Neutral Citation Number: [2022] CA (Bda) 7 Civ

Case No: Civ/2021/22

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS ORIGINAL CIVIL JURISDICTION
THE HON. MRS. JUSTICE SUBAIR WILLIAMS
CASE NUMBER 2019: No. 195

Sessions House
Hamilton, Bermuda HM 12

Date: 26/07/2022

Before:

THE PRESIDENT, SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL GEOFFREY BELL
JUSTICE OF APPEAL ANTHONY SMELLIE

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Between:

(1) JONATHAN INGHAM
(2) NICHOLAS INGHAM

Appellants

- and -

(1) CLAUDIA MARIE RUTH RADIGAN WARDMAN
(both as Executor of George Alfred Wardman's estate and in her own capacity)
(2) ALEC R. ANDERSON
(as Executor of George Alfred Wardman's estate)
(3) BUTTERFIELD TRUST (BERMUDA) LIMITED
(as Executor and Trustee of the estate of Elfrida Chappell)
(4) STEPHEN WHITAKER KEMPE
(as Executor and Trustee of the estate of Elfrida Chappell)

Respondents

Ms Constance McDonnell, QC, instructed by Mr. Richard Horseman, Wakefield Quin Ltd. for the Appellants
Mr. Robert Ham, QC, instructed by Mr Keith Robinson, Carey Olsen Bermuda Ltd., for the Respondents

Hearing date: 21 July 2022

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RULING ON COSTS

BELL JA:

Introduction

1. This ruling follows from the court's judgment dated 25 March 2022, when we set aside an order made by Subair Williams J ("the Privacy Order") which the learned judge had originally made on 25 June 2021, and which she had then set aside on 16 September 2021. In our judgment, we indicated that in relation to costs we wished to have more detail as to the basis upon which the judge had been persuaded to make a *Beddoe* order (following the principles laid down in the case of *In re Beddoe, Downes v Cottam* [1893] 1 Ch 547). This order permitted the third and fourth Respondents ("the Executors") to be indemnified from the estate of the late Elfrida Chappell ("the Estate") for the costs to be incurred in opposing the appeal which the Appellants ("the Appellants" or "the Inghams") had filed against the judgment referred to above ("the Privacy Appeal"). The Inghams had sought an order which would enable them to refer to certain documents which had been disclosed to them in proceedings taken in Guernsey, for the purposes of Bermuda proceedings which they wished to pursue against members of the Wardman family, who, like the Inghams, were beneficiaries of the Estate. Such proceedings would necessarily have to be taken in the name of the Executors, for which the court's permission was required ("the Permission Application"). The documents in question were the subject of a privacy order in Guernsey, such that they could only be used by the Inghams in the Permission Application if they were made subject to a privacy order in similar terms to the order which the Guernsey court had made. The Inghams accordingly sought to secure the Privacy Order for the purpose of the Permission Application, to enable them to take the aforementioned proceedings in the name of the Executors against the Wardmans. It should be noted at this point that the Executors did not make any application to the judge for a *Beddoe* order when they opposed the Privacy Order in contested proceedings at first instance. So any protection for their costs afforded by the *Beddoe* order granted by the judge would apply only to the appellate proceedings.

2. In our judgment, we referred to the judgment of Lightman J in the case of *Alsop Wilkinson v Neary* [1995] I All ER 431, where he had referred to the different types of dispute in which trustees might find themselves, being a trust dispute, a beneficiaries dispute and a third party dispute. This case is concerned with a beneficiaries dispute, where the trustee's duty is generally to remain neutral, to offer to submit to the court's directions, and to leave the parties who are in dispute (in this case the Ingham and Wardman branches of the family) to resolve their dispute as they may be advised. Lightman J observed that where trustees do become actively involved in such proceedings, they might, if successful, be entitled to their costs out of the trust estate, but if they failed, they would not ordinarily be entitled to any indemnity.

3. The Executors did not follow such a course in this case, but instead chose to engage in hostile litigation, taking a position which had the effect of preferring one branch of the family to the other. In paragraph 15 of our judgment, we commented on the statement made by Stephen Kempe, one of the Executors, in his affidavit sworn on 12 March 2021, that the Executors took the view that the litigation proposed by the Inghams against the estate of the late George Wardman and his widow, would not be in the interests of the Estate. Such a position presumes

that the litigation would fail, because if it were to succeed, it necessarily follows that the Estate would benefit to the extent of any amount recovered.

4. So it is against that background that the court wished to know why the Executors took the view that it was appropriate for them to engage in hostile litigation and how the judge was persuaded that she should endorse such a position, even to the extent of an indemnity for their costs at the appellate level, as her order purported to do. We noted that counsel for the Executors had relied upon the case of *Alsop Wilkinson v Neary* in regard to the position to be taken by the *Beddoe* judge on issues arising in the main action. So it would be natural to infer that counsel had read the case, and hence should have been aware of what position his client should take in the event of there being a beneficiaries dispute, ie one of neutrality.

5. The court also took the view that it was appropriate to hear the outstanding *Beddoe* appeal for which the Appellants had filed an application for leave to appeal ("the *Beddoe* Appeal") at the same time as the costs issue. This appeal of the *Beddoe* order arose from the order made by the judge on 10 February 2022 on an ex parte basis. On 25 February 2022 at an inter partes hearing, the learned judge had declined to set aside her ex parte order. The effect of that order, the Inghams complained, purporting as it did to extend to the costs of any appeal, was to circumvent the discretion of this court in relation to costs, and this court's ability to make an effective costs order in favour of the Inghams. Hence the two matters – the costs of the Appellants' successful Privacy Appeal and the *Beddoe* Appeal are inter-related, and it was for this reason that we indicated that we wished to hear them at the same time.

6. A central issue on the appeal thus became whether and to what extent the Executors might rely upon the protection of the *Beddoe* order for their costs to be paid from the Estate, having pursued their opposition to the Privacy Appeal in reliance upon it, if later on appeal, that order were to be set aside.

Directions

7. On 29 April 2022, I made an order by consent, which provided that the Executors should disclose the legal advice which they had received, to the court, on a confidential basis in the first instance, but on the basis that the court might order that such advice be disclosed to the Inghams. In the event, the Executors disclosed an affidavit sworn by Mr Kempe on 28 January 2022, exhibiting the advice given to them by Corey Olsen in the form of an opinion on merits dated 26 January 2022. Having reviewed the advice, we ordered that the affidavit and the exhibited opinion should be disclosed to the Inghams. We did so because we took the view that the opinion was entirely consistent with the manner in which the appeal had been argued for the Executors, both in their skeleton argument on the appeal, and in oral submissions. In practical terms, there was nothing new or unexpected in the opinion. We took the view that it was important that the Inghams should have the position confirmed. We also set a timetable for the submission of skeleton arguments, to which I will now turn.

The parties' submissions

8. In summarising the parties' positions, the Appellants' skeleton argument submitted that the Executors should bear personal liability for the costs of all parties to the Privacy Appeal and the related proceedings at first instance, with no entitlement to indemnify themselves out of the Estate. The Executors' position, on the other hand, was that they were entitled to indemnify themselves for all such costs out of the Estate, which would mean that the share of the Estate to which the Inghams were entitled would be correspondingly reduced.

9. The starting point for the Inghams was that the Executors had acted unreasonably, and that (quoting from Order 62 rule 6 of the Rules of the Supreme Court) they had in substance acted for their own benefit rather than for the benefit of the fund, in this case the Estate. The skeleton argument relied upon several statements made by the editors of Lewin on Trusts (20th edition), as to the circumstances under which trustees are entitled to an indemnity in respect of costs, ie only when costs were both honestly and reasonably incurred. The Appellants contended that the Executors' non-neutral role was itself sufficient to disentitle them to an indemnity from the Estate, and that they had acted unreasonably in failing to adopt a neutral stance. Complaint was made in respect of the Executors' failure to explain their hostile stance towards a mechanism which had been agreed in Guernsey by consent between all beneficiaries for the disclosure of documents to be used in aid of the Permission Application; and towards the disclosure of documents to be used aid of the Permission Application; and towards the Privacy Order, which had been necessarily obtained but which the Executors opposed and had successfully persuaded the judge below to set aside, and in respect of what was said to be their misrepresentation of the Guernsey consent order. And the Appellants contended that it was not an answer for the Executors to say that they had relied upon legal advice. They summarised the unreasonable actions of the Executors as:

   • opposing the Privacy Order from the outset, before even obtaining legal advice;
   • continuing to oppose the Privacy Order by applying to have it set aside, without considering whether it was in the interests of the beneficiaries to do so;
   • opposing the Privacy Appeal;
   • applying for *Beddoe* relief, particularly before the judge who had heard the Privacy application, without bringing to her attention the applicable legal principles or their duty to remain neutral, and without admission of the connection between a *Beddoe* order and any costs order which this court might make if they were unsuccessful on the appeal.

10. The Appellants maintained that the Executors had acted throughout out of self-interest, while at the same time contending that the proper test, derived from *Alsop Wilkinson v Neary*, was not whether trustees had acted out of self-interest, but whether they had acted otherwise than in the beneficiaries' interests.

11. The Appellants then turned to the indemnity clause contained in clause 21 of Mrs Chappell's will, which I will not set out since (as will appear) its significance has now gone. I will refer to this issue as the "Clause 21 Issue".

12. The Appellants anticipated that the Executors would rely on this clause, and particularly the key words "except wilful and individual fraud or wrongdoing", and maintained that the Executors' actions did indeed come within the definition of those words. But they also

submitted that the case of *Re the FA and FB Trust* [2019] SC (Bda) 77 Civ supported the contention that there existed an overriding requirement that costs incurred by a trustee had to be both reasonably and properly incurred. The Appellants contended that clause 21 could not be construed so as to permit the Executors to indemnify themselves out of the estate in circumstances where they have acted unreasonably and/or in self-interest, or at least not in the interests of the estate.

13. The Appellants' skeleton then turned to the issue of "wilful and individual fraud or wrongdoing", referring to the judgment of Millett LJ (as he then was) in *Armitage v Nurse* [1998] Ch 241, that of Sales LJ (as he then was) in *Barnsley v Noble* [2017] Ch 191, and Lewin at 41-132, where the editors state that in the context of an exemption clause, fraud means dishonesty. The Appellants submitted that no reasonable trustee could reasonably have thought that opposing the Privacy Order and the Privacy Appeal was for the benefit of the beneficiaries. The Executors had self-evidently breached their duty to remain neutral, and must be taken to have acted out of self-interest, there being no other explanation for their vehement opposition to the Privacy Order. The Appellants accordingly submitted that clause 21 of the will should afford no protection to the Executors against personal liability for the costs of their application to set aside the Privacy Order, the appeal therefrom and the associated *Beddoe* application.

14. In relation to the Executors' application for *Beddoe* relief, the Appellants complained that the Executors had made no attempt to analyse the Appellants' appeal submissions. They referred to the fact that the Executors had placed heavy reliance before the judge on their 2021 *Beddoe* application in relation to the Permission Application, pointing out that that hearing had lasted less than five minutes and that there had not been a reasoned decision of the court on the relevant matters. As to the Executors' perceived difficulties in relation to the manner in which the Privacy Appeal would affect the beneficiaries, the Appellants submitted that these were impossible to understand.

15. As to the judge's "extremely brief reasons" for her ruling, the Appellants complained that the judge had failed to explain why she was departing from the principles set out in *Alsop Wilkinson v Neary* regarding the trustee's duty to remain neutral in relation to a beneficiaries dispute, something which had been expressly set out in the Appellants' submissions to the judge. The judge should, they said, have discharged the *Beddoe* Appeal order, or at the least made it expressly subject to this court's decision in regard to costs.

16. For the Executors it was argued that to grant the Appellants the relief they sought would be to frustrate the function of a *Beddoe* order, which was to predetermine the question of recovery of costs in the main action, and thereby to protect the trustee who has obtained the sanction of the court. It would, the Executors submitted, render the securing of a *Beddoe* order pointless, if such an order could subsequently be made subject to a further or different order of the Supreme Court or the Court of Appeal. But if the *Beddoe* judge did grant relief wrongly, then the remedy was by way of appeal against that relief, rather than to impose a condition in relation to that relief, implying that any subsequent order, including any order which this court might make on appeal, could operate only prospectively, and not so as to reverse the benefit of the protection for costs which had been available until the order was set aside . The Executors further maintained that it would be unfair to them to discharge the *Beddoe* relief

obtained with retrospective effect, when the Appellants had not sought to stay the judge's order or to postpone the hearing of the Privacy Appeal until after the *Beddoe* Appeal had been heard.

17. In relation to the complaint that the Executors were motivated by self-interest, the Executors simply say that there is no basis for such a suggestion.

18. As to the suggestion that no reasonable trustee could have thought that opposing the Privacy Order was for the benefit of the beneficiaries, the Executors made the point that the reasonableness of their opposition was the basis for the *Beddoe* application, and the fact that the judge rejected an application by the Appellants to vary her order so that the costs of an appeal would not be prejudged, showed that she did not agree. That, say the Executors, is conclusive of the matter.

The argument at the hearing

19. For the Inghams, Ms McDonnell QC started by referring to the Clause 21 Issue, but Mr Ham QC helpfully conceded that the clause did not apply and confirmed that the Executors did not rely upon it.

20. Ms McDonnell then referred to the agreed position that the Inghams should have their costs of the Privacy Appeal, pointing out that the issue now was whether those costs should be recoverable from the Estate. She then went through the relevant timeline, starting with the *Beddoe* order which had been made by the judge on an ex parte basis on 10 February 2022, which order gave the Executors liberty to defend the appeal taken by the Inghams against her decision of 16 September 2021, in which she set aside the Privacy Order which had been made ex parte. As adumbrated above, that order provided that the Executors should be entitled to be indemnified against the costs of the Privacy Appeal (both incurred and to be incurred) out of the assets of the Estate, both in respect of the Executors' own costs insofar as not recoverable from the Inghams, and any costs that the Executors may be ordered to pay to any person in the appeal.

21. The next step was the 25 February 2022 hearing, when the judge dismissed the Inghams' application to vary her previous order so as (i) to provide for an overriding provision that the entirety of any relief ordered should be expressly subject to any further or different order of the Supreme Court or the Court of Appeal; (ii) to delete the express provisions which entitled the Executors to have recourse to the Estate on an indemnity basis; and (iii) to impose an overriding provision that the Executors' ability to rely on an indemnity in respect of costs should be subject to further or different order of the Supreme Court or the Court of Appeal. The judge, in dismissing the Inghams' application, affirmed the terms of her *Beddoe* order of 10 February 2022.

22. Ms McDonnell then referred to the extensive submissions which had been placed before the judge, which set out the appropriate test for the judge to apply when considering the Executors' application. She submitted that the Executors had not engaged with the matters in question, and referred to their submissions before the judge. She placed reliance on the case of *Trustee L* [2015] SC (Bda) 41 Comm, a judgment of Hellman J, in which he traced the ambit of the

trustee's duty and the requirement that the trustee's proposed course of action be reasonable. She emphasised that the Executors had not followed the correct legal procedure as required by the *Alsop Wilkinson* case, and also pointed out that the Executors had resisted the proposal made by the Inghams that the *Beddoe* Appeal and the Privacy Appeal should be heard together. Ms McDonnell conceded that an application for a stay of the Privacy Appeal pending argument on the *Beddoe* Appeal could have been made, although as was pointed out by the court, the same position applied to the Executors.

23. Ms McDonnell summarised her position as being

• the *Beddoe* order was not conclusive,
• such an order was only as good as the information provided to the judge making the order, and
• the judge who in fact dealt with the *Beddoe* application should not have done so, given that the underlying judgment to be appealed against on the Privacy Appeal was her own.

24. Ms McDonnell next turned to the case of *Individual Present Professional Trustees of 2 Trusts* [2007] EWHC 1922 (Ch), a judgment of Lindsay J, in which he explained the circumstances in which a trustee might find himself vulnerable in costs despite having secured a *Beddoe* order, for example if it transpired that the picture painted before the judge was materially inaccurate and such inaccuracy was the trustee's fault. A *Beddoe* order was not, she submitted, a cast iron guarantee. In this regard Ms McDonnell referred to the Executors' failure to refer the judge to the need for trustees to be neutral, expressed in *Alsop Wilkinson v Neary*. And she relied upon paragraph 32 of Lindsay J's judgment, in which he had referred to the possibility of a *Beddoe* order being weakened or departed from in the event of a failure to make full disclosure of all relevant matters. In relation to the case before us, Ms McDonnell identified the failure to explain to the judge the need to remain neutral, and the key factor that all beneficiaries had consented to the Privacy Order being made. To similar effect was a passage from the judgment of Hoffmann LJ (as he then was) in *McDonald v Horn* [1995] ICR 685, emphasising the need for a trustee to make full disclosure of the strengths and weaknesses of his case.

25. Ms McDonnell next referred to the judgment of Nourse LJ in the case of *In re Evans dec'd* [1986] 1 WLR 101, and then went back to the case of *Trustee L,* and the references to the authorities reviewed by Hellman J. She stressed that the only matter to which the Executors had referred the judge was that of the merits, the significance of which Mr Kempe in his affidavit had appeared inappropriately to elevate. The reality was that the Executors were not bound to support the first instance judgment, and it was not their job to justify it. She pointed out that the *Beddoe* judge was neither impartial nor independent; she was being told that her judgment was correct, but even so gave leave to appeal on one ground.

26. Finally, Ms McDonnell referred to the cases of *In re Dallaway dec'd* [1982] 1 WLR 756, *Breadner v Granville-Grossman* [2001] WTLR 377 and the recent Bermuda case of *Re the FA and FB Trust*, which emphasised the need for costs incurred by a trustee to have been both properly and reasonably incurred. In this case, she asserted, the blame for the delay lay squarely with the Executors.

27. For the Executors, Mr Ham used as his starting point the original *Beddoe* order, granted in respect of the Permission Application on 8 January 2021, to which, he noted, the Inghams had consented. But he accepted that they had previously said that the Executors must remain neutral, advising that they had subsequently applied for the further *Beddoe* order in relation to the Privacy Appeal on a "belt and braces" basis. He stressed that there was always liberty to apply in respect of a *Beddoe* order, and said that there were two factors which now pertained in relation to the Executors' position regarding the Permission Application; the first was that this court's judgment was now to hand, and the second was that the Inghams had now confirmed that they would pay the costs of the derivative action and not make claim as against the Executors.

28. Mr Ham contended that there was no absolute duty to remain neutral, but was not able to answer the President's question as to why the Executors should not be neutral in this case. He referred to what Mr Kempe had said in his fourth affidavit sworn on 13 March 2020, regarding the benefit to the Estate. And in relation to the President's question as to what was the benefit to the beneficiaries in resisting the Privacy Appeal, Mr Ham said that he could not and did not point to any specific benefit.

29. Regarding the question of the grounds for challenge to the *Beddoe* order, Mr Ham submitted that the question was whether there was sufficient disclosure made to the judge. He accepted that there was a need to monitor the *Beddoe* order, and agreed that it was unsatisfactory that Subair Williams J should have been the *Beddoe* judge. He pointed out that Mr Robinson had objected to the judge who had made the *Beddoe* order approving the Executors' decision to defend the Permission Application ("the Original *Beddoe* Order") acting as the judge in the application to set aside the Privacy Order.

30. Mr Ham maintained that the Executors were entitled at first instance to rely upon the Original *Beddoe* Order. He advised that it was 21 March 2022 when the Inghams had confirmed that they would not look to the Executors in relation to the costs of the derivative proceedings.

31. Finally, Mr Ham dealt with the issue of indemnity costs.

32. In reply, Ms McDonnell pointed out that she had previously addressed this court on the issue of costs, referring to paragraph 54 of Jonathan Ingham's affidavit of 26 February 2020, and saying that the Executors had known the position since then. Finally, she pointed out that when the Original *Beddoe* Order in relation to the Permission Application had been made on 8 January 2021, the application for the Privacy Order was not within the contemplation of any of the parties.

Discussion

33. The starting point is of course this court's judgment of 25 March 2022, and the findings made therein. The first question to be addressed is the requirement derived from *Alsop Wilkinson v Neary* that the Executors should have taken a neutral position in relation to the dispute between the Ingham and Wardman branches of the family. The suggestion that the potential exposure

of the Executors in costs justified their approach does not bear scrutiny, and Mr Ham properly conceded that the Executors could have resolved their stated concern at their costs exposure by the simple expedient of seeking clarification from the Inghams, if such was necessary given the terms of Mr Ingham's affidavit referred to. And we referred in paragraph 15 of our judgment to the manner in which Mr Kempe viewed the potential derivative proceedings and his inability to see that (assuming that the costs aspect of matters had been addressed as it should have been and the Executors could be satisfied that they were not at risk in costs) the proceedings contemplated by the Inghams against the Wardman branch of the family clearly had the potential to increase the value of the Estate. The basis of the Inghams' claims are set out in Mr Ingham's affidavit sworn on 15 July 2019. Broadly, the Inghams claim that George Wardman and his widow Claudia had improperly made payments (that term is widely defined) from the Estate amounting to almost $2.5 million. As we said in our judgment, how it could be said by Mr Kempe that the pursuit of such litigation would not be in the interests of the Ingham family (as beneficiaries of the Estate) makes no sense, and nothing was said during the hearing of 21 July 2022 which justified that statement by Mr Kempe.

34. And that statement, impossible to follow as it is, demonstrates the need to gain a better understanding of the Executors' position in relation to the Permission Application and the Privacy Order and Appeal which followed. Why did they oppose an application to which all beneficiaries had consented? Why did they not seek to resolve the costs aspect of matters so that there could be no possibility of any adverse effect from the Inghams' proposed derivative action? And why did their legal advisors not refer the judge to the material passages of *Alsop Wilkinson v Neary*, when they had relied upon that case in relation to the issue of the judge acting as the *Beddoe* judge?

35. The short point is that the judge should have asked herself these questions, and should not have acceded to the request for a *Beddoe* order without having satisfied herself that there were good and valid answers to them, none of which were apparent from the material before her. In these circumstances, the question asked by the President during the course of argument demands an answer. If the judge should not have made the *Beddoe* order, why can that not be set aside by this court? The answer must be that it should be, and any argument about the retrospective effect of the setting aside of the order has to be looked at in the context of the Executors' knowledge of the complaints made by the Appellants. They have only themselves to blame for the position in which they now find themselves.

Conclusion

36. And that position is this. In our view the *Beddoe* order of 10 February 2022 should not have been made, and should be set aside, and that we now do. The consequence is that costs fall to be determined without reference to it, and the position should now be looked at bearing in mind what we said in our judgment, namely that we would have had no hesitation in ordering that the Executors should be responsible for the Inghams' costs both in relation to the appeal and in the court below in respect of both the Privacy Appeal and the *Beddoe* Appeal. It follows that we should now make that order, and we do. For the avoidance of doubt, the Executors shall not be entitled to recovery of those costs from the Estate, because to do so would, in our view, represent an injustice to the Inghams; nor should the Executors be entitled to recover

their own costs in respect of those proceedings from the Estate. As an aside, it was noted in argument that the Executors had not sought the protection of a *Beddoe* order in respect of the first instance ruling setting aside the Privacy Order, so that if we had been persuaded that we should not make the order which we have, it nevertheless remained open to us to make such an order in respect of the first instance proceedings. But that is now academic. Lastly, I am not persuaded that the Original *Beddoe* Order entitles the Executors to an indemnity in respect of the first instance proceedings which led to the Privacy Appeal. The matters in issue in those proceedings cannot be regarded as coming within the ambit of the Original *Beddoe* Order

37. As to indemnity costs, given the criticisms of the Executors' conduct, which we accepted, it must follow that we should order costs to be taxed on the indemnity basis, and this we now do.

38. Ms McDonnell understandably blamed the Executors for the delay which has prevented the Permission Application being heard on the date originally set, back in July of last year. Mr Ham confirmed that in the light of our judgment, his clients now intend to seek further directions in relation to the Permission Application. We expect that for the future, the Executors will also take note of the terms of this ruling.

SMELLIE JA:

39. I agree with the judgment of my Lord Bell, and with the additional comments and directions given by my Lord President.

CLARKE P:

40. I agree. The way in which the Executors have approached their task in this case seems to me to be the exact opposite of what they should have done. They do not appear to have addressed their minds to the question: what is the benefit to the beneficiaries to be derived from the Executors contesting the making of a privacy order and resisting the appeal? As my Lord has observed, when I asked Mr Ham that question he was unable to identify any benefit. This is not surprising, since there was none. If the appeal had been unsuccessful the position would be that the judge hearing the Permission Application would in all probability be denied access to the Guernsey documents, which may well have indicated the potential validity of the claim which, if successful, could only benefit the Estate. The affidavit evidence put before the judge did not address the question, proceeding on the basis that the relevant question was whether the judge was right to set aside the privacy order, and relying on the opinion that she was. Far from adopting a position of neutrality, the Executors took a stance which favoured one side of the dispute, despite the fact that all the residual beneficiaries had agreed to the order made by the Guernsey court, a matter which the Executors treated as irrelevant. The result of this stance has been that large costs have been incurred in litigating the present disputes, and the hearing of the Permission Application which, absent the disputes, would have gone ahead a year ago, is still not resolved.

41. Accordingly, the orders which this Court makes are as follows:

(i) the orders of Subair Williams J of 10 and 25 February 2022 are set aside;

(ii) the Executors are to pay the Appellants their costs of Privacy Appeal and the *Beddoe* Appeal, both in this court and below, such costs to be taxed, if not agreed, on the indemnity basis;

(iii) the costs referred to in (ii) are to be paid by the Executors personally and with no right of indemnity from the Estate;

(iv) the Executors are to bear their own costs of the Privacy Appeal and the *Beddoe* Appeal proceedings, both in this court and below, with no right to an indemnity from the Estate, and

(v) the Executors are to reimburse the Estate forthwith the amount of any of their own costs of the *Beddoe* Appeal and the Privacy Appeal proceedings, both in this court and below, which have already been paid to them.