

1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS
3 CAUSE 731 OF 1998

4
5 IN THE MATTER of the Deed of Settlement made the 5th day of January, 1984 between
6 Captain Pandelis Christos Lemos and Roywest Trust Corporation (Cayman) Limited and
7 others (known as the Trofos Foundation).

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- BETWEEN: (1) PANDELIS CHRISTOS LEMOS
(2) MARIKA CHRISTOS LEMOS
(3) PANDELIS GEORGIOS LEMOS (a minor)
By GEORGIOS PANDELIS LEMOS DAVID LONG his father
And next friend)
(4) ASPASIA GEORGIOS LEMOS (a minor)
(by GEORGIOS PANDELIS LEMOS DAVID LONG her father
and next friend)
(5) AIKATERINI GEORGIOS LEMOS (a minor)
(by GEORGIOS PANDELIS LEMOS DAVID LONE her father and
next friend)

PLAINTIFFS

- AND: (1) COUTTS (CAYMAN) LIMITED
(2) COUTTS (JERSEY) LIMITED
(3) SEATON TRUSTEES INC.
(a company incorporated in the Turks & Caicos Islands)
(4) PARTHENON TRUSTEES INC.
(a company incorporated in the Turks & Caicos Islands)
(5) ASPASIA PANDELIS LEMOS
(6) DIMITRI JOHN SAMONAS
(7) IONNA DIMITRI SAMONAS
(8) MARIGO PATITSAS
(9) JOHN DIMITRI SAMONAS
(10) LEON JOHN SAMONAS
(11) PHILEMON SPYROS PATITSAS
(12) LEON SPYROS PATITSAS
(13) THE LEON LEMOS CHARITABLE FOUNDATION

DEFENDANTS

1 **Representations:**

2 (Mr. Andrew Jones of Maples & Calder for the Trustee and Mrs. Shan Warnoch-Smith
3 instructed by Mr. William Helfrecht of Boxhalls for the LLCF having withdrawn).

4 Mr. Graham Ritchie Mr. Anthony Duckworth of Charles Adams, Ritchie and Duckworth
5 for Sixth, Eight, Ninth, Tenth, Eleventh and Twelfth Defendants.

6 Mr. John Stephens instructed by Mr. Seamus Andrew of W.S. Walker & Co for plaintiffs.
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10 **RULING AS TO COSTS**

11 **Costs incurred pre - 2nd November 1999:**
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16 I regard these costs as covered by the earlier orders of the Court ie: first made on the 2nd

17 March 1999 in respect of the parties named in paragraph 3 of that order; extended by

18 order on the 8th July 1999 in paragraph 7 to encompass all steps up to and including the

19 final hearing and taking of judgement on the Originating Summons as it then stood;

20 further extended on 28th October 1999 to allow for the participation of the 8th to 12th

21 defendants inclusive and finally settled in paragraph 6 of the Order of the 2nd November

22 1999. The ruling of the 29th September did not change the principles – that ruling

23 addressed the issues as they originally came upon the plaintiff's Originating Summons.

24 To the extent that the Order of the 2nd November 1999 in paragraph 6 referred to the costs

25 of the scheme of segregation, I regard that as having literal application to the

26 administrative costs of the scheme; not to the costs of the proceedings which followed in

27 respect of the principles of segregation.

28 To the extent that I still have a discretion to revisit Orders earlier made in the foregoing

29 definitive terms; my reasons for the decisions I take now as to costs are straightforward.

30 Those earlier Orders had been made on the Court's - and all parties' acceptance that the

31 proceedings instituted by the plaintiff fell within the second category of Justice

1 Kekewich's three categories described in In Re Buckton [1907] 2 Ch. D. 406. at

2 That is the application is made “not by the trustees (who are respondents), but by some of
3 the beneficiaries, yet it is made by reason of some difficulty of --- administration, which
4 would have justified an application by the trustees. ---. The application is necessary for
5 the administration of the trust, and the costs of all parties are necessarily incurred for the
6 benefit of the estate regarded as a whole”.

7 As matters then stood, the making of an Order allowing costs to be paid from the Trofos
8 Fund on the pre-emptive and indemnity basis, would not otherwise have been
9 permissible.

10 These were proceedings instituted not by the Trustees but by beneficiaries. Such an order
11 would not have come within the principles of in Re Buckton and the many cases which
12 have followed it ever since, had I not been satisfied that the proceedings were intended to
13 resolve important matters which it was in the interest of the Trofos Fund as a whole to be
14 resolved.

15 To now treat these costs in any other way so as to require that they be met not from the
16 fund as a whole, but respectively from the individual subtrusts to be created upon
17 segregation, would be to go contrary to that earlier finding and agreed basis upon which
18 the costs were ordered.

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20 Costs incurred by the parties post 2nd November 1999

21 These I regard as falling to be treated separately and differently.

22 As early as in the Order of 12th November 1999 there was some indication that the costs -
23 at least of the issue ordered to be tried, namely that it be determined how and in what

1 proportions the present trustees are to divide the net assets of the Trofos Foundation -
2 may ultimately not be ordered to be paid as a whole from the Trofos Foundation.
3 The ruling as to costs which followed on 7th January 2000 made it plain, at Mr
4 Duckworth's request, that costs incurred in that latter context would be reserved and
5 might well ultimately be ordered to be paid from the respective subtrusts.
6 This was notwithstanding the fact that the proceedings were to be continued to be
7 regarded as non-hostile.
8 I make it plain here that I so still regard them. The trial of the issue defined became
9 necessary because the parties could not agree on the terms of what division of the Trofos
10 Fund would be just and equitable.
11 The fact of disagreement by itself may not serve to attach any side with liability for the
12 costs or any other side. The matter never become party and party litigation in the usual
13 hostile sense. Each side was entitled to put before the Court its own views as to what was
14 just and equitable without incurring the liability of any other side's cost in so doing.
15 Nonetheless, this case is unusual and different from any of the first time categories
16 described in In Re Buckton because of the fact of the segregation of the Trust Fund which
17 was ordered in principle on the 2nd November 1999.
18 The view expressed in the ruling of 7th January 2000 and the view I take now, is that it
19 might not properly be said that the respective arguments as to what would be the terms of
20 a just and equitable division of the Trofos Fund, could be in the interest of that Fund as a
21 whole. Those arguments were respectively in the interests of those taking under the
22 separate subtrusts.

1 Only an agreement between the parties as to the just and equitable division could have
2 been in the interest of the Fund as a whole, because of the costs which would have been
3 saved.

4 That agreement was not forthcoming. Instead, forces were arrayed on each side and, in
5 terms of sheer numbers, most impressively so on the side of the plaintiffs. Many weeks
6 were spent in preparation and the hearing witnessed over 10 full days, the unreserved
7 deployment of the forensic arsenals.

8 That was all with a view to persuading the Court to the acceptance of fairness as
9 embodying as much as possible of the assets being awarded to the respective contestants
10 to the deprivation of the others.

11 In the end, if the court is to be assured that it arrived at a just and equitable division, no
12 side can be said to have won that contest. Each side ends up only with what in principle
13 it would have obtained; had there been a fair agreement.

14 In the rather special and peculiar circumstances of this case; where since 2nd November
15 1999 the Court has been dealing, at least in principle with subtrusts, the only fair and
16 equitable order is that the costs incurred since then - with the objective of advancing the
17 respective interests of the subtrusts - should be borne respectively by the subtrusts.

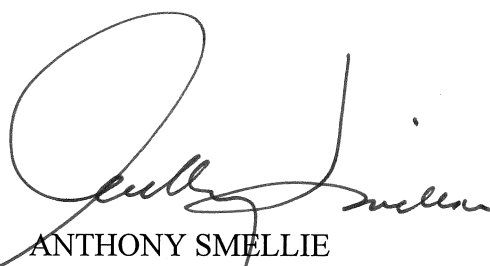
18 In this respect, the decision I take is that the costs are all to be settled from the reserve
19 kept back by the Trofos Trustee and, in the case of costs incurred post 2nd November
20 1999, respectively paid by and accounted for to each subtrust.

21 In the case of Mrs. Aspasia Lemos, her costs incurred are to be apportioned equally
22 between the four subtrusts which all bear the liability proportionately for her entitlement.

23 The same treatment is to be accorded to the LLCF's costs.

1 All costs, pre and post 2nd November 1999, are to be taxed, if not agreed, as between the
2 parties and the Trofos Trustees; including the Trofos Trustees' costs . Taxation is to be on
3 the indemnity basis.

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ANTHONY SMELLIE
CHIEF JUSTICE



DATED THE 21ST DAY OF APRIL 2000.