

Costs judgment as to whether or not the costs of the appeal ought to be borne by the Trust fund
[2020]GCA068

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION – APPEAL NO.539

24 July 2020

Before:

**Clare Montgomery QC, President
George Bompas QC
Helen Mountfield QC**

Between:

D

Appellant

-v-

THE TRUSTEES

(“Applicants” or “Trustees”)

-and-

(1) A

(2) B

(3) C

**(5) – (12); (15)-(19) THE MINOR AND UNBORN BENEFICIARIES AND THEIR
REPRESENTATIVES**

(13) THE INCUMBENT PROTECTOR

(“Respondents”)

IN THE MATTER OF

THE TRUSTS (GUERNSEY) LAW 2007 (AS AMENDED)

-and-

**IN THE MATTER OF
THE R TRUST**

**Advocate Paul Richardson for the Appellant D
Advocate Simon Davies for the First Respondent
A and the Second Respondent B
Advocate A D Laws for the Second Respondent's Minor and Unborn Beneficiaries
Advocate Jeremy Wessels for the Respondent C
Advocate Paul Richardson for the Respondent D
Advocate C J Hay for the Fourth Respondent's Minor and Unborn Beneficiaries
Advocate Alison Ozanne for the trustee Respondents
Advocate Konrad Friedlander for the Respondent The Incumbent Protector**

COSTS 4TH RESPONDENT APPEAL

1. For the reasons explained in the judgment delivered by Mountfield JA on 24 July 2020, we consider this appeal to be both hopeless and hostile. We do not accept the submission by Advocate Richardson that it was bought for the benefit of the trust fund or to limit the costs to the Trust occasioned by the construction appeal. Nor do we accept the submission by Advocate Davies that the 1st and 2nd Respondents have not contributed to the costs in this case.
2. Those supporting the construction appeal as well as this appeal have pursued the appellate litigation in this case in a manner that is hostile (at least) to the Trustees and the Incumbent Protector. Their conduct of this appellate litigation does not fall within the category of cases identified in *In re Buckton* [1907] 2 Ch. 406, where costs should come out of the trust fund. The application by Advocate Richardson on behalf of the 4th Respondent and the 4th Respondent's Minor and Unborn Beneficiaries and by Advocate Davies on behalf of the 1st and 2nd Respondents for the costs to be borne by the Trust is therefore refused. Their costs must be borne by them personally.
3. The pursuit of the appeal was at all times likely to be academic and was rendered wholly academic by our judgment in the construction appeal. The points raised on the appeal were not worthy of real consideration. On this basis we see no reason why the trust fund should bear the costs of the Trustees or the Incumbent Protector. The Appellant must pay the recoverable costs of the Trustees and the Incumbent Protector, on the standard basis. They will still be entitled to be indemnified from the trust fund as to any costs not recovered from the Appellant.
4. The remaining Respondents' costs should be dealt with in the administration of the trust and paid from the trust fund.
5. At the request of the Trustees there is liberty to apply in the event of difficulty in giving effect to this judgment.