



2004 No. 205

IN THE SUPREME COURT OF BERMUDA

(CIVIL JURISDICTION)

IN THE MATTER OF THE INTERIOR TRUST AND
IN THE MATTER OF THE LAST WILL AND TESTAMENT OF
JOHN A SCRYMGEOUR

BETWEEN

ALEXANDER SCRYMGEOUR

Plaintiff

and

WENDELL MALCOLM HOLLIS

First Defendant

JOSEPH C H JOHNSON

Second Defendant

RULING AS TO COSTS

John Milligan-Whyte for the Plaintiff

Andrew Martin for the First and Second Defendants

In this matter the Plaintiff prevailed in establishing that funds contributed to the Interior Trust by John Scrymgeour, the Settlor, to purchase Greensleeves Cottage in the name of the Trust were by way of a gift rather than loan as the Defendants contended. In the normal course costs would follow the event.

However, Order 62 Rule 6 of the Rules of the Supreme Court makes provision for cases where costs do not follow the event as follows:

“Where a person is or has been a party to any proceedings in the capacity of trustee, estate representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or estate representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, estate representative or mortgagee has acted unreasonably or, in the case of a trustee or estate representative, has in substance acted for his own benefit rather than for the benefit of the fund.”

In my view the Defendants have not acted unreasonably or in any other way that would justify a departure from Order 62 Rule 6(2). In the circumstances the Defendants are entitled to the costs of the proceedings out of the fund held by them in their respective capacities as executor and trustee.

Dated 17th April 2007.

John E Riihiluoma
Acting Puisne Judge