judgment Date:	17 January 2018
Neutral Citation:	[2018] JRC 13
Date:	17 January 2018
Court:	Royal Court

Text

[2018] JRC 13

Royal Court

(Samedi)

Before:

J. A. Clyde-Smith, Commissioner, sitting alone.

Between
Cristiana Crociani
First Plaintiff

and

A (by her guardian ad litem Nicolas Delrieu)
Second Plaintiff

and

B (by her guardian ad litem Nicolas Delrieu)

Third Plaintiff
and
Edoarda Crociani
First Defendant

and

Paul Foortse
Second Defendant

and

BNP Paribas Jersey Trust Corporation Limited
Third Defendant

and

Appleby Trust (Mauritius) Limited
Fourth Defendant

and

Camilla de Bourbon des Deux Siciles
Fifth Defendant

and

Camillo Crociani Foundation IBC (Bahamas) Limited
Sixth Defendant

and

BNP Paribas Jersey Nominee Company Ltd
Seventh Defendant

and

GFin Corporate Services Ltd
Eighth Defendant

Advocate A. D. Robinson **for the Plaintiffs**.

Advocate W. A. F. Redgrave **for the Third and Seventh Defendants**.

Advocate E. Moran **for the Fourth Defendant**.

Authorities

Hong Kong Foods Limited and another v Robin Hood Curry Limited and another

[2017] JRC 116 .

Watkins v Egglishaw [2002] JLR (1) .

Target Holdings v Redfern [1996] AC 421 .

Bertrand des Pallières v JP Morgan Chase & Co [2013] JCA 146 .

Alsop Wilkinson v Neary [1995] 1 All ER 431 .

In the matter of X Trust [2012] JRC 171 .

Trusts (Jersey) Law 1984 (as amended).

Costs.

JUDGMENT ON COSTS

THE COMMISSIONER:

1 I sat on 13 th October, 2017, to hear the plaintiffs' application for indemnity costs as against the first, third and fourth defendants.

2 When the substantive judgment in this matter (JRC 146) was handed down on 11 th September, 2017, the Court made the following orders in relation to costs:-

> ***"32 Ordered that the Plaintiffs' claim against the First, Third and Fourth Defendants for costs of and incidental to these proceedings on the indemnity basis be adjourned to a date to be fixed*** .
>
> ***33 On the basis that the Third and Fourth Defendants accept that they should pay the costs of the Plaintiffs on the standard basis and the Commissioner has found that he would award the Plaintiffs' costs against the First Defendant on at least that basis, ordered that the First, Third and Fourth Defendants shall jointly and severally pay to the Plaintiffs a payment on account representing 50% of the Plaintiffs' costs of and incidental to these proceedings calculated on the standard basis, namely a payment to the Plaintiffs in the sum of £2,884,437.83 and this within 28 days of the date hereof.*** The Third and Fourth Defendants have agreed (whilst reserving their rights to seek contribution from the First Defendant, Fifth Defendant, Sixth Defendant and Eighth Defendant) to apportion this payment on account between themselves in the ratio seventy-five percent (75%) to twenty-five percent (25%), the third Defendant paying the sum of £2,163,328.39 and the Fourth Defendant paying the sum of £721,109.46 within twenty-eight days of the date hereof .

> ***34 Ordered that the Plaintiffs' costs calculated on the trustee indemnity basis and not actually recovered pursuant to the above orders shall be borne by the Trust Fund (equally as between Cristiana's Fund and Camilla's Fund).”***

3 These orders were made with the consent of the third and fourth defendants, who had agreed to pay all of the costs of the plaintiffs of and incidental to these proceedings on the standard basis and to apportion that liability between them. Accordingly the Court heard no argument on the issue of costs.

4 The first defendant made a deliberate decision not to be represented at the substantive hearing, or to attend to give evidence, and is in default of disclosure orders made against her (paragraphs 38 and 49 of the substantive judgment). Costs form part of the relief sought against her under the Re-Re-Amended Order of Justice, and there was no requirement, therefore, for her to be notified of the orders sought in this respect.

5 No orders for costs were sought by the plaintiffs against the fifth defendant, who had also made a deliberate decision not to be represented at the substantive hearing or to attend to give evidence, and no prayer for that relief is contained in the Re-Re-Amended Order of Justice. Under paragraph 28 of the Act of Court of 11 th September, 2017, claims for contribution as between the defendants in relation to costs were adjourned.

6 On 11 th October, 2017, the fifth defendant, now represented by Voisin, filed a written submission to the effect that the Court's discretion in relation to costs should not be exercised against her. No such orders have been sought. To the extent that the third and fourth defendants may seek a contribution from the fifth defendant, that claim will have to be made separately, and on notice to her.

7 The third and fourth defendants having agreed to pay all of the costs of the plaintiffs of and incidental to the proceedings on the standard basis and the first defendant having been ordered to do so, the issue before me now is whether they should be ordered to pay those costs on the indemnity basis.

Indemnity costs – principles

8 The principles to be applied are conveniently summarised in the judgment of *Hong Kong Foods Limited and another v Robin Hood Curry Limited and another* [2017] JRC 116, where Sir Michael Birt, Commissioner, stated at paragraphs 9 and 10:-

> ***“9 The principles in relation to indemnity costs are well established.*** A convenient summary is to be found in the decision of the Court of Appeal in *C v P-S* [2010] JLR 645 ***where Beloff JA said this at para 11*** :-

> ***'…we do not accept that it is appropriate to impose such a restrictive approach on the discretion of the court to make an award of costs on the indemnity basis.*** The question will always be – is there something in the conduct of the action by one of the parties or the circumstances of the case which takes the case out of the norm in a way which justifies an order for indemnity costs, recognising there will usually be some degree of unreasonableness? We do not consider that there is a need for the claiming party to show a lack of moral probity or conduct deserving of moral condemnation, or malicious or vexatious conduct.'
>
> ***10 The Court of Appeal specifically approved the observation of Page, Commissioner in*** *Pell Frischmann Engineering Limited v Bow Valley Iran Limited* [2007] JLR 479 ***where the Commissioner said at para 25*** :-
>
> ***'25 At the risk of over-simplifying matters, the result of these English authorities may be said to be this: that the circumstances in which an award of indemnity costs may, as a matter of discretion, be ordered are less restrictive than they used to be; there must, ex hypothesi, still be something to take the case out of the ordinary, but the range of potentially relevant considerations … is considerable and need not involve any finding of a lack of moral probity; the test, in a word, is unreasonableness, the purpose of such an award is to achieve a fairer result for the party in whose favour it is made than would be the case if he were only able to recover costs on the standard basis; in the end, it is a question of what would be fair and reasonable in all the circumstances.***'"

9 As Advocate Redgrave cautioned, the test should not be watered down to simply what is fair. There must be something to take the case out of the norm, something unreasonable in the conduct of the paying party. In *Hong Kong Foods*, there are some examples of what the Commissioner in that case found could justify an award of indemnity costs, namely a failure to inform the parties and the Court that the first plaintiff in that case had in fact been struck off (the whole case had been conducted in the belief that it still existed), an unreasonable refusal to engage in mediation and a repeated failure to comply with orders.

Issues based order

10 In *Watkins v Egglishaw* [2002] JLR (1), Page, Commissioner set out the general principles to be applied when considering orders for costs. The overriding objective of doing justice between the parties would, in many cases, be fulfilled by ordering costs in favour of the "winning" party, but he said it would be a mistake to strain overmuch to label one party as the winner and one the loser, when the complexity of the case does not readily lend itself to an analysis on those terms.

11 In agreeing to pay the plaintiffs' costs of and incidental to the proceedings on the standard basis, the third and fourth defendants were acknowledging that the plaintiffs were "the

winners" and that they should, jointly and severally, pay all of the plaintiffs' costs (to the extent not already dealt with by way of costs orders), notwithstanding that the plaintiffs did not succeed on all of their claims, namely in relation to the distributions and the failure of the former trustees to call in the interest on the Promissory Note (paragraph 829 of the substantive judgment).

12 At the hearing on indemnity costs, however, Advocate Moran, for the fourth defendant, sought to argue the matter on an "issues" basis, submitting that the fourth defendant had no involvement in the 2010 Appointment, the Crica shares and the distributions. She said its involvement on the "Key Issue" (paragraph 54 of the substantive judgment), was limited to its effect upon the Agate Appointment.

13 In Advocate Moran's view, under the existing all costs order (albeit on the standard basis), the Taxing Greffier would decide what issues the fourth defendant had or had not been involved in, and tax the plaintiffs' bill of costs down accordingly.

14 In my view, shared by Advocate Robinson and Advocate Redgrave, it is for the trial judge, not the Taxing Greffier, to make separate orders reflecting the outcome of different issues (see *Watkins v Egglishaw*). To allow the fourth defendant now to argue the matter of indemnity costs on an issues basis, having accepted liability for standard costs on a non-issues basis, could arguably result in its liability to the plaintiffs being less than it has already accepted under the standard basis.

15 In this case, having made an order by consent that the third and fourth defendants shall pay all of the costs of the plaintiffs on the standard basis, the only matter before me was whether those same costs should be paid by the third and fourth defendants on the indemnity as opposed to the standard basis, in respect of which I was concerned principally with the conduct of the third and fourth defendant in the proceedings.

Costs and compensation

16 As stated in *Target Holdings v Redfern* [1996] AC 421 (Paragraph 675 of the substantive judgment), where there has been a breach of trust, the obligation of the defaulting trustee is to restore to the trust fund what has been lost by reason of the breach or to make compensation for such loss, sufficient to put the trust fund back to what it would have been had the breach of trust not been committed. Might it be argued that, accordingly, a defaulting trustee must always pay costs on the indemnity basis or alternatively that such restoration/compensation should extend to the irrecoverable legal costs incurred by the trust fund in successfully pursuing the defaulting trustee?

17 It seems clear that under English law, costs are dealt with separately from restoration/compensation applying the ordinary rules. Quoting from *Lewin* at paragraph 27–173:-

> ***"27–173 The ordinary rules as to costs of hostile litigation apply to breach of trust actions.*** Accordingly, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, subject to the general qualifications which apply in ordinary hostile litigation."

18 As Nugee JA said in *Bertrand des Pallières v JP Morgan Chase & Co* [2013] JCA 146 at paragraph 56:-

> ***"56 Be that as it may, Hoffmann LJ was clearly right to say that where a beneficiary makes a hostile claim against a trustee, it is treated in the same way as common law litigation and costs usually follow the event.*** If a beneficiary successfully sues a trustee for breach of trust, the trustee will normally both be ordered to pay the beneficiary's costs and have to bear his own personally; if the beneficiary fails in his allegations, he will normally be ordered to pay the trustee's costs."

19 The basis of assessment of costs under English law is usually the standard basis, as made clear in paragraph 27–130 of *Lewin*, footnote 429 of which states as follows:-

> ***"429 … When considering an application for the award of costs on the indemnity basis the court is principally concerned with the losing party's conduct of the case rather than the substantive merits of the position: Civil Procedure (2014), Vol.*** 1, 44x 4.3. The fact that the unsuccessful defendant is a defaulting trustee does not, in itself, appear to be a good reason for an award on the indemnity basis. But in Jersey costs are normally awarded against a defaulting trustee on the indemnity not the standard basis: *Ogier Trustee (Jersey) Ltd v C.I. Law Trustees Ltd* [2006] JRC 158 ***at [20]; and see*** *Re The Den Haag Trust* (1997–98) 1 O.F.L.R. 495 , *Jers RC*; *Bhander v Barclays Bank & Trust Co. Ltd* (1997–98) 1 O.F.L.R. 497, *Jers RC*."

20 Advocate Redgrave submitted that if the footnote is intended to convey that the courts in Jersey normally penalise a trustee found guilty of a breach of trust with indemnity costs, it is incorrect. Taking the three cases cited in *Lewin* in turn:-

> (i) *Bhander v Barclays Bank & Trust Co. Ltdwas a Beddoes application in which the trustee sought its past costs out of the trust fund on the indemnity basis and a pre-emptive order for its future costs out of the trust fund, again on the indemnity basis, in respect of litigation in which it was involved as trustee.* The Court granted the application, applying the principles laid down in*Alsop Wilkinson v Neary* [1995] 1 All ER 431. *I would agree with AdvocateRedgrave that this case lends no support for the proposition that courts in Jersey normally order a defaulting trustee to pay costs on the indemnity costs*.
>
> (ii) *The Den Haag Trustwas a case in which the trustee had refused to give disclosure*

to a beneficiary to which the beneficiary was clearly entitled in law, causing the beneficiary to go to the cost of issuing proceedings which immediately resulted in disclosure of all of the documentation required. Costs on the indemnity basis were awarded against the defaulting trustee.

(iii) *Ogier Trustee (Jersey) Limited v CI Law Trustee Limitedconcerned a former trustee which had failed to comply with its duty to assist fully and properly in the handing over of information to the new trustee, causing the latter to issue proceedings.* When the matter came before the Court, the former trustee had complied with its duties, and so the only issue was costs. Sir Michael Birt, then Deputy Bailiff, said this in relation to whether the former trustee should pay costs on the standard or indemnity basis:-

> ***"20 I have considered whether the circumstances put forward by Mr Grace should lead me to depart from that and to say that standard costs would be appropriate here; but I come back to the finding that there was no valid excuse for CI Law to fail to comply with the request for information and I think it would be unjust and unfair for the costs which have been incurred solely as a result of the outgoing trustee's breach or failure to fall on the beneficiaries.*** I therefore order indemnity costs."

21 What the latter two cases show, in my view, is that in Jersey, where a trustee or former trustee fails to comply with its obligations for no good reason, forcing the beneficiaries or the new trustee to go to the cost of issuing proceedings, which should not have been needed, in order to enforce compliance, then such conduct, effectively misconduct, will be met with an order for indemnity costs. The position of the defaulting trustee in these situations is essentially indefensible and therefore indemnity costs are justified, but that approach of the Court cannot be extended to the kind of case with which I am concerned, where there is a defence to the allegations of breach of trust. Where there is a defence, the trustee is perfectly entitled to defend the proceedings and to do so robustly.

22 Advocate Robinson did not argue for an inflexible rule that a defaulting trustee must always pay costs on the indemnity basis, but said that compensation for unrecovered costs borne by the trust fund as a consequence of a breach of trust is one of the factors the Court should take into account in the exercise of its discretion in awarding costs.

23 However, in relation to indemnity costs, the Court is principally concerned with the losing party's conduct of the case, rather than the substantive merits of the position. In my view, it is important for the Court to be able to exercise discipline over the conduct of the parties in proceedings by the imposition of indemnity costs where it is appropriate to do so, which would be undermined by the Court invariably awarding indemnity costs against a defaulting trustee.

24 In this case, save for the claim brought by the first plaintiff in relation to the Crica shares,

the plaintiffs' claim is in the nature of a derivative action in which they are acting like trustees (using the wording of Sir William Bailhache, then Deputy Bailiff, in the case of *In the matter of X Trust* [2012] JRC 171 at paragraph 23), where the proceeds of any successful action will be payable to the trust fund, and not to the plaintiffs.

25 Although acting like trustees, the plaintiffs are not trustees and do not have a right to be reimbursed out of the trust fund either under the terms of the Grand Trust deed or under Article 26(2) of the Trusts (Jersey) Law 1984 (as amended). Sir William Bailhache in the *X Trust* was not prepared to go so far as to say that there was a general principle that the costs of a derivative action brought by a beneficiary should always be met from the trust fund. In this case, and by agreement, the plaintiffs will be reimbursed out of the trust fund of the Grand Trust for the unrecovered costs they have incurred in pursuing the action they undertook at their own risk (see paragraph 34 of the order of the 11 th September, 2017, above), but it is another matter to argue that such reimbursement should form part of the compensation payable by the defaulting trustee. In any event, no such claim has been pleaded in this case.

26 Accordingly, I conclude that I should apply the ordinary rules as to costs in hostile litigation.

The first defendant

27 It suffices to refer to the three following aspects of the first defendant's conduct in these proceedings:-

(i) The Court found that the appointment by the fourth defendant of the eighth defendant as trustee of the Grand Trust, and the assignment away to it of the Promissory Note, was an interference with the administration of justice here (paragraph 808(vii) of the substantive judgment), and that the first defendant was behind the actions of the fourth defendant in this respect (paragraph 612 of the substantive judgment).

(ii) The first defendant played a leading role in the defence of these proceedings, as made clear in the substantive judgment, but at the last moment chose to withdraw her legal representation, and not to give evidence.

(iii) The first defendant has refused to comply with the disclosure order made by this Court (paragraph 38 of the substantive judgment).

28 There can be no question that the first defendant's conduct in these proceedings has been such as to merit an order for indemnity costs.

The third defendant

29 Whilst accepting that the third defendant was entitled to defend the claims against it robustly and recognising that there will usually be some degree of unreasonableness (quoting from the judgment of Beloff JA in *C v P-S* cited above), Advocate Robinson submitted that from the time of the letter before action in July 2012 until May 2015, the third defendant, threw its lot in with the first defendant and her strategy of attrition, in the hope that it might avoid the plaintiffs' claim being aired in Court. Advocate Robinson submitted that it nearly succeeded, because it was only through litigation funding that the plaintiffs were able to take the case to trial.

30 Advocate Robinson highlighted the following conduct of the third defendant which he said justified indemnity costs:-

(i) It accepted joint representation with the first defendant, despite the conflict that inevitably arose over its claim against her for an indemnity.

(ii) It chose not to follow the advice of Mr Le Poidevin (and of Carey Olsen who instructed him) that there should be an application to the the Court for directions. Had such an application been made, Advocate Robinson submitted that matters may well have turned out very differently, with the plaintiffs being spared *"this massively expensive and stressful litigation"*.

(iii) It entered into the Agate Appointment, which the Court found was a tactical response in order to *"block"* the threatened proceedings (paragraph 569 of the substantive judgment).

(iv) It joined the forum challenge all the way to the Privy Council, an exercise described by Advocate Robinson as *"futile"*.

(v) It had to accept responsibility for the change in the evidence of Mr Le Cornu, which stood his own witness statement and evidence in chief on its head – described by Advocate Robinson as a ***"signal moment in the case"***. (paragraph 321 of the substantive judgment).

(vi) It had never sought to settle with the plaintiffs, whether through mediation or otherwise.

31 If fairness was a touchstone, said Advocate Robinson, why can it possibly be thought to be fair for *"a bank"* not to pay the plaintiff's costs to the fullest extent possible, when the strategy of attrition which so escalated those costs, one it bought into, has failed and it is found to be at fault all along?

32 As against that, Advocate Redgrave submitted that it was not unreasonable for the three former trustees to seek joint representation as they were being actioned jointly, and in the light of the indemnity given to the third defendant by the first defendant, it was not unreasonable to allow her to fund that representation.

33 Whilst acknowledging that the Court had found the Agate Appointment ***"disheartening"***, (paragraph 570 of the substantive judgment), he said it had been entered into with advice from lawyers occupying the top tier of the legal profession. That advice had been premised upon the assumed fact that the sixth defendant (the Foundation) had been established for the sole benefit of the first defendant, and was included as a beneficiary of the Grand Trust to allow her to benefit through it. That had been the understanding of the officers of the third defendant and its predecessor as trustee, and it was not an unreasonable view for them to hold on the information in their possession. In any event the Agate Appointment was ignored by the plaintiffs, who issued proceedings in any event, and did not materially add to the costs of the final hearing.

34 Advocate Redgrave did not agree that the forum challenge was futile. It raised, he said, a *bona fide* point of law, for which leave to appeal had been given both by the Court of Appeal and the Privy Council. No criticism had been made by the Courts of the conduct of the appellants in making the forum challenge and bringing the appeal, as evidenced by the orders for standard costs made by the Royal Court, the Court of Appeal and the Privy Council. The exercise had, therefore, been the subject of discrete costs orders and could not fairly be used to justify indemnity costs for the remainder of the proceedings.

35 It could not be right, argued Advocate Redgrave, for an indemnity award to be made because a witness for the third defendant, who no longer worked for it, changed his evidence in cross-examination from that which was within his witness statement, and that which he gave in evidence in chief. It was obvious to the Court when it happened that this was unexpected, and to blame the third defendant for it was entirely unreasonable.

36 As to mediation, on 20 th January, 2016, the Master had stayed the proceedings for the purposes of mediation, and any party refusing to engage was required to set out an affidavit giving that party's reasons for such a refusal. Madame Crociani filed an affidavit on 6 th May, 2016, explaining why she had refused to engage in mediation.

37 Advocate Redgrave informed me that the third defendant had never refused mediation and indeed had always encouraged it, but it was on the basis that the first defendant, who had received the benefit of the 2010 Appointment, would fund any sums paid back into the Grand Trust. The fact that the third defendant did not pay off the plaintiffs out of its own funds could not, he said, be regarded as unreasonable in these circumstances.

38 Advocate Robinson had acknowledged that the third defendant's conduct after it was separately represented in May 2015, was reasonable, but he said it was then too late. Its conduct prior to May 2015 should colour the whole of its conduct thereafter. Advocate Redgrave responded that such an approach by the Court would act as a disincentive to any party to ever change its ways.

39 Turning to my decision, costly as the forum challenge was, its costs have already been dealt with by all three courts involved, and I do not think it is fair to take that exercise, which none of the three courts criticised, and use it as a ground for awarding indemnity costs against the third defendant for its conduct of the rest of the proceedings. I have therefore put that exercise to one side.

40 The Agate Appointment has troubled me because of the view the Court took of it, but as Advocate Redgrave said it did not in any way alter the course of the proceedings. I am also conscious that I should not judge the parties to that appointment with the benefit of the subsequent findings of the Court as to the true role of the sixth defendant. I accept that it was not unreasonable for the third defendant and its advisers to work on the basis of information derived from the first defendant, as settlor, that the sixth defendant was there as a beneficiary to enable her to benefit. That assumption, incorrect as it was found to be, underpinned the whole of the Agate Appointment.

41 I agree that it is unreasonable to blame the third defendant for the change of the evidence of Mr Le Cornu, something which clearly took it by surprise. I also agree that this was not a case in which the third defendant had refused mediation, let alone refused unreasonably. It had encouraged mediation, but the first defendant had the proceeds of the 2010 Appointment, and it was eminently reasonable for the third defendant to expect that if the matter was to be settled, it would be out of the funds that she had received.

42 As the Court said in *Egglishaw v Watkins*, I should take an overview of the litigation, and I conclude that the third defendant's conduct of these proceedings comes within the bounds of what is acceptable in hard fought litigation, not justifying an award of indemnity costs.

Fourth defendant

43 The fourth defendant was also a party to the Agate Appointment, and to the forum challenge, and the same points therefore apply to it in this respect. However, the position of the fourth defendant is to be distinguished from that of the third defendant.

44 In the letter before action, and in the original Order of Justice, no claim was made against the fourth defendant. In particular, it faced no personal liability in respect of the issue which lay at the heart of the proceedings – the 2010 Appointment. Its appointment as trustee of the Grand Trust was challenged, but that was a challenge to the exercise of the requisite power by the former trustees. In other words, it had nothing to defend; on the contrary, it had an interest in funds being recovered for the benefit of the trust of which it was trustee.

45 A new trustee in that situation would ordinarily be expected to take a neutral role and in doing so would not be at personal risk in the proceedings. The fourth defendant did not do this. It made no independent inquiry of the merits of the claim, which represented a potentially very substantial asset of the trust of which it was trustee. It made no inquiry of the

beneficiaries of Cristiana's Trust, and it did not seek the directions of the Court as to the stance it should take in those proceedings. It decided instead to join with the former trustees accused of this substantial breach of trust in actively resisting the proceedings. Its conduct in so doing was unreasonable in my view.

46 When the first plaintiff sought a pre-emptive costs order out of the Grand Trust, the fourth defendant opposed the application without first seeking the directions of the Court as to its stance, bearing in mind that it was an active defendant in the main proceedings. Advocate Moran rightly points out that it was the first plaintiff who withdrew that application before it was heard, but in the judgment dealing with costs arising out of that application (2015 JRC 178), I said at paragraph 46 that it was difficult to see how the approach of the fourth defendant to this request for a distribution was consistent with its duty of loyalty as trustee to the first plaintiff as a beneficiary, to ensure that her request received independent consideration without delay. At paragraph 48 I questioned the basis upon which the fourth defendant as trustee opposed the application, which it did in strong terms, and bearing in mind its position of conflict, I suggested that it should have surrendered its discretion to the Court.

47 The fourth defendant's hostility to the claims of the plaintiffs was such that it then went on to interfere with the administration of justice here by agreeing to the amendments to the Promissory Note, appointing the eighth defendant as trustee, assigning the Promissory Note to it (thus placing it beyond the jurisdiction of the Court) and amending the provisions of the Grand Trust, giving the eighth defendant a platform to commence rival proceedings in Mauritius, which it promptly then did. The fourth defendant did so secretly and knowing that its appointment as trustee was being challenged.

48 I agree with the thrust of the submissions of Advocate Robinson as set out in his skeleton argument of the 5 th September, 2017, at paragraph 43 and 44 that at the trial itself the fourth defendant involved itself in the Key Issue, obtained fresh material from the first defendant or her advisers, instructed experts and fought a joint defence with the third defendant, but its conduct as described above goes way beyond anything that could be described as reasonable or within the norm. Such conduct can only be properly met with an order for indemnity costs.

49 In conclusion, I order the first, third and fourth defendants, jointly and severally, to pay the costs of the plaintiffs of and incidental to these proceedings to the extent not already dealt with by way of costs orders:-

The joint liability of the third defendant being limited to costs on the standard basis.

(i) the first defendant on the indemnity basis;

(ii) the third defendant on the standard basis; and

(iii) the fourth defendant on the indemnity basis.