NEUTRAL CITATION NUMBER: [2026] CIGC (Civ) 13

IN THE GRAND COURT OF THE CAYMAN ISLANDS
PROBATE AND ADMINISTRATION DIVISION

P0059 OF 2015

IN THE ESTATE OF THOMAS ALFRED JACKSON, AKA THOMAS A. JACKSON, AKA ALFRED JACKSON

BETWEEN:

ATHENS LEONCE JACKSON

CECILE PANTON

Plaintiffs

AND:

KATHERINE VICTORIA JACKSON

Defendant

AND

DELROSE WILLIAMS AND KATHY ZANGRILLI

(As Administrators of the Estate of Mary Eloise Jackson, Deceased)

Intervenors

ON THE PAPERS AND IN CHAMBERS

Coram:	**Hon. Justice Marlene Carter**
Appearances:	**Ms. Stacy Thomspon for the Plaintiffs** **Mr. John Meghoo for the Defendant** **Mr. Matthew Harders and Mr. James Kennedy of KSG for the Interveners, Personal Representatives of the Estate of Mary Eloise Jackson (Wife of Thomas Alfred Jackson)**
Heard:	**1 April 2025**
Draft circulated:	**6 March 2026**
Ruling Delivered:	**13 March 2026**

Probate and Administration – Application for removal of administrator – Hearing of Preliminary Issue - Ruling against Administrator- Whether costs that of administrator or estate

RULING ON COSTS

Background

1. The First-named Plaintiff is co-administrator of the Estate of Thomas Alfred Jackson aka Thomas A. Jackson aka Alfred Jackson, Deceased (the "TAJ Estate"). The Second Plaintiff is a Surety in the TAJ Estate, (collectively the "Plaintiffs"). The grant of administration of the TAJ Estate in favour of the Defendant was made in March 2015. The administration of the estate has not been completed.

2. By summons dated 9 August 2023 the Plaintiffs sought, inter alia, the removal of the Defendant as the administrator of the TAJ Estate. The Plaintiffs alleged self-dealing and mismanagement of the TAJ Estate by the Defendant.

3. The Defendant filed a cross summons on 18 September 2023 seeking for the Plaintiffs' summons to be struck out.

4. At the hearing of the summons and cross-summons and after hearing counsel for the Plaintiffs and for the Defendant the court determined that there was a preliminary issue to be tried ("the Preliminary Issue") and gave directions for the filing of submissions by the respective parties permitting counsel for the Plaintiffs to expand upon previously filed submissions and for the Defendant and the Administrators of the Estate of Mary Eloise Jackson[1] (the "Intervenors") to file a response.

5. At the hearing of the Preliminary Issues on 18 January 2024, the Court found in favour of the arguments of the Intervenors. The Interveners were awarded 50% of their Costs on the application.

6. The Interveners subsequently sought the court's clarification regarding the award of costs. The Plaintiffs contended that they are entitled to have recourse to TAJ Estate assets in respect of their own costs of the Preliminary Issue and their liability under the Costs Order. Counsel for the Interveners objected to this course. Given the prominence of this issue to the settlement of the TAJ Estate the court received further submissions from the parties on this aspect of costs.

[1]Representatives of the Estate of Mary Eloise Jackson were joined as Intervenors in light of their interest in the outcome of the preliminary issue.

The Interveners' Submissions

7. The Interveners contend that the Plaintiffs should bear their costs personally without recourse to the TAJ Estate's assets.

8. Counsel argued that a personal representative's right of indemnity from an estate fund is not absolute. A personal representative will not enjoy such indemnity if they have acted unreasonably, or if they have acted, in substance, for their own benefit rather than for the benefit of the fund.

9. Counsel advanced the following reasons to support his argument that the Plaintiffs should bear the costs personally without recourse to the TAJ Estate's assets:

   i. The conduct of the Plaintiffs in connection with the Preliminary Issue made plain that they considered that they (and their siblings) were the true and sole beneficiaries of the TAJ Estate. In adopting that position, the Plaintiffs were in substance acting for their own benefit rather than for the benefit of the TAJ Estate:

   ii. The Plaintiffs were not seeking to bring a claim or advance a position which would increase the value of the TAJ Estate or defend against a claim or position which might decrease the value of the TAJ Estate, for the benefit of the fund generally. Instead, the Plaintiffs were acting in their own self-interest in their capacity as putative beneficiaries of the TAJ Estate. The Plaintiffs were attempting to obtain a declaration of the Court from which they would personally benefit. There was no benefit to the fund by the Plaintiffs seeking to establish themselves as beneficiaries of the TAJ Estate, nor would there have been even if the Plaintiffs had been successful in doing so.

   iii. The Plaintiffs should have sought legal advice instead of seeking to bypass the proper procedure and to remove one administrator, place a second supportive sibling as co-administrator, and to then simply deal with the TAJ Estate in the manner proposed.

10. The Intervenors submit that because the Plaintiffs have acted in substance for their own benefit rather than the benefit of the fund, there was sufficient basis for the court to make an order, pursuant to GCR O.62, r.6(2), that the Plaintiffs do not have recourse to the assets of the TAJ Estate in order to meet their liability to the Intervenors under the Costs Order, or in respect of their own costs of and incidental to the Preliminary Issue.

11. It was further submitted that the Second Plaintiff who provided a guarantee in connection with the due administration of the TAJ Estate, was nothing more than a surety, Because she was not a personal

representative, she should not be able to rely on any indemnity afforded to personal representatives or trustees under any rule or law, including that prescribed by GCR O.62, r.6(2). Counsel urged that the court should be careful not to permit an unsuccessful party to effectively avoid any out-of-pocket costs at the expense of the very fund they had (unsuccessfully) attempted to establish themselves as being entitled to.

12. Counsel referred to an offer of settlement made by the Intervenors which he urged should be considered by the court. Counsel argued that this offer had been unreasonably rejected by the Plaintiffs. Counsel submitted that the Plaintiffs had the benefit of seeing the Intervenors' submissions and properly advised, the Plaintiffs ought to have known their position concerning the Preliminary Issue was untenable and bound to fail. Counsel for the Interveners submitted that this is evidence of the Plaintiffs *"having engaged in the dispute concerning the Preliminary Issue on an adversarial basis, rather than approaching that issue in a reasonable manner in their capacity as (at least in the case of the First Plaintiff) personal representative of the TAJ Estate."*

13. Counsel submitted that consistent with the judgment of Kawaley J. ***In the Matter of the Estate of Brian Richard Selby Uzzell; Uzzell & Ors v Sam***[2]**,** this is a relevant factor to be taken into account in determining whether the Plaintiffs have acted in substance for their own benefit within the meaning of GCR O.62, r.6(2), and on counsel's view, it weighed in favour of an order depriving the Plaintiffs of an indemnity out of the fund.

14. Counsel for the Interveners further submitted that it would be unjust for the Plaintiffs to be permitted to have recourse to the assets of the TAJ Estate since

> *"..To do so would levy a significant cost (50% of the MEJ Administrators costs and 100% of the Plaintiffs costs) against the TAJ Estate, to the ultimate detriment of the MEJ Estate as sole beneficiary, in circumstances where the MEJ Administrators have done no wrong, and have done no more than successfully protect the MEJ Estate's interest as true beneficiary of the TAJ Estate."*

[2] Unreported, FSD 86/2020 (IKJ), 14 September 2020

> *"47. That would, in effect, penalize the MEJ Estate as a result of the Preliminary Issue having been argued. That outcome is not supported by law and is inherently unjust, and ought be avoided."*

The Plaintiffs' response

15. Counsel for the Plaintiffs submitted that generally the administrator of an estate is entitled to full indemnity for all their costs in carrying out the administration of an estate, unless they have breached their duties or acted unreasonably. Counsel submitted that while the court had ruled against the co-administrator and his co-applicant on the Preliminary Issue, it had not adjudged that they breached statutory duties or that they acted unreasonably.[3]

16. Counsel submitted that it was within the court's wide discretion in probate and trust claims to rule other than that the unsuccessful party pays the costs. She noted that the court's initial view of the matter that only 50% of the Interveners' costs should be met accepts that some of these special circumstances are present and applicable.

17. Counsel submitted that each case must turn on its own facts and that the Preliminary Issue was related to other serious concerns regarding the conduct of the co-administrator who has now resigned. On 05 March 2024 the Defendant filed an affidavit in which she resigned as co-administrator of the TAJ Estate. Counsel stated that the claim was justified and the position taken on the Preliminary Issues was based on the belief that there was an interesting legal question to be aired.

18. In response to the submission on behalf of the Interveners that the first-named Plaintiff was essentially self-dealing and acting unreasonably for his own benefit, and so was not seeking to do anything to benefit the estate but instead his objective was ultimately to enrich himself and the second-named Plaintiff, counsel stated that the question raised on the Preliminary Issue did not arise beforehand. At the time that it was raised the Plaintiffs took the view that the court should be concerned because of the manner in which the TAJ estate was being administrated. The issue raised was to ascertain the settled and true beneficiaries of that estate.

19. Counsel submitted that the court must also consider the beneficiaries' conduct when determining costs. Counsel referred to the following from ***Zoran Kostic v Sir Malcolm Chaplin et al***[4] stating that the first principle identified was relevant in this case.

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[4] [2007] EWHC 2909 (Ch)

> *"The two exceptions were stated as follows by Sir Gorell Barnes P in Spiers v English [1907] P 122 at 123:21*
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> *'In deciding questions of costs one has to go back to the principles which govern cases of this kind. One of those principles is that if a person who makes a will or persons who are interested in the residue have been really the cause of the litigation as case is made out for costs to come out of the estate. Another principle is that, if the circumstances lead reasonably to an investigation of the matter, then the costs may be left to be borne by those who have incurred them. If it were not for the application of those principles, which, if not exhaustive, are the two great principles upon which the Court acts, costs would now, according to the rule, follow the event as a matter of course. Those principles allow good cause to be shown why costs should not follow the event. Therefore, in each case where an application is made, the Court has to consider whether the facts warrant either of those principles being brought into operation.'"*

20. Counsel stated that at this juncture the Plaintiffs had no interest in pursuing the former co-administrator and the court must now determine how the proceedings were to continue. Counsel stated that the Plaintiffs have a real interest in completing the administration of the TAJ Estate and that the executor could now move with alacrity to do so, especially with the withdrawal of the Defendant. Because the Plaintiffs no longer wished to pursue any wrongdoing on the part of the Defendant the substantive claim would come to an end once the administration of the TAJ estate was completed. To this end the orders made on costs were appropriate and any other order would result in significant injustice to the current administrator who had brought this suit with proper justification.

21. Counsel for the Defendant adopted the submissions of counsel for the Intervenors. He reiterated that the Plaintiffs should not have sought the intervention of the court concerning the accounting or the Preliminary Issue.

Court's considerations:

22. The *Succession Act (2021 Revision)*, states at section 22

> *"The Court and the Court of Appeal have power to award costs and enforce the payment thereof, either out of the estate in controversy or against any litigant before such court by virtue of this Act."*

23. The usual rules in relation to costs in civil proceedings apply in contentious matters arising under *the Succession Act* by virtue of s.24 of the *Judicature Act (2021 Revision),* which expressly applies to "*administration of estates*" proceedings. It follows that "*costs follow the event*" under the *Grand Court Rules* (*GCR*) Order 62 applies in respect of contentious matters arising under the *Succession Act.*

24. Halsbury's Laws of England[5] states the following in relation to a personal representative's costs on administration of an estate:

> *"The general rule is that the costs of and incidental to all proceedings in both the High Court and the County Court, including proceedings relating to the administration of estates and trusts, are in the discretion of the court which has full power to determine by whom and to what extent the costs are to be paid. This general rule is subject to the proviso that a personal representative or trustee is entitled to an indemnity out of the relevant trust fund or estate for costs properly incurred, which may include costs awarded against the trustee or personal representative in favour of another party. Whether costs were properly incurred depends on all the circumstances of the case, and may, for example, depend on:*
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> 1. *whether the trustee or personal representative obtained directions from the court before bringing or defending the proceedings;*
> 2. *whether the trustee or personal representative acted in the interests of the fund or estate or in substance for a benefit other than that of the estate, including his own; and*
> 3. *whether the trustee or personal representative acted in some way unreasonably in bringing or defending, or in the conduct of, the proceedings.*
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> ...
>
> *In administration proceedings a personal representative who has acted properly is allowed his full costs of the proceedings as a matter of course, and in priority to the costs of all other parties. He is entitled to be allowed all costs properly incurred on an indemnity basis. This right to a full indemnity may, however, be modified if he has failed to adopt the normal disinterested and independent attitude proper to a trustee. In such a case part of his costs may be disallowed."*

[5] Halsbury's Laws of England, Volume 103 (2021), paragraph [1199]

25. These principles which are an exception to the general position that costs follow the event are reflected in *Grand Court Rules*, Order 62, rule 6(2):

> *"Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative, mortgagee, chargee or official liquidator the person shall be entitled to the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the fund and the Court may order otherwise only on the ground that the person has acted unreasonably or, in the case of a trustee, personal representative or official liquidator has in substance acted for the person's own benefit rather than for the benefit of the fund or the creditors as the case may be."*

26. One of the authorities referred to by counsel for the Interveners is the judgment of Kawaley J in ***In the Matter of the Estate of Brian Richard Selby Uzzell; Uzzell & Ors v Sam***[6]**.** The Learned Judge stated the following regarding costs and persons in representative positions:

> *"The Overriding Objective in the Preamble to the Grand Court Rules imposes a positive duty on civil litigants to conduct litigation in a "just, expeditious and economical way". Similar principles are expressly incorporated in GCR Order 62 rule 4(2). These overarching guiding principles require this Court to apply the fundamental costs principles in a consistent and predictable manner so litigants know where they stand. The costs discretion may in some respects be broad, but it is firmly constrained by certain parameters. Where sympathetic litigants such as the Defendant hold a representative office yet conduct proceedings in an unreasonable manner, Judges must steel themselves against the risk of compromising legal certainty and clarity through being "too full of the milk of human kindness."*[7]

27. The court also noted an approach where there is an allegation of the administrator acting for his own benefit:

> *"[R]eliance on the second limb of GCR Order 62 rule 6(2), acting "in substance, for his own benefit", does not necessarily require proof of misconduct which require a full inquiry to establish. In other cases, such as the present, it may be possible to summarily determine that an executor or trustee was clearly not acting in a representative capacity in relation to the relevant litigation, without recording a finding of misconduct capable of supporting removal for cause."*[8]

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[6] Unreported, FSD 86/2020 (IKJ), 14 September 2020
[7] At [27]
[8] At [8]

28. Counsel for the Plaintiffs insistence on maintaining the position that the property in the TAJ estate reverts to his estate upon the death of his spouse, his sole beneficiary, where the completion of the administration of TAJ estate did not occur prior to the death of his spouse, strongly influenced this court's decision that the Preliminary Issue was one that the court needed to pursue in this case before dealing with the removal summons. The outcome of the Preliminary Issue was relevant to the matters that had been raised in support of the summons for removal of the Defendant. Counsel for the Plaintiffs was adamant that it could strongly influence the distribution of the TAJ estate and that this was a matter with which the court should be very concerned.

29. It was obvious when the matter came to be heard that counsel for the Plaintiffs, whether through her own research or taking heed of what was revealed in the Interveners' submissions, was aware that her position on the issue had become less strong and was ultimately untenable. The legislation did not support the Plaintiffs' position. The Plaintiffs' legal submissions were without merit.

30. The Plaintiffs rejected the open offer of the Interveners made after written submissions had been filed. The legal position identified therein was one with which this court has ultimately found favour. The terms of the open offer: *"the Plaintiffs agree to a consent order providing that (a) the MEJ Estate remains the sole beneficiary of the TAJ Estate, (b) the administrators of the TAJ Estate would be removed and replaced with the MEJ Administrators, and (c) there would be no order as to costs."* As counsel for the Intervenors submitted: *"This letter put the Plaintiffs on notice that should the offer not be accepted, the MEJ Administrators would seek costs against the Plaintiffs personally, without recourse to the assets of the TAJ Estate, and on an indemnity basis."*

31. The rejection of the offer is a matter relevant to costs and the indemnification of the Plaintiffs from the TAJ Estate. I am mindful of the Plaintiffs' submission that the offer was found to be unreasonable in light of the unresolved position of the Plaintiffs' application to remove the Defendant as co-administrator.

32. The second-named Plaintiff was not a trustee of the TAJ Estate. As a surety to the application for administration of the estate of the second-named Plaintiff has no interest in the estate and no role in its distribution. Prima facie, the indemnity that may be enjoyed by an administrator does not extend to the second-named Plaintiff.

33. The matters relevant to the determination of the present issue at issue center on the Plaintiffs' approach to the Preliminary Issue and the wider administration obligations. The Plaintiffs were represented by

counsel from the onset. I accept that they may have believed or been advised that the law was on their side. It is because they were convinced of the correctness of their position that they do not appear to have properly considered the offer to resolve the litigation, to dispose of the Preliminary Issue and the administration of the estate. They could have been more cautious and conciliatory in their approach to this issue. Ultimately, the Plaintiffs pursuit of their position on the Preliminary Issue would, if they had been successful, be to their benefit. Their actions in pursuing the issue have resulted in the offer of settlement being ignored and the adverse cost order being imposed. I am not entirely satisfied that their actions were as selfish as the Interveners submit, that the Plaintiffs were only acting in their own self-interest in their capacity as putative beneficiaries of the Estate and not for the benefit of the fund. The court's position is reflected in the fact that the award of costs to the Intervenors was only 50%.

34. The distribution of the TAJ Estate is not complete. Counsel for the Interveners has highlighted that there is only one piece of property in the estate. The estate is modest. The court must consider whether costs should be taken from the estate where the Interveners have had to incur costs to defend against the Plaintiffs' actions with the result that the estate would be further whittled away by legal costs.

35. Taking these matters into account, this court finds that the Plaintiffs acted unreasonably in raising the matter that was ultimately determined as the Preliminary Issue. The unreasonableness of their position is found in the context of an argument that was without basis, merit or foundation in law and in the face of clear provision in the Succession Act regarding the entitlement upon an intestacy. This was not a case in which there was a need for judicial clarification. This was not a legislative provision that was ambiguous. That the Plaintiffs refused to consider the open offer in such circumstances, especially one which involved agreement that costs would not be sought by the Interveners is a further element of this court's finding of unreasonableness on the part of the Plaintiffs.

36. The Plaintiffs are not entitled to have recourse to the TAJ Estate's assets to meet their liability to pay 50% of the Intervenors' costs in connection with the Preliminary Issue nor are they entitled to have recourse to the TAJ Estate's assets to meet their own costs of and incidental to the Preliminary Issue.

The Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court