

**Judgment 51/2007**

**Colussi v (i) Investec Trust (Guernsey) Ltd and  
(ii) Serravallo – Royal Court (Civil Action File  
992) – 19 December 2007**

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**Royal Court Civil Rules, 1989 (Rule 48) – decision on Exceptions Déclinatoires  
handed down on 25 May 2007 (See Judgment 16/2007) – costs applications –  
principles to be applied**

**IN THE ROYAL COURT IN THE ISLAND OF GUERNSEY**

Civil 992

The 19th day of December, 2007 before Richard John Collas, Esquire, Deputy  
Bailliff; sitting alone.

Between:-

MARIA CRISTINA COLUSSI

Applicant

- and -

(1) INVESTEC TRUST (GUERNSEY) LIMITED

First Respondent

(2) ANGELO COLUSSI SERRAVALLO

Second Respondent

WHEREAS on the 6<sup>th</sup> day of November, 2007 THE  
COURT considered the application by the Second Respondent for recoverable costs, and  
heard thereon Advocates J.P. Greenfield and S.H. Davies, Counsel for the Applicant and  
Second Respondent respectively, and RESERVED JUDGMENT;

THE COURT this day handed down judgment in the  
terms attached hereto and MADE AN ORDER that the Applicant shall pay forthwith, on  
a recoverable basis, the Second Respondent's costs incurred in connection with the  
Exceptions Déclinatoires relating to the Share Claims AND THE COURT reserved costs  
in respect of the work related solely to the Trust Claims.

M A TOSTEVIN

Her Majesty's Deputy Greffier.

**IN THE ROYAL COURT OF GUERNSEY**

**ORDINARY DIVISION**

**In the matter of**

**The A & M C Trust dated 14 June 2001**

**Between:**

**MARIA CRISTINA COLUSSI**

**Applicant**

**-and-**

**(1) INVESTEC TRUST (GUERNSEY) LIMITED**

**First Respondent**

**(2) ANGELO COLUSSI SERRAVALLO**

**Second Respondent**

**COSTS JUDGMENT  
RE-EXCEPTIONS DECLINATOIRE**

**Judgment handed down: 19<sup>th</sup> December 2007**

**Before: Richard John COLLAS Esq., Deputy-Bailiff**

Advocate for Applicant:

Advocate J P Greenfield

Advocate for Second Respondent:

Advocate S H Davies

Advocate for First Respondent:

Advocate J M Wessels

(Did not appear at the costs' hearing)

**Cases and statutes referred to:-**

1. Rule 48 of the Royal Court Civil Rules 1989
2. In Re Elgindata Limited (no. 2) [1993] 1 All ER 232

**Introduction**

1. In a judgment handed down on 25 May 2007 I gave my decision on the *Exceptions Déclinatoires* raised by the Second Respondent. I upheld the Second Respondent's assertion that the Royal Court had no jurisdiction over the Share Claims as defined in the judgment, but I rejected his application to stay the hearing of the Trust Claims (as defined). I now deal with the costs of the *Exceptions Déclinatoires*.
2. The Trustee (the First Respondent) has made no application for costs at this stage and did not appear at the costs' hearing. No order was sought by either of the other parties in respect of the costs in connection with the *Exceptions Déclinatoires* concerning the Trust Claims.
3. The issue before me is that Advocate Davies seeks an order that the Second Respondent's recoverable costs in connection with the Share Claims be paid by the Applicant whilst Advocate Greenfield, on behalf of the Applicant, submitted that the most practical and appropriate Order is that there be no order as to costs or, alternatively, that costs be costs in the cause.

## The Law

4. Both Counsel were agreed that Rule 48 of the Royal Court Civil Rules 1989 gives the Court a broad discretion when making costs orders at any stage of the proceedings although, as always, the discretion must be exercised in a judicial manner.
5. Advocate Davies referred me to the approach adopted by the English courts prior to the introduction of the Civil Procedure Rules and in particular to *In Re Elgindata Limited (no. 2) [1993] 1 All ER 232* and the judgment of Nourse L.J. at page 1214:

*“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.”*

6. I am satisfied that the same principles are applicable in Guernsey and should guide the Royal Court in deciding who should bear responsibility for the cost of proceedings. I am also satisfied that the same principles apply at any interlocutory stage, as well as the final stage, of Royal Court proceedings. I recognise that at an interlocutory stage there is a greater range of orders available to the Court as the Court can defer either until a later stage or until the conclusion of the proceedings both the consideration of any costs application and also the payment of any costs ordered to be paid.

## Counsels’ submissions

7. Advocate Davies argues that having been successful in his *Exceptions* regarding the Share Claims, the Second Respondent should recover his costs and should not be denied them by reason of having failed in his submissions regarding the Trust Claims. He says that any additional work required in connection with the *Exceptions Déclinatoires* that related specifically to the Trust Claims was not significant and points out that the only legal authority relied upon was also relevant to the Share Claims.
8. In arguing that there should be no order for costs at this stage or, alternatively, that costs be in the cause Advocate Greenfield submits there should be an investigation of the time spent in preparing, and arguing, the successful and the unsuccessful parts respectively of the *Exceptions Déclinatoires* before apportioning any costs order if it is appropriate and practicable to do so.
9. Applying that approach to the *Exceptions Déclinatoires*, Advocate Greenfield argues that the majority of the Second Respondent’s written argument dealt with the Trust Claims whereas the Applicant devoted the majority of her written argument to the Share Claims. He estimated that 80% of the hearing

and a similar percentage of my judgment were devoted to the *Exceptions* that related to the Trust Claims.

### My decision

10. Without carrying out a detailed exercise it is impossible to say precisely how much time has been spent on each aspect and I am concerned that at taxation a disproportionate amount of work would be involved in identifying the time spent solely on the Share Claims separately from the time spent on the Trust Claims and as distinct from the time spent dealing with aspects of the *Exceptions* that relate to both Claims.
11. Advocate Davies has argued that any such difficulty could be resolved during the taxation process and should not deprive his client of costs to which he would otherwise be entitled.
12. We are very fortunate to have available the services of Lieutenant Bailiff Haworth who is very experienced in matters of taxation but, even so, I do not wish to overburden the taxation process unnecessarily. Also, I am reluctant to make an order that may involve the parties in significant work and, therefore, further expense in apportioning the work in order to calculate the costs.
13. I have considered deferring the making of any Order for costs until the conclusion of the proceedings. However, I do not consider that is the appropriate Order to make in the light of my decision that the Share Claims are not justiciable in Guernsey. The Second Respondent's costs relating to the Share Claims should be recoverable whatever the outcome of the Trust Claims.
14. I am satisfied that it is appropriate to make an order at this stage. The difficult issue for me has been to decide what order to make concerning the costs incurred on those aspects of the *Exceptions Déclinatoires* that relate to, or are common to, both the Trust Claims and the Share Claims. I will call them the "common costs".
15. It would be unfair to the Second Respondent to make no order in respect of the common costs especially if the Applicant is eventually successful on the Trust Claims and the Second Respondent is ordered to pay her costs on those Claims. On the other hand, the Applicant would argue that it would be unfair on her to pay all the common costs if she ultimately succeeds on the Trust Claims.
16. I have to bear in mind the third of the principles set out in *Elgindata* in the quotation above. The Second Respondent should not be denied his costs on the Share Claims *Exceptions* simply because he raised *Exceptions* on the Trust Claims.
17. I have anxiously considered what is the fairest order to make in these circumstances. I take into account that there will be costs savings to both parties in Guernsey in not having to continue to deal with the Share Claims in this jurisdiction. After very careful consideration I have decided that I should recognise the fact that it was appropriate to raise *Exceptions Déclinatoires* in relation to the Share Claims and consequently that the Second Respondent

should not be deprived his costs in relation thereto including the common costs.

## **Order**

18. Accordingly I order that the Applicant will pay forthwith the Second Respondent's costs, on a recoverable basis, incurred in connection with the *Exceptions Déclinatoires* relating to the Share Claims. That includes the work that related solely to the Share Claims plus the work that was common to both the Share Claims and the Trust Claims and excludes work that related solely to the Trust Claims. In respect of the work that related solely to the Trust Claims, I order that costs be reserved.