

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2002/CLE/gen/02280**

**IN THE MATTER of the provisions of the Partition Act, Chapter 143.**

**AND**

**IN THE MATTER of ALL THAT** piece parcel or tract of land situate on the Southwestern Side of the New Harold Road Reservation in the Western District of the Island of New Providence aforesaid comprising Ninety-two and Thirty-three Hundredths (92.33) acres more or less and bounded Northwardly by land the property of the Bahamas Government Northeastwardly by the New Harold Road Reservation leading to John F. Kennedy Drive Eastwardly partly by land property of the Air Ministry partly by other land the property of Nassauvian Limited partly by land formerly leased to the late Hedley Edwards and partly by other land and partly by land reserved for the Bahamas Geodetic Survey southwardly by Crown Land Westwardly partly by land now or formerly the property of The Caves Company Limited and partly by land now or formerly the property of G.A. and S. G. Bostfield which said piece parcel or tract of land has such position shape mars and dimensions as are shown on the diagram or plan attached to a Certificate of Title issued by the Supreme Court of the Bahama Islands to Nassauvian Limited on the 23<sup>rd</sup> day of February, A.D. 1970 and recorded in the Registry of Records in the City of Nassau in the said Island of New Providence in Volume 1582 at pages 182 to 185 and is delineated on that part which is coloured pink on the said diagram or plan.

**BETWEEN**

**LESHELMARYAS INVESTMENT COMPANY LIMITED**

**Plaintiff**

**AND**

- 1. ALBERT C. HIGGS on behalf of the Estate of KENNETH McKINNEY HIGGS,**
- 2. ALBERT C. HIGGS on behalf of the Estate of CLOTHILDA HIGGS, DECEASED, KENNETH MCKINNEY HIGGS, SENIOR,**
- 3. JASON WOODSIDE on behalf of the Estate of ANNAMAE WOODSIDE**
- 4. PERSONAL REPRESENTATIVE OF THE ESTATE OF LULIE LESLIE, DECEASED**
- 5. MANUFACTURERS AGENTS LIMITED**
- 6. PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGE NOTTAGE, DECEASED OSBOURNE HIGGS**

**7. PERSONAL REPRESENTATIVE OF MONICA DELORES  
HIGGS, DECEASED**

Defendants

**Before Hon. Chief Justice Sir Ian R. Winder**

**Appearances: Anthony McKinney KC with Owen Wells for the Plaintiff  
Bridget Francis-Butler for the First and Second Defendants  
Kahlil Parker KC with Roberta Quant for the Third Defendant  
Timothy Eneas KC for the Neely's of Nassau (an Interested Party)**

**COSTS RULING**

**WINDER, CJ**

1. On 15 July 2022 when I rendered my decision on this preliminary application, I indicated that I would hear the parties by way of written submissions on the question of costs. Having received submissions I give my decision on costs.

2. In the English Court of Appeal decision in *Re Elgindata Ltd [1992] 1 WLR 1207 at 1213*, the applicable principles, in deciding an appropriate order for costs, were stated as follows:

"The principles are these. (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."

3. The starting point is therefore the general rule, that costs should follow the event and that the successful party ought to be paid their costs unless there are cogent reasons to depart from this rule. The circumstances of this case does not afford any basis to depart from the general rule, in which case I award Higgs (the First and Second Defendants) their reasonable costs as against the Third Defendant (Woodside).

4. The award of costs are in the discretion of the Court and in accordance with Order 59 rule 9 of the Rules of the Supreme Court, such a discretion extends to the fixing of costs. According to Order 59 rule 9:

9. (1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

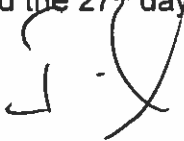
...

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled — (a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or (b) to a gross sum so specified in lieu of taxed costs.

I propose to summarily fix the costs to be paid to Higgs.

5. In assessing the reasonableness of the costs, I have taken into account the time spent before me, the work reasonably to have been expended, the seniority of counsel and the importance of the matter to the client. Having looked at the work, in the round, I will fix the reasonable professional charges in this matter at \$15,000 inclusive of disbursements.

Dated the 27<sup>th</sup> day of July 2022



Sir Ian R. Winder  
Chief Justice