In The Supreme Court of Bermuda

CIVIL JURISDICTION

2018: No. 18

BETWEEN:-

(1) WONG, WEN-YOUNG (WINSTON)
(2) WONG, RAY TSENG (RILEY)
(an infant by his Next Friend, Grace Tsu Han)

Plaintiffs

-and-

(1) GRAND VIEW PRIVATE TRUST COMPANY LIMITED
(2) WANG, RUEY HWA (SUSAN)
(3) WONG, WEN-YUAN (WILLIAM)
(4) WANG, RUEY-YU (SANDY)
(5) WANG, WENG TSAO (WILFRED)
(6) WANG, VEN-JIAO (TONY)
(7) LIN WANG, HSUEH-CHING (SARAH)
(8) WANG, HSUEH-MIN (JENNIFER)
(9) WANG, HSUEH-KUANG (RACHEL)
(10) WONG, HSUEH LING (CHARLENE)
(11) WANG, HSIUEH HONG (CHER)
(12) WANG, WEN HSIANG (WALTER)

Defendants

AND

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION

2023: No. 6

BETWEEN:-

(1) WANG, VAN-JIAO (TONY)

Plaintiff

-and-

(1) WONG, WEN-YOUNG (WINSTON)
(2) WONG, RAY TSENG (RILEY)
(an infant by his Next Friend, Grace Tsu Han)
(3) GRAND VIEW PRIVATE TRUST COMPANY LIMITED
(4) WANG, RUEY HWA (SUSAN)
(5) WONG, WEN-YUAN (WILLIAM)
(6) WANG, RUEY-YU (SANDY)
(7) WANG, WENG TSAO (WILFRED)
(8) LIN WANG, HSUEH-CHING (SARAH)
(9) WANG, HSUEH-MIN (JENNIFER)
(10) WANG, HSUEH-KUANG (RACHEL)
(11) WONG, HSUEH LING (CHARLENE)
(12) WANG, HSIUEH HONG (CHER)
(13) WANG, WEN HSIANG (WALTER)

Defendants

RULING (COSTS)

Payment of all costs out of the trust fund, whether application is necessary for the administration of the trust, whether costs of all parties are necessarily incurred for the benefit of the estate regarded as a whole, whether conduct was unreasonable

Date of Written Submissions:27 August, 10 September 2025
Date of Ruling: 10 July 2026

Appearances: **Elspeth Talbot Rice KC, XXIV Old Buildings, Lincoln's Inn, London, Rod S. Attride-Stirling, ASW Law Ltd, for Winston Wong and Riley Wong**

Richard Wilson KC, Serle Court, London, Fozeia Rana-Fahy, MJM Ltd for Tony Wang

Stephen Midwinter KC, Brick Court Chambers, London, Oliver Mackay, Carey Olsen Bermuda Limited, for Susan Wang, Sandy Wang, William Wong and Wilfred Wang

Keith Rowley KC, Radcliffe Chambers, Lincoln's Inn, David Kessaram, Cox Hallett Wilkinson Limited for Sarah Wang, Jennifer Wang, and Rachel Wang

Kevin Taylor, Walkers (Bermuda) Limited for Charlene Wang, Cher Wang and Walter Wang

RULING of Mussenden CJ

Introduction

2018: No. 18

1. In February 2018, Winston[1] commenced the 2018: No. 18 proceedings by way of a Specially Indorsed Writ of Summons, subsequently amended, against Grand View Private Trust Company Limited ("**Grand View PTC**") in relation to the Global Resource Trust No. 1 ("**GRT**"). Winston sought, *inter alia,* the appointment and supervision of a new trustee of the GRT by the Court.

2023: No. 6

2. In January 2023, Tony commenced the 2023: No 6 proceedings by way of an Originating Summons, subsequently amended, against Grand View PTC and others in relation to the GRT. Tony sought, *inter alia*, the appointment of a new trustee of the GRT by the Court.

Consolidation and Joinder

3. By an order dated 28 September 2023, both actions would be tried at the same time. Over time, various parties have been added to the proceedings.

Appointment of a Trustee for GRT

4. On 24 July 2025, I heard submissions from the parties in respect of the appointment of a trustee for the GRT. In a Ruling dated 13 August 2025 (the "**Trustee Ruling**"), I exercised my statutory jurisdiction to appoint Hamilton Trust Company Limited ("**Hamilton**") as the trustee for GRT. In that Trustee Ruling, I invited written submissions on costs to be determined on the papers.

5. In this Costs Ruling, I use the following defined terms:
    a. Tony and Winston and Riley (the "**Applicant Parties**");
    b. Susan, William, Sandy and Wilfred (the "**Directors**") with Sarah, Jennifer and Rachel (together the "**Opposing Parties**");

[1] The individual parties to the litigation are all members of the Wang/Wong family and have conventionally been referred to in the Bermuda litigation by their western-style individual names. That convention is adopted here and, as ever, no disrespect is intended. 'Wang' and 'Wong' are different transliterations of the same Chinese family name, the correct pronunciation of which lies (to western ears) somewhere between the two.

c. R&H Trust Co (Bermuda) Limited ("**R&H**"); and

d. Butterfield Trust (Bermuda) Limited ("**Butterfield**").

The Law

6. In *Wong v Grand View Private Trust Company* [2022] SC (Bda) 60 Com, Kawaley AJ set out the legal principles in respect of determining orders for costs in trust matters, citing the leading general authority on this issue of *Re Buckton* [1907] 2 Ch 406 and that it applied in Bermuda law. In that case [at 414-15], Kekewich J drew the distinction between on the one hand, applications made to construe the trust instrument and ascertain the beneficiaries' interests, or "*ask to have some question determined which has arisen in the administration of the trusts*", whether the application is made by the trustee (Buckton Category 1), or a beneficiary (Buckton Category 2), and on the other hand, applications "*made by a beneficiary who makes a claim adverse to other beneficiaries*" (Buckton Category 3). He stated:

> *"In a large proportion of the summonses adjourned into Court for argument the applicants are trustees of a will or settlement who ask the court to construe the instrument of trust for their guidance, and in order to ascertain the interest of the beneficiaries, or else ask to have some question determined which has arisen in the administration of the trusts. In cases of this character I regard the costs of all parties as necessarily incurred for the benefit of the estate, and direct them to be taxed as between solicitor and client and paid out of the estate. ....*
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> *There is a second class of cases differing in form, but not in substance, from the first. In these cases it is admitted on all hands, or it is apparent from the proceedings, that although the application is made, not by trustees (who are respondents), but by some of the beneficiaries, yet it is made by reason of some difficulty of construction, or administration, which would have justified an application by the trustees, and it is not made by them only because, for some reason or other, a different course has been deemed more convenient. To cases of this class I extend the operation of the same rule as is observed in cases of the first class. The application is necessary for the administration of the trust, and the costs of all parties are necessarily incurred for the benefit of the estate regarded as a whole.*
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> *There is yet a third class of cases differing in form and substance from the first, and in substance, though not in form, from the second. In this class the application is made by a beneficiary who makes a claim adverse to other beneficiaries, and really takes advantage of the convenient procedure by originating summons to get a question determined which, but for this procedure, would be the subject of an action commenced by writ, and would strictly fall within the description of litigation. It is often difficult to discriminate between cases of the second and third classes, but when once convinced that I am determining rights between adverse litigants I apply the rule which*

ought, I think, to be rigidly enforced in adverse litigation, and order the unsuccessful party to pay the costs. …" [emphasis added]

7. In respect to applications for the appointment of a new trustee, *Lewin on Trusts 20th Ed* at [48-056] states:

> *"… the court as a matter of practice might be expected to order the costs of any trustees who are parties to the application, as well as beneficiaries, to be paid out of the trust fund, in those cases where the application is for the benefit of the estate, by analogy to Buckton categories (1) or (2). Accordingly, in general the cost of applications for the appointment of new trustees by the court under section 41 of the Trustee Act 1925 [the English equivalent of section 31], being for the benefit of the whole estate, come out of the trust fund."*

8. In respect of unsuccessful beneficiaries and unreasonableness, in *Lewin on Trusts 20th Ed* at [48-041] it states:

> *"But it does not necessarily follow that, because the proceedings come within Buckton categories (1) or (2), an order for cost out of the trust fund will be made in favor of unsuccessful beneficiaries. Since beneficiaries are awarded costs by analogy to the trustees' right of indemnity, beneficiaries are subject to the same requirement of reasonableness as applies to trustees."*

9. In respect of a beneficiary who has put forward a view in a robust manner, that has not found favour with the Court, in *Wong*, Kawaley AJ stated [at 9]:

> *"53. Third, the fact the beneficiary or third party presents the case robustly will not take it out of Buckton 2. That is apparent from:*
>
> *53.1 Hellman J's observation in the Beddoe costs judgment … at [20], equating as he did P with a beneficiary for the purposes of the Buckton analysis, that 'even strong opposition by the beneficiary does not in itself amount to acting unreasonably';*
>
> *53.2 The recent observations of the Jersey Royal Court in Re Erinvale PTC Ltd [2022] JRC 076 at [34]: 'I agree that Advocate Sinel put forward the Second Respondent's case in an aggressive manner, consistent it might be felt with his style of advocacy, and certainly at times the proceedings felt hostile, but that does not justify my placing Erinvale's Representation into category (3) of Buckton. He was putting forward views that were genuine and passionately held by the Second Respondent.'"*

10. In respect of unreasonable conduct by a beneficiary, in *Green v Astor* [2013] 6 Costs L.O. 911, [2013] EWHC 1857 (Ch) at [54], Roth J stated:

"54 … Where unreasonable conduct by a beneficiary is responsible for generating substantial costs on the part of a trustee or personal representative as regards an application to the court, it is appropriate that the burden of those costs should be borne by that beneficiary and not fall on the trust or estate and thus the beneficiaries as a whole.

56. Although in form an application that comes within category (1) of Buckton, I do not think it falls neatly within Kekewich J's tripartite classification. It has far more the character of hostile litigation, in which the other individual beneficiaries support the position of the personal representative, who has faced sustained hostility and opposition from the one beneficiary who has opposed this claim. Having regard to the overall justice of the case, I do not regard this as one where the costs should fall on the estate, and thus be at the expense of all the beneficiaries. The appropriate order, in my judgment, is that the costs referable to the second head of relief should be paid by Mr Astor."

11. Also, in respect of unreasonable conduct by a beneficiary and the overall justice of the case, in *Aslam v Seeley* [2025] EWHC 24 (Ch); [2025] 1 P. & C.R. DG22 (10th January 2025), Master Brightwell stated:

"38. I take from this the following two propositions. First that, where a claim or an application by a trustee or personal representative is necessitated by the unreasonable conduct of a beneficiary, that beneficiary may be ordered to pay some or all of the costs incurred by the claimant even though prima facie they are costs which would generally be payable out of the estate pursuant to the indemnity of the trustee or personal representative. And, secondly, that conduct within the litigation itself can justify a similar approach. The purpose of this approach is to protect the interests of other beneficiaries from costs which have not been incurred for the benefit of the estate, in order to respond to unreasonable conduct on the part of another beneficiary. Roth J made clear that he was considering the overall justice of the case, and that the court continues to exercise a discretion in order to do justice between the parties."

12. In respect of the unfairness of the estate bearing the costs when a beneficiary has acted unreasonably, in *Daley v Hodges* [2023] EWHC 3397 (Ch) at [47], Shuman CM stated:

"It does seem to me that the claimant has contributed to a greater proportion of the issues and the amount of work that the substituted personal representative had to do for the purposes of bringing the application to court and coming to court to determine the directions. Indeed, as I have said, simply providing for the costs to come out of the estate generically would be unfair and would not reflect the conduct of the claimant in increasing costs in respect of this application." [emphasis added]

Submissions on behalf of Susan, Sandy, William and Wilfred (Carey Olsen)

13. Counsel (Mr. Midwinter KC and Mr. Mackay) submitted that the costs of the Application should be paid from the GRT on an indemnity basis, to be taxed if not agreed. The reasons for such a suggested costs order were as follows:
    a. An application for the appointment of a trustee pursuant to section 31 of the trustee Act 1975 ("**Section 31**") is not ordinarily adversarial litigation but is an application to determine a question in respect of the administration of the trust, where it is appropriate to hear and consider the views of all the beneficiaries.
    b. The approach in respect of costs for this kind of application is that they are to be paid out of the trust estate, unless any beneficiary has acted unreasonably, in which case a costs order against that beneficiary may be appropriate.

14. Counsel submitted that the fact that a beneficiary has put forward a view that has not found favour with the Court is no reason to deprive it of its entitlement to an indemnity from the trust estate, noting that even 'strong opposition' by a beneficiary to the position of other parties, even if presented in a 'hostile' or even 'aggressive' manner, does not detract from the beneficiary's entitlement to an indemnity where the question at issue is as to the administration of the trust. Counsel submitted that each of the beneficiaries put before the Court their view as to the best course to be adopted for the due administration of the GRT, noting that it was not 'hostile litigation' but an application concerned with the due administration of the trust, analogous to a *Re Buckton* category (2) case. Thus, the standard approach should be applied.

15. Counsel submitted that it was entirely appropriate and not unreasonable for the Directors to seek and put before the Court a proposal for the administration of the trust from Butterfield so that the Court could consider it before coming to a decision, in effect enabling the Court to test and consider Hamilton's proposal on a more significantly informed basis. Further, it was appropriate and reasonable for the Directors to indicate that their view was that Butterfield was the best of the candidates for the administration of the trust as a whole, noting that they made it very clear that they did not object to the appointment of Hamilton or R&H.

16. Counsel submitted that the suggestion of Butterfield as a potential candidate was supported by other beneficiaries including by Winston and Riley until very late in the day, noting that at the hearing they did not suggest that they had any actual objection to Butterfield. Counsel submitted that the Ruling suggested that the Court also considered Butterfield to be a suitable candidate, and thus to criticise and penalise in costs those beneficiaries who proposed one suitable candidate rather than another suitable candidate would be arbitrary and unfair, posing the question whether the Applicant Parties would have agreed to pay the costs of the application if Butterfield had been the chosen trustee.

17. Counsel submitted that a large part of the costs incurred by all parties involved interviewing the various candidates, obtaining proposals from them and considering and putting before the Court the rival proposals for consideration, a process necessary in any event for the Court to discharge its duty under Section 31, noting that the Applicant Parties continued to put forth both R&H and Hamilton as candidates at the hearing until pressed by the Court to indicate a preference. Thus, putting forward a range of options was appropriate.

18. Counsel submitted that what made the hearing feel contentious was Tony's conduct in baselessly and unpleasantly insinuating that there was something untoward or inappropriate in Butterfield being put forward as a candidate, or that Butterfield had provided an affidavit to the Court setting out the details of its proposal – such insinuations being rejected by the Court. Thus, Tony had put forward no valid or reasoned objection to Butterfield as a candidate at all, thus it was Tony who could be criticized for having acted unreasonably or inappropriately. Further, there was no hostility in the Directors' suggestion that Butterfield was the best of the potential candidates as they had no financial interest in the issue and they were not looking for a win at the expense of other beneficiaries.

Submissions on behalf of Sarah, Jennifer and Rachel (Cox Hallett Wilkinson (CHW))

19. Counsel (Mr. Rowley KC and Mr. Kessaram) submitted that the Court should make an order on well-established principle, that the costs of all parties to the Application are paid from the GRT on an indemnity basis to be taxed, if not agreed. This is on the basis that an application to the Court was necessary in order for the Court to exercise its discretionary jurisdiction under Section 31 in that: (i) the Court had to be satisfied that it was expedient

to exercise that statutory jurisdiction for which an application to Court and hearing of the application was necessary; and (ii) the Court found [at paragraph 36 of its Ruling] that "*each proposal was very informative and of immense assistance to the Court*" in determining which trustee was best suited to the GRT. Thus, Counsel submitted that the application for the appointment of a trustee of the GRT was an administrative application falling within the general principle that costs of all parties for such applications are ordered to be paid from the trust fund. Further, counsel submitted that the Court should be mindful of the important statement of the Court of Appeal in *St. John's Trust Company (PVT) Ltd v Medlans (PTC) Ltd* [2021] Bda LR 121 (referred to by this Court as helpful guidance in the Trustee Ruling at paragraph 22) where the Court of Appeal held as follows:

> *"56. It is also to be emphasized that the dispute enjoined in the Administration Proceedings is not ordinary adversarial litigation: see again, for instance The Pensions Regulator v Dalriada at [28]- [30]. And, from Schumacher v Clarke [2019] EWHC 1031 (Ch) per Chief Master Marsh at [18] in terms which this Court is content to approve and adopt: "The jurisdiction is quite unlike ordinary inter partes litigation in which one party, of necessity, seeks to prove the facts (of) its cause of action against another party."*
>
> *58. The procedure to be adopted in trust administration proceedings is in the discretion of the Court and informed by the interests of the beneficiaries. The Court proceeds in a pragmatic way. This will mean avoiding what may fairly be regarded as an expensive and protracted battle, …"*

20. Counsel submitted that even in construction summonses required to determine the meaning of the trust instrument and interests of the beneficiaries thereunder, on which beneficiaries are arguing against each other, each for the interpretation that maximises their financial interests, the cost of all parties are paid out of the trust fund. This includes the costs of the beneficiary who loses the argument, because the application was made to enable the trust to be administered, unless the Court found that a beneficiary conducted himself unreasonably and thereby caused costs to be unnecessarily incurred, which may be the subject of an adversarial order.

21. Counsel submitted that the appointment of a trustee is an administrative matter because a trust requires a trustee for it to be administered, making reference to my Ruling [at paragraph 33] that it was expedient for the Court to make an order appointing a new trustee

for the GRT, which had been without a trustee for over 20 years. Thus, the costs of appointment of a new trustee are ordered to be paid from the trust, both outside Court and where, as here, an application to the Court is necessary. Counsel submitted that it cannot be said that Sarah, Jennifer and Rachel have conducted themselves unreasonably as it was reasonable for them to be joined because they are interested in the best trustee appointment, and accordingly neither Tony nor Winston opposed their joinder. Further, the arguments on their behalf were not unreasonable, where the Court heard arguments on both sides, with equality of arms (two King's Counsel on each side) appropriate for a trust of this size, which enabled the Court to reach a decision with the benefit of rational debate, and was plainly in the interests of the trust as a whole.

22. Counsel submitted that there was an objective nature to the application in the best interests of the trust as a whole, in particular for many beneficiaries in subsequent generations (including unborns) who were not before the Court. Thus, the Court had the comfort of knowing, in the interests of the trusts as a whole, that a trustee has been selected with the benefit of evidence filed by all the parties and counsel's submissions. Counsel submitted that Sarah, Jennifer and Rachel did not make any unreasonable allegation against any party nor against any of the trustee candidates. Further, their skeleton argument provided the correct analysis of the law and appeared to have been helpful in providing the roadmap of the capabilities the Court looked for in determining objectively which of the three trustee candidates was best suited to the requirements of the GRT. Thus, a Court application was always necessary in order for the Court to exercise its administrative jurisdiction under Section 31, which should satisfy the Court, in the interests of all beneficiaries, before the Court or not, that a trustee has been carefully considered and appointed which in the Court's objective view is best suited to the trust as a whole. On that basis, the costs of Sarah, Jennifer and Rachel and all parties should be paid out of the trust fund to be assessed on an indemnity basis, to be taxed if not agreed.

Submissions on behalf of Winston (ASW)

23. Counsel (Ms. Talbot Rice KC and Mr. Attride-Stirling) submitted that: (i) Tony had suggested Hamilton and R&H; (ii) Winston and his siblings (Margaret, Charlene, Cher and Walter) and grandson Riley all supported the appointment of Hamilton or R&H (with Winston and Riley expressing a preference for Hamilton at the hearing, as did Tony); and (iii) Tony's siblings, Tammy and Janis, also supported the appointment of Hamilton or R&H.

24. Counsel submitted that the Directors, rather than engage with suggested candidates or meeting any of them, simply made their own different suggestion, namely Butterfield and insisted on it. They note that Sarah, Rachel and Jennifer supported the Directors by submitting a 33-page skeleton argument and appearing at the hearing by King's Counsel, when there was no need to have done so. Thus, it followed that the Opposing Parties were wrong to not even have considered Hamilton as the new trustee for the GRT. Thus, had they done so, and agreed that Hamilton was best suited to executing the GRT and should be appointed, then none of the costs of and occasioned by the hearing on 24 July 2025 would have been incurred.

25. Counsel submitted that it would be unfair for the parties' costs to be borne by the GRT and would not reflect the unreasonable conduct of the Opposing Parties in failing to engage with the candidates proposed by Tony, thus incurring the costs. They submitted that the correct costs order is an order that the Opposing Parties do pay the Applicant Parties' costs of and occasioned by the hearing on 24 July 2025 to be taxed on the standard basis if not agreed, with any shortfall between what they recover from them and what they spent being met by the GRT. Alternatively, if the Court was not prepared to make such an order, then the Applicant Parties' costs should be indemnified out of the GRT, because their costs were incurred for the benefit of the GRT, as they resulted in the best candidate, Hamilton, being appointed trustee, but that the Opposing Parties should not benefit from any such order and should be left to bear their own costs.

26. Counsel made reference to *Re Buckton* [1907] 2 Ch 406 where there was a second class of cases where an application could be made by a beneficiary because of some difficulty of construction or administration which would have justified the application and the costs of all parties are necessarily incurred for the benefit of the estate regarded as a whole. Ms. Talbot Rice submitted that those circumstances in respect of this matter were not present as the costs of the Opposing Parties were not "*necessarily incurred for the benefit of the estate regarded as a whole*". Further, counsel submitted that there should be no question of Sarah, Rachel and Jennifer's costs being borne by the GRT as there was no need for them to take part at all in the hearing as they were simply supporting the Directors' position, for which purpose a letter of support was all that was necessary, as was done by Margaret, Charlene, Cher and Walter, Diana and Lora, and Tammy and Janis. Thus, an appearance by King's Counsel and a lengthy skeleton argument was disproportionate to the contained nature of the issue to be determined and to their role. Thus, it would be unfair to Winston's family's and Tony's family's interests if the GRT fund was burdened with their costs.

Submissions on behalf of Tony (MJM)

27. Counsel (Mr. Wilson KC and Ms. Rana-Fahy) submitted that as the Applicant Parties' Application was successful as against the Opposing Parties, the appropriate cost order is that the Opposing Parties should pay the costs of the Applicant Parties. They noted that the Applicant Parties' costs should *prima facie* be paid out of the GRT on the basis that the application falls within the scope of *Re Buckton* Category 2. However, they submitted that the position adopted by the Opposing Parties was unreasonable, on the basis that they had no reasonable basis for opposing any, let alone all, of the alternative replacement trustees proposed by Tony. Thus, they should be made liable for the Applicant Parties' costs.

28. Counsel submitted that the determination of this matter should be considered in the light of the conduct of the Directors and the conclusions of the Privy Council that the Directors acted for an improper purpose and had failed to obtain any form of direction from the Court. Further, the Court should consider that the Directors should have acted reasonably in response to attempts by Tony to get the GRT back on an even keel by the appointment of

a new trustee in whom all the beneficiaries could have trust and confidence. However, they did not do so, although Tony had sought to break the impasse over the trusteeship by identifying multiple suitable candidates, doing so in an entirely transparent manner as set out in affidavit evidence. They noted that any reasonable reader would have concluded that there was no proper basis for objecting to the shortlist proposed by Tony, and the only reasonable response would have been to select one of those candidates. However, the Directors sought to impose a single possible trustee upon the Applicant Parties, which in all the circumstances was unreasonable conduct.

29. Counsel submitted that the effect of the Opposing Parties' opposition has been a delay in over a year in the administration of the GRT and substantial unnecessary costs. Further, the Opposing Parties did not attempt to argue that any of the candidates proposed by Tony were in any way unsuitable to act as trustee of the GRT. Thus, it was not a case where the Court was assisted by arguments as to the merits of the application, instead, the Opposing Parties sought to procure the appointment of their alternative candidate. Further, the only reasonable response to the Application would have been to engage in the selection process that Tony had started and agree to one or more of Tony's proposed candidates, both of whom the Opposing Parties have accepted were suitable candidates. Thus, the Opposing Parties' response was unreasonable.

30. Counsel submitted that the appropriate outcome is that *prima facie* the Opposing Parties pay the Applicant Parties' costs to be assessed on the standard basis if not agreed, noting that there was no reason why the GRT should be depleted in meeting costs which could have been avoided altogether if the Opposing Parties had acted reasonably. In respect of any shortfall between the assessed costs to be paid the Opposing Parties, the Applicant Parties should be entitled to the difference between standard and indemnity costs from the GRT. In all circumstances, no order should be made for the Opposing Parties' own costs in view of their unreasonable conduct.

Analysis

31. In my view, the costs of all the parties should be paid out of the GRT to be assessed on an indemnity basis, to be taxed if not agreed, for several reasons.

32. First, as I stated in the Trustee Ruling, the GRT had been without a trustee for over 20 years. Thus, as I stated in paragraph 33 of the Trustee Ruling, "*It is not in dispute amongst the parties that, pursuant to section 31(1) of the Trustee Act 1975, it is expedient for the Court to make an order appointing a new trustee for the GRT*." I agree with CHW's submission that the appointment of a trustee is an administrative matter because a trust requires a trustee for it to be administered. To my mind, it follows that the application was necessary for the administration of the trust, and for the benefit of the whole estate, and thus, following *Re Buckton*, it falls within *Re Buckton* Category 2, wherein the costs of all the parties should be paid out of the GRT on an indemnity basis.

33. Second, I stated at paragraph 34 of the Trustee Ruling that, following *St. John's Trust Company (PVT) Ltd v Medlands (PTC) Ltd* [2021] Bda LR 121, the Court of Appeal had stated that the Court should proceed in a pragmatic way. Thus, I was not prepared to reject any arguments because of who had proposed them, rather the Court's focus was to assess the candidates. Thus, I disagree with MJM's submissions that this matter should be considered in the light of the conduct of the Directors and the conclusions of the Privy Council. In paragraph 35 of Trustee Ruling, I agreed with the parties that Hamilton, R&H and Butterfield are all highly qualified independent and professional Bermuda trustee companies with a range of resources at their disposal. I also took the position of agreeing with Counsel that no submissions were made to cast aspersions against any of the three proposed candidates. In paragraph 36, I found that each proposal was very informative and of immense assistance to the Court. I then carried out an assessment of the candidates, selecting Hamilton to be the trustee at the end of the exercise.

34. Third, in light of my findings and approach as set out in the preceding paragraph, I do not find that the conduct of the Opposing Parties was unreasonable. I rely on Kawaley AJ in *Wong*, where he stated that the fact that a beneficiary or third party presents the case robustly will not take it out of Buckton 2. In my view, the Opposing Parties carried out a

full assessment of a prominent trustee company, Butterfield, and made submissions for their selection. I find that both of those tasks were performed satisfactorily and even robustly. Further, in considering *Green v Astor*, I did not find the presentation of the case to be in any way hostile. As set out in the preceding paragraph, counsels' submissions made clear that no aspersions were being cast on any of the candidates. Also, I reject the criticisms that the Opposing Parties were unreasonable because they failed to engage with the recommendations for R&H and Hamilton. In my view, they were not obliged to, just as there was no obligation on the Applicant Parties to engage with the recommendations for Butterfield.

35. Fourth, I do not take the view that because a party was unsuccessful, they should not have their costs paid out of the GRT. In this case, which involved a trust of some considerable size, the Court was tasked with selecting a candidate that appeared objectively to the Court to be best suited to executing the GRT. Thus, I agree with CHW that there was an objective nature to the application in the best interests of the trust as a whole in that the Court had the benefit of evidence filed by all the parties along with submissions. I also agree with Carey Olsen that the submissions in respect of Butterfield allowed the Court to test and consider Hamilton's proposal on a significantly more informed basis.

36. Fifth, I do not find any merit in the submissions of ASW and MJM that the conduct of the Opposing Parties was unreasonable because they did not support the two candidates proposed by the Applicant Parties. Also, I do not find any merit in the submission by ASW that Sarah, Jennifer and Rachel acted unreasonably by supporting the Directors, with submissions and an appearance at the hearing. In my view, they are beneficiaries with the same right to be heard on the trustee issue as Winston who supported Tony. As stated earlier, the GRT is a trust of substantial size, and no doubt there will be complex matters to be resolved. In my view, including consideration of *Aslam v Seeley* - as far as the overall justice of this case goes - the Application falls squarely in and remains in the *Re Buckton* 2 category with the costs of all parties being borne by the GRT.

Conclusion

37. For the reasons above, I find that for all the parties, the costs of the Application should be paid from the GRT on an indemnity basis, to be taxed if not agreed. I make the same order in respect of this application for costs.

Dated 10 July 2026

HON. MR. JUSTICE LARRY MUSSENDEN
CHIEF JUSTICE