

CITATION: Estate of Georgia Manos, deceased, 2023 ONSC 1962
COURT FILE NO.: CV-21-00670135-00ES
DATE: 20230328

ONTARIO

SUPERIOR COURT OF JUSTICE

ESTATE'S LIST

IN THE MATTER OF THE ESTATE OF GEORGIA MANOS, deceased

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)	
Doug Lewis, Estate Trustee During)	
Litigation)	<i>David Delagran</i> for the Applicant
)	
)	
Applicant)	
)	
- and -)	
)	
James Manos)	<i>Susanne Balpataky</i> , for the Respondent
)	
)	
Respondent)	
)	
)	
Nicholas Manos, a Person with a Financial)	<i>Gerard Barosan</i> , for Nicholas Manos
Interest in the Estate)	
)	
Anastasia Dellaportas-Manos, a Person with)	<i>Anastasia Dellaportas-Manos</i> on her own
a Financial Interest in the Estate)	behalf
)	
)	
)	HEARD: March 14, 2023

C. GILMORE, J.

JUDGMENT ON PASSING OF ACCOUNTS

INTRODUCTION

[1] This is an Application to Pass Accounts for the period of October 31, 2018 to June 30, 2021 (“the relevant period”) by the Estate Trustee During Litigation (the “ETDL”). A Notice of Objection has been filed by the beneficiary James Manos (“James”).

- [2] The other beneficiaries of the Estate namely Nicholas Manos (“Nicholas”), Anastasia Dellaportas-Manos (“Anastasia”), Alexia Hillary Manos, Stephan Byron Manos and Patricia Georgia Manos (“the beneficiaries”) do not object to the compensation or legal fees sought by the ETDL. Nicholas and Anastasia object to any portion of the legal fees expended by the ETDL in relation to James’ litigation against the Estate and the ETDL being paid from the Estate. Specifically, they request that any legal fees and/or compensation accumulated as a result of James’ ill-founded litigation be paid from his share of the Estate.
- [3] Most of the objections have been resolved other than the claims by the ETDL for increased costs, and compensation.
- [4] For the reasons set out below, the requests for increased costs and the compensation sought by the ETDL is granted. The balance of the objections are dismissed and a judgment on the passing of accounts shall issue. James Manos should be required to pay a portion of the ETDL’s costs from his share of the Estate for the further reasons set out below.

BACKGROUND FACTS

- [5] Georgia Manos died on April 10, 2012. In her Will, she jointly appointed her sons Nicholas and James Manos as the Estate Trustees of her Estate. Her Estate is divided such that James is entitled to a 50 percent share and Nicholas, his wife and children (the other beneficiaries) are to receive the other 50 percent share. The deceased’s Estate consists of property in Ontario, Florida and the U.K. The Estate remains undistributed 12 years after Georgia Manos’ death.
- [6] The Honourable Doug Lewis was appointed as ETDL by Wilton-Siegel J. on October 31, 2018 (“the 2018 ETDL Order”). Mr. Lewis is a qualified accountant and lawyer and has provided professional trustee services since 2014.
- [7] The relevant provisions of the 2018 ETDL Order are as follows:
- 8 (d) To take from the assets of the Estate all reasonable expenses for the Estate from the Estate Account including, but not limited to, professional costs, debts and testamentary expenses, income taxes of the Deceased and the Estate, and his own reasonable fees for the administration of the Estate, and such amounts may be paid prior to the ETDL having passed his accounts, but subject to further review by the Court;
10. THIS COURT ORDERS that the remuneration and costs of the ETDL shall be payable out of the assets of the Estate at first instance without prejudice to the ability of the Trial Judge to order such costs to be paid by any of the parties personally.
- [8] Once appointed, the ETDL took steps to liquidate the remaining assets of the Estate including the Florida property and the shares in PZ Cussons PLC, a U.K. company (the “U.K. Shares”).

Sale of the Florida Property

- [9] In order to sell the Florida property, the ETDL was required to obtain the Florida equivalent of an ancillary appointment of Estate Trustee. The ETDL retained solicitor Victoria Jones to bring the required application and act as personal representative in the state of Florida.
- [10] The property was initially listed for sale in May 2019, but the listing was cancelled as the Ancillary Letters of Administration were not granted until November 27, 2019. The ETDL blames this on James' actions in evading service of the Application and the objection filed by James to the appointment of Ms. Jones as personal representative of the Estate.
- [11] By the time Ms. Jones commenced her Application for Ancillary Letters of Administration, James no longer had counsel. He did not file a Notice of Intention to Act in Person and provided no address for service. Ms. Jones was obliged to seek an Order for Substituted Service of the Application on James in Florida.
- [12] The ETDL submitted that James actively interfered with the sale of the Florida property by complaining to the realtor about the listing price and advising the realtor that Mr. Lewis' position as ETDL would be terminated. The realtor reported to the ETDL that the For Sale sign and the lock box had been removed. James refused to answer the ETDL's enquiries regarding insurance for the Florida property. Given all of the abovementioned issues, the realtor would not proceed with the sale.
- [13] The property was relisted for sale on January 9, 2020 for \$634,250 USD. The property was not in good repair and there were no offers other than an offer for \$595,000 conditional on inspection. The inspection revealed further defects and the purchasers asked for a price reduction to \$565,000. The ETDL was concerned about COVID and how this would affect house sales, the seasonal use of the property, its condition and the purchaser's indication he was considering further inspections. Given these concerns and in consultation with the realtor, the ETDL made a counteroffer and the property ultimately sold on February 28, 2020 for \$570,000 USD.
- [14] On the advice of Florida counsel, the ETDL instructed Ms. Jones to bring a petition for judicial approval of the sale. The petition was filed on notice to all beneficiaries. An Order approving the sale and the sale price was made on February 21, 2020.
- [15] The proceeds from the sale of the Florida property continue to be held by a transfer agent in Florida pending receipt of a clearance certificate from the U.S. Internal Revenue Service.
- [16] One of James' objections was that the sale price of the Florida property was too low. The ETDL's position is that he had ample reason to sell the Florida property at a reduced price and obtained a Court Order to confirm the sale and the price. That objection was subsequently withdrawn.

Sale of the U.K. Shares

- [17] The deceased was gifted 499,580 shares in PZ Cussons PLC. In November 2020, the ETDL sold the U.K. shares for a total of 1,151,753.50 GBP. After the payment of U.K. inheritance tax and interest totalling 448,113.23 GBP, the net Canadian proceeds were \$1,408,050.32 CAD. Those funds were deposited into the Estate Account on February 20, 2021.
- [18] One of James' objections relates to the U.K. shares being sold undervalue. James alleged that when the ETDL was appointed the share price was 2.19 GBP per share but had fallen to 1.78 GBP and that the ETDL should be personally liable for the difference. In fact, the shares were sold at 2.31 GBP per share. The objection was subsequently withdrawn.
- [19] The ETDL has provided a detailed breakdown from His Majesty's Customs and Revenue showing the calculation of Inheritance Tax of \$361,713.20 GBP on the gross share sale proceeds of 1,554,283. Interest at different rates each year was calculated from November 1, 2012 to October 15, 2019 in the amount of 75,223.49 GBP.
- [20] James complains that the breakdown of inheritance taxes and interest was not provided to him until April 2022 despite numerous requests. He also complains that the ETDL should have made enquiries as to whether a reduction or discount could have been sought in the circumstances. James submitted that he had a cousin who also sold shares in PZ Cussons. The cousin applied for and received a discount on the tax payable. The ETDL has agreed to make enquiries as to whether such reassessment is available.
- [21] Prior to the sale of the U.K. shares, there had been virtually no cash in the Estate. The ETDL's accounts had not been paid since his appointment in October 2018. By way of authorizing Court Order in September 2022, the ETDL paid his account for the period of October 28, 2018 to January 31, 2021 in the amount of \$53,663.

Prior Proceedings

- [22] Prior to the ETDL's appointment there were two proceedings before the Court. The beneficiaries had commenced an Application against Nicholas and James for failing to make any distribution from the Estate in the five years following the sale of the deceased's home. As well, the shares owned by the Estate in PZ Cussons PLC in the U.K. and the Florida property had not been sold.
- [23] A second proceeding was commenced by James against Nicholas and the other beneficiaries.
- [24] In December 2020 James commenced a third application naming the ETDL and all of the other beneficiaries as Respondents ("the Removal Application"). Prior to that date, the ETDL has not required litigation counsel. After being served with the Removal Application, the ETDL hired Mr. Delagran.
- [25] In the Removal Application James sought to remove the ETDL and appoint himself or a third party as ETDL, plus the following relief:

- requiring the ETDL to pass accounts;
- directing the ETDL to deliver up all communications with his counsel;
- directing the ETDL to pay him \$10,000 personally;
- preventing the ETDL from testifying, "or being a witness" in other ongoing litigation between himself and his family members;
- requiring the ETDL to pay him "50% of the value of the deterioration of the Estate assets during his administration";
- requiring the ETDL to pay him 50% of the fees paid to a Florida solicitor;
- requiring the ETDL to repay fees paid to counsel on this application.

- [26] James has not delivered an affidavit in support of that Application nor has the ETDL responded to it. The ETDL took the position that all of James' concerns could be addressed in the within Passing of Accounts.
- [27] In April 2021 James sent a letter advising that he intended to bring a motion for contempt against the ETDL.
- [28] On June 2, 2021, an urgent scheduling appointment was requested by James to schedule the Freezing Motion. The Freezing Motion was scheduled for August 17, 2021. James served his motion record for the Freezing Motion on June 7, 2021. The Responding Record for the Freezing Motion was served on June 25, 2021. James was advised by the ETDL's counsel that the issue on the motion (prohibiting the ETDL from paying legal fees from Estate funds) was more appropriately dealt with on a Passing of Accounts.
- [29] Cross-examinations on the Freezing Motion were held on July 23, 2021. On August 3, 2021 James served his factum. The main argument in his factum was that the ETDL should be prevented from paying his legal fees from Estate Assets. Once again, the ETDL's counsel advised James that this would be more appropriately dealt with on a Passing of Accounts.
- [30] On August 12, 2021, James served an Amended Motion Record which included relief requesting that the ETDL be removed. In his confirmation, James requested that 0 minutes be allocated to the responding party on the motion. On August 16, 2021, James attempted to have the motion rescheduled submitting that he would need two hours for his arguments and that the scheduled time was insufficient.
- [31] On the motion date (August 17, 2021) James sought an adjournment. Justice Cavanagh adjourned the motion on the basis that the issues raised by James would be more appropriately dealt with on a Passing of Accounts. Costs of the August 17, 2021 appearance were reserved to the judge hearing the Passing of Accounts.

- [32] On October 21, 2021 the ETDL served the within Notice of Application to Pass Accounts. James refused to accept service of the Application. A motion to validate service was brought returnable on February 14, 2022. On February 8, 2022 James agreed to accept service.
- [33] On May 19, 2022, James served his motion to find the ETDL in contempt (“the Contempt Motion”).
- [34] After service of the Contempt Motion, no further steps were taken by James to advance the Removal, Freezing or Contempt Motions.
- [35] In his affidavit in response to the Freezing Motion, the ETDL remarked that had he known of the obstructive behaviour of James, he would not have taken on the role of ETDL in this case. He described this appointment as one of the most difficult he has encountered in years.

The Passing of Accounts

- [36] The ETDL’s counsel has provided a draft judgment in relation to the Passing of Accounts at page A982 in Caselines. Neither James nor any of the other Respondents object to the capital and revenue receipt and disbursement accounting as set out in paragraph two of the draft judgment.
- [37] The remaining outstanding issues for this Court’s determination are the compensation and legal costs sought by the ETDL. The ETDL seeks compensation of \$70,670.71 and all-inclusive legal fees of \$60,000 for the relevant period. Nicholas seeks costs of \$6,000 as he has provided responding material to the Passing of Accounts. Nicholas’ response focuses on apportioning the costs of the proceeding such that the beneficiaries are not obliged to pay costs which he says were incurred because of James’ conduct.

A. The Compensation Objection

The Position of the ETDL

- [38] The compensation claimed by the ETDL is broken down into three different invoices. These are based on the Wilton-Siegel Order which permits the ETDL to charge for his services at the rate of \$300 per hour plus HST and disbursements.
- [39] The first two invoices relate to services rendered by the ETDL in relation to the Passing of Accounts. The first invoice is for services for the period of October 28, 2018 to January 31, 2021 in the amount of \$53,665. This invoice has been paid. The second invoice was for the period of February 1 to June 21, 2021 for a total of \$6,949.
- [40] The third invoice relates to time spent by the ETDL in relation to the various litigation commenced by James. The invoice is for the period of December 31, 2020 to August 17, 2021 and totals \$9,356.

- [41] The ETDL's dockets for the litigation work have been provided. Those dockets include the expected entries with respect to reviewing Court material, exchanges of emails with his counsel and exchanges of emails with James. The total hours claimed are 27.6.
- [42] No objection has been made by the beneficiaries, including James, to the number of hours claimed by the ETDL with respect to compensation. The sole objection by James appears to be that the ETDL is either undeserving of the amounts claimed or has simply done a bad job.
- [43] The ETDL's counsel submits that the ETDL has fulfilled his duties with the required skill, ability, care and responsibility required. Where necessary he retained outside professionals including real estate agents and counsel. The beneficiaries (other than James) do not deny the ETDL's success as the assets of the Estate are now entirely liquidated and available for distribution.
- [44] The ETDL's counsel points out that James' actions with respect to the sale of the Florida home interfered with the listing and sale and caused the Estate to require a Court Order approving the sale and the price. Further, James' litigation with respect to the Removal Motion, the Freezing Motion and the Contempt Motion required the ETDL to take steps including retaining counsel, drafting responding material and multiple Court attendances. While James now concedes that some steps he took while self-represented were misguided, such steps came at a cost. That cost is the time expended by the ETDL for which he seeks compensation.

The Position of the Objector – James Manos

- [45] James claims a reduction in compensation of between 25-30 percent. This would reduce the claimed compensation from \$61,920 plus HST and disbursements to between \$46,440 and \$43,444 plus HST and disbursements.
- [46] James filed a detailed response to the ETDL's Reply to the Notice of Objection in which he denied virtually everything in the ETDL's Reply.
- [47] James submits that he had withdrawn a considerable number of his original objections to permit an efficient hearing in this matter.
- [48] While he did commence three proceedings against the ETDL, he defends his actions by submitting that he did so in response to a failure by the ETDL to share information. When James requested information, he was met with the response that he would have to wait until the Passing of Accounts. This created tension between James and the ETDL as James viewed the ETDL as carrying out his duties in secret and harbouring an antagonistic attitude towards him.
- [49] While James admitted that the proceedings he brought were largely about the same issues, it all could have been avoided had the ETDL been responsive to his enquiries.

- [50] The fact that the other beneficiaries chose not to question the ETDL's actions should not affect James' claim for a reduction in compensation.
- [51] With respect to the sale of the Florida property, James submits he had legitimate questions with respect to both its marketing and sale and that he sent various letters to the ETDL to which he did not receive satisfactory responses. Further, James advised the ETDL of at least 10 overdue bills in relation to the Florida property. He submits that the ETDL was not properly managing the Florida property prior to sale. He denied removing the For Sale sign from the property as the real estate agent admitted to having removed it.
- [52] James takes issue with the ETDL's position that he was obliged to withhold information related to the sale of the Florida property because of James' interference. No such interference occurred. James submits that the ETDL simply used this fabrication as a reason not to answer his reasonable requests.
- [53] The fact that the ETDL obtained a Court Order for the sale of the Florida property had nothing to do with James or his alleged "interference" with the sale.
- [54] James denies that he evaded service of the Florida Application. He submitted that his former counsel provided his mailing address and that the ETDL failed to give that address to his Florida counsel.
- [55] James maintains that the Florida property was sold below value. He is aware that it was resold one year later for \$980,000, a 72 percent increase in value. James subsequently withdrew this objection.
- [56] The tenor of many of James' requests was that he was entitled to the information pursuant to the Wilton-Siegel Order. James now concedes that his references to entitlements under the Wilton-Seigel Order may not have been accurate. However, he still had a right to receive information as a beneficiary.
- [57] Out of frustration at what he perceived to be inadequate responses by the ETDL, James brought the Freezing Motion in June 2021. The ETDL, with the Court's approval, agreed that a Passing of Accounts would be the best way to deal with issues raised by James.
- [58] James complained that the failure on the part of the ETDL to provide information continued. For example, only in response to James' Notice of Objection did he receive the detailed breakdown of the Inheritance Tax and interest paid on the share sale proceeds in the U.K. James is also concerned that the share sale proceeds have not been invested and that the ETDL is therefore not maximizing the value of Estate assets.
- [59] James submits that with respect to the required considerations in relation to the ETDL's duties and responsibilities that the Estate was neither large nor complex. Only two assets needed to be liquidated. Further, the ETDL delegated much of his work to professional advisors and the Estate paid \$19,000 USD to Florida counsel and 27,000 GBP to U.K. counsel. The ETDL then seeks to charge the Estate for over 200 hours by way of compensation. This is unreasonable and a reduction in compensation should be applied.

The Position of Nicholas Manos

- [60] Nicholas submits that the litigation between his brother and the ETDL was ill-founded and had nothing to do with him or the other beneficiaries. He submits that James should be required to pay the compensation of \$9,356.40 sought for time spent on litigation issues from his share of the Estate. It would be unfair for any of the other beneficiaries to shoulder any portion of this compensation.
- [61] Nicholas further submits that even if there were communication issues between the ETDL and James, that did not merit three separate tranches of litigation and \$40,000 in legal fees. That is not an appropriate way to approach a communication imbalance. The simple solution would have been for James to compel a Passing of Accounts. The fact that James was self-represented does not excuse him from bringing imprudent litigation when at each step solutions were offered, and he was reminded of the costs of the steps he was taking.
- [62] Nicholas' counsel reminded the Court that James did not object to the number of hours spent by the ETDL for which compensation is claimed.
- [63] James' counsel submits that there is no case law to support Nicholas' claim that James pay all or a portion of the claimed compensation from his share of the Estate. Nicholas does not disagree but suggests that the Court consider the compensation as partly necessitated by James' litigious actions. It is unfair that the other beneficiaries be required to shoulder all of this expense.

B. The Costs Objection

- [64] The ETDL seeks costs on a full indemnity scale in the amount of \$60,000. He does so based on a Request for Increased Costs dated August 10, 2022.
- [65] The ETDL submits that the Notice of Objection filed by James was very vague. The ETDL and his counsel were left to "divine" what the actual objections were as none of the objections referred to line items in the accounts. They were mostly comprised of broad allegations against the ETDL. As a result, the ETDL's Reply to the Objections took longer than expected.
- [66] The scope of the objections was extremely broad and included criticism of decisions made by the ETDL related to the sale of the Florida property, retaining an agent to obtain ancillary letters of probate, the application to authorize the sale of the property, and objections to the amounts realized on the U.K. shares.
- [67] The ETDL's Reply and Supplemental Reply to the Objections was detailed and extensive. Nicholas and Anastasia request that the award of increased costs to the ETDL be paid by James personally.
- [68] James demanded that this matter proceed to mediation. The ETDL had not included mediation in the original litigation timetable as he felt it would not be useful. The ETDL was correct as no issues were resolved at mediation.

- [69] At all times James was kept apprised of the cost of litigation. Emails were sent to James on May 31, 2021, April 18, 2022 and June 6, 2022 wherein he was advised of the legal costs incurred by the ETDL directly related to the multiple legal proceedings brought by James. Further, this is only an interim Passing of Accounts necessitated by James' litigation tactics. The ETDL had originally intended to pass his accounts only once at the end of his administration of the Estate. However, James' actions have necessitated this interim proceeding and a further and final Passing of Accounts will be required.
- [70] The ETDL denies that there is any duplication in the dockets presented. In fact, efficiencies were experienced because issues dealt with in the Prior Proceedings initiated by James were not docketed again in the context of the Passing of Accounts.
- [71] The ETDL seeks to be fully indemnified for his costs pursuant to s. 23 of the *Trustee Act*, R.S.O. 1990, c. T.23. However, the ETDL is also of the view that the beneficiaries should not be responsible for all of the costs but that costs be apportioned such that James be responsible for 60 percent of the costs from his share of the Estate.

The Objector's Position on Costs

- [72] In his sur-reply to the Reply of the ETDL, James submits that each complaint made in his Notice of Objection was connected to a specific problem and is documented in four sworn affidavits, three of which related to litigation commenced by James.
- [73] James agreed that some of the same issues in the Notice of Objection were raised in the context of the litigation he commenced but that was necessary because of the ETDL's continued refusal to provide vouchers, estate-related information and failing to maximize the Estate's assets.
- [74] James insists that the legal costs sought by the ETDL should be paid from the Estate. If James is required to pay any portion of the costs it should not be at a substantial indemnity rate. He submits that hard fought litigation with legitimate requests to the ETDL does not reach the threshold of being scandalous, in bad faith or outrageous. In the context of the Passing of Accounts, James has not brought any motions nor were there cross-examinations. His Notice of Objection was filed for legitimate reasons and many of the objections were withdrawn to ensure this proceeding went forward as efficiently as possible.
- [75] James has not sought his own costs from the Estate despite his position that he is still missing disclosure from the ETDL.
- [76] James points out that a review of the ETDL's dockets for fees for the Passing of Accounts demonstrates that some dockets pre-date the service of the Notice of Objection and represent a duplication of work. Further, James should not be solely responsible for the costs of the mediation. The fact that it failed is not solely his responsibility.
- [77] The Cavanagh Order permitted a payment of \$20,000 to the ETDL for fees. As well there was an initial retainer of \$5,000 paid on December 17, 2020. James submits that the

ETDL's counsel has already billed and been paid for approximately \$40,000 of work and now wants \$60,000 more. \$100,000 for legal fees for a Passing of Accounts is excessive.

Nicholas' Position on Costs

- [78] Nicholas submits that the costs incurred by the ETDL were as a result of the litigation commenced by his brother. James simply rolled forward the same issues from his Motion to Remove to the Freezing Motion to the Contempt Motion. This was fruitless litigation and a form of harassment. None of the litigation commenced by James has actually proceeded. James should be treated as a form of vexatious litigant and costs awarded accordingly.
- [79] Nicholas does not object to the ETDL's legal fees being paid on a substantial indemnity scale so long as all or a majority of those costs are paid from James' share of the Estate. The majority of James' objections were withdrawn. He made outrageous and egregious allegations against the ETDL (which the ETDL was bound to defend). None of this was initiated by or the fault of the other beneficiaries. All steps involving this interim Passing of Accounts including the lengthy response to the Notice of Objection was because of James' intractable position. He was warned on multiple occasions that his actions would result in increased legal fees, but he carried on despite those warnings.

Analysis and Rulings on Compensation and Costs

Compensation

[80] Section 61(1) and (3) of the *Trustee Act* provides as follows:

- (1) A trustee ... is entitled to such fair and reasonable allowance for the care, pains and trouble, and the time expended in and about the estate, as may be allowed by a judge of the Superior Court of Justice.
- (3) The judge, in passing the accounts of a trustee or of a personal representative or guardian, may from time to time allow a fair and reasonable allowance for care, pains and trouble, and time expended in or about the estate.

[81] In determining the quantum of compensation, guidance is given in the form of five factors which are appropriate considerations, in *Toronto General Trusts Corp. v. Central Ontario Railway* (1905), 6 O.W.R. 350 (H.C.) and endorsed by the Court of Appeal in *Laing Estate v. Laing Estate* (1998), 41 O.R. (3d) 571 (C.A.), at para. 5 as follows:

- a) The total value of the estate;
- b) The care and responsibility involved in its administration;
- c) The time spent by the trustee in administering the estate;
- d) The skill and ability shown by the trustee; and

e) The success of the administration.

A) The Total Value of the Estate

[82] The net sale proceeds of the Florida property were \$378,810 USD or approximately \$519,992 CAD. The net proceeds of the U.K. shares were \$1,408,050 for a total of approximately \$1,928,042. This is beyond a modest sized Estate. The assets, once liquidated, were considerable.

B) Care and Responsibility Involved in the Estate Administration

[83] James attempts to minimize the ETDL's responsibility by stating that the ETDL dealt with only two assets, the Florida property and the U.K. shares. Further, he submits that the ETDL engaged professionals in both Florida (\$20,000 paid to Florida counsel) and the U.K. (\$45,125 for U.K. counsel) at significant cost. James' position is that the cost of engaging those professionals was unreasonable for what was neither a large nor a complex Estate.

[84] I do not agree. The sale of shares in a foreign jurisdiction required legal professionals. It is a certainty that if the ETDL had undertaken this without professional assistance and failed to properly execute the sale, the complaints from James would have been monumental. The ETDL, for good reason, chose to engage professionals to ensure the sale was properly carried out and all taxes and interest paid.

[85] As for the Florida sale, I accept the ETDL's position that James' "involvement" in that sale created problems. He objected to the appointment of the Ancillary Estate Trustee. His contact with the sales agent was intended to be helpful but was not received that way. Once again, taking a cautious approach because of James' aggressive approach, the ETDL sought a Court Order to confirm the sale and the sale price.

[86] As James and his brother were unable to administer the Estate, the responsibility was given to a professional who had both legal and accounting experience. The Court is not in a position to second guess the ETDL's decisions particularly in circumstances where litigation was already underway when he was appointed and continued to accumulate throughout his appointment. His cautious approach was entirely understandable.

[87] In summary, I find that in all the circumstances the ETDL did his very best to administer the Estate and sell foreign assets with the appropriate care and responsibility. His compensation should not be reduced in this regard.

C. The Time Spent Administering the Estate

[88] James submits that the hours claimed by the ETDL (206.4) are excessive given that much of the work on the sale of the assets was done by outside professionals.

[89] As mentioned above, the use of outside professionals was entirely understandable and necessary in this case. The ETDL did not have the authority to undertake transactions in

those countries without the assistance of professionals who were qualified to practice law in the State of Florida and the U.K.

D. The Skill and Ability Shown by the ETDL

- [90] James submits that the ETDL's refusal to provide information and his technical and legalistic responses to James' enquiries fuelled unnecessary delay and litigation. I reject James' arguments that the ETDL undertook the administration of the Estate in secret and that the litigation commenced by James could have been avoided had the ETDL simply responded to his requests.
- [91] Despite James' insistence that the ETDL was the cause of his aggressive reactions, I prefer the submission of the ETDL's counsel. This case was already being litigated by the time the ETDL was appointed. In the five years prior to that appointment no steps had been taken to administer the Estate. Now, after the main assets of the Estate have been liquidated, and more accomplished in the three years following the ETDL's appointment than had ever been accomplished prior, James still seeks to push the blame onto the ETDL.
- [92] James frames the necessity for litigation as being the result of stonewalling from the ETDL when he simply wanted information. However, on closer examination James' requests for information were not simply that. They were aggressive demands with deadlines and threats of litigation. The ETDL was naturally cautious in his responses.
- [93] I do not agree that the ETDL was secretive and unresponsive. The ETDL gave statements when requested. He and his counsel responded to James when required. I find that the ETDL has used a reasonable degree of skill and ability to liquidate Estate assets and function in circumstances that were toxic when he was appointed and continued in that manner throughout his appointment.
- [94] I would add that the other beneficiaries took no issue with the ETDL's claim for compensation or hours spent. Their position was that James should have to shoulder a larger share of the compensation given that his actions increased the amount of compensation sought. In this regard, I agree with James' counsel that there is no authority which would permit me to allocate any portion of the compensation to James. The case law permits an adjustment downward on appropriate evidence but apportioning it amongst beneficiaries is not available to the Court.

E. The Success of the Administration

- [95] James submitted that he did not receive sufficient information regarding the U.K. share sale including information as to how the sale price was arrived at, what professional advice was sought and what attempts were made by the ETDL to reduce the tax and interest payable. James claims that only recently was he given copies of correspondence between the ETDL and U.K. counsel.
- [96] With respect to steps allegedly not taken to reduce the U.K. taxes, the breakdown of those amounts was provided to James over a year ago. There is a contact name on the document

whom James was at liberty to contact. The fact that his cousin received a significant discount was new information. If there is a re-assessment process the ETDL has indicated a willingness to pursue it.

- [97] It must be kept in mind that the significant interest charged on the share sale was due to the delay in the sale post-death. James was the Estate Trustee in the first five years following death and provided no evidence of any steps he took to attempt to sell the shares. It is unfair to claim that somehow the administration of the Estate lacks success because of the significant taxes and interest on the share sale when the shares were sold at a rate higher than James suggested they should be and when the interest was in large part attributable to the failure by the previous Estate Trustees to take any steps in the relation to the shares.
- [98] As for the reason why the share sale proceeds have not been invested, no evidence was provided on this point in response. The matter can be dealt with on the final Passing of Accounts.
- [99] Turning to the claim that the ETDL should not be entitled to claim compensation for the litigation pursued by James, I reject that claim entirely. James cannot, on the one hand claim that the litigation he brought was “misguided”, be constantly reminded of the cost of doing so and then take the position that the ETDL’s time in responding to that litigation is ineligible for compensation.
- [100] With respect to the Wilton-Siegel Order, the ETDL has billed all accounts at the rate of \$300 per hour as permitted by the Order. He is permitted to receive “his own reasonable fees for the administration of the Estate.” To date, the ETDL has paid himself \$31,750.21 on June 25, 2021 and a further \$5,860.24 on June 30, 2021 on account. The ETDL did not receive compensation for more than two and a half years after his appointment. I do not find that the ETDL has taken any steps in contravention of the Wilton-Siegel Order.
- [101] In summary, James could have compelled a Passing of Accounts in 2019 and avoided a significant amount of the costs in issue in this matter. Instead, the matter apparently became a personal mission to grind down the ETDL. James’ proposed reduction in compensation by 25-30 percent is unwarranted and without foundation based on the test in *Laing Estate* and the facts found by this Court.

Legal Fees of the ETDL

- [102] James submits that the legal fees sought by the ETDL should be reduced and paid out of the Estate. James was entitled to request information and object to the accounts as a beneficiary of the Estate. The ETDL only provided information after James’ repeated requests. James submits that his actions were intended to maximize the value of the Estate and benefit all beneficiaries.
- [103] James submits that the ETDL is effectively asking for almost \$100,000 in costs which is unreasonable. The ETDL already billed \$41,396 for legal fees incurred between December 31, 2020 and August 18, 2021. James argues that those fees were incurred before the

commencement of the Passing of Accounts and were incurred to respond to Prior Proceedings. This amount is in addition to the further \$60,000 in costs sought by the ETDL.

- [104] James takes the position that the amount of legal fees sought by the ETDL is unreasonable and should be reduced. He should not be required to personally contribute any portion of those fees but if he is required to do so, it should be on a partial indemnity scale.
- [105] Nicholas and Anastasia seek to have James shoulder all but a small portion of the legal fees due to his harassment of and egregious allegations made against the ETDL. They submit it would be unfair for the other beneficiaries to pay for 50 percent of James' rambling objections and imprudent litigation. The issues raised in James' litigation were the same each time and are the same issues being dealt with in this Application.
- [106] The ETDL seeks his legal fees on a full indemnity scale. Pursuant to his Request for Increased Costs, the ETDL seeks costs of \$70,670 inclusive of HST. This has been a difficult Estate to administer, and litigation counsel was required to review and respond to the Removal Motion, the Freezing Motion and the Contempt Motion as well as ongoing communication with James. The ETDL submits he is entitled to be indemnified for all of his reasonably incurred costs as per the principles in *Sawdon Estate v. Watch Tower Bible and Tract Society of Canada*, 2014 ONCA 101, 119 O.R. (3d) 81.
- [107] The ETDL is correct that the general principle is that Estate Trustees are entitled to be fully indemnified for their reasonably incurred expenses including the legal costs of an action reasonably defended, to the extent the costs are not recovered from another person (see *Brown v. Rigsby*, 2016 ONCA 521, 350 O.A.C. 236, at paras. 11 and 14).
- [108] More recently in *Neuberger Estate v. York*, 2016 ONCA 303, 131 O.R. (3d) 143, at paras. 24 and 25, Gillese J.A. addressed the more modern approach to costs awards including blended costs awards as follows:

In estates litigation in Ontario, the historical approach to costs has been displaced in favour of one in which the costs rules in civil litigation apply both at first instance and on appeal, unless the court finds that one or more of the relevant public policy considerations dictate that costs (or some portion thereof) should be paid out of the assets of the estate: *McDougald Estate v. Gooderham* (2005), 255 D.L.R. (4th) 435 (Ont. C.A.), at para. 80; see also *Sawdon Estate v. Sawdon*, 2014 ONCA 101, 370 D.L.R. (4th) 686, at para. 101. The public policy considerations at play in estate litigation are primarily of two sorts: (1) where the difficulties or ambiguities that give rise to the litigation are caused, in whole or in part, by the testator; and (2) the need to ensure that estates are properly administered.

Blended costs awards, in which a portion of costs is payable by the losing party and the balance is payable out of the estate, are available at first instance and on appeal, in the discretion of the court, where one or more of the relevant public policy considerations are found to be engaged: *Sawdon*, at paras. 93-100 and 107.

- [109] The Divisional Court case *In the Estate of Stefanie Aber, deceased*, 2015 ONSC 5123, 12 E.T.R. (4th) 42, dealt with an appeal of a contested passing of accounts trial decision in which the trial judge ordered a beneficiary to pay costs personally on a full indemnity scale in the amount of \$192,000. The Appeal Court considered whether the legal costs were reasonably incurred, who should pay the costs and on what scale.
- [110] As the litigation did not arise out of the actions of the testator, the Court determined that the Appellant should be responsible for some portion of the costs given her lack of success in the litigation. The Court noted that the trial judge did not make a finding that the Appellant's conduct was scandalous, reprehensible or outrageous, nor did she find that the litigation was fruitless or designed to harass. The Appellant was entitled to request a Passing of Accounts and a blended award of costs was appropriate.
- [111] The Court held that the costs sought were reasonable but that the Appellant should pay a portion of those costs on a partial indemnity scale. The costs payable by the Appellant were thereby reduced from \$192,000 to \$115,200. The balance of the legal costs were payable from the Estate.
- [112] James seeks to convince the Court that the cost of his "misguided" litigation and extensive objections should be shared by all of the beneficiaries. This would be unfair for several reasons. First, the remaining beneficiaries quite rightly point out that they had nothing to do with the Removal Motion, the Freeze Motion or the Contempt Motion. They did not question the ETDL's actions with respect to either the Florida sale or the U.K. share sale. They do not object to the ETDL's accounts. Now, they are being asked to shoulder 50 percent of those costs because of actions that they neither initiated nor condoned.
- [113] In reviewing James' response to the ETDL's Reply to Objections, it would appear that, according to James, every action he took against the Estate was entirely justified and that he should bear none of the consequences for steps taken by the ETDL that were allegedly entirely unnecessary, unprofessional and uninformed. This is not borne out by the evidence. There is evidence that James did interfere with the Florida sale, that his actions required a Court Order for sale, that his objections were in large part unnecessary and have come to a hearing on essentially two remaining issues; legal fees and compensation caused in large part by misguided litigation, multiple Court appearances and resulting delay and associated costs.
- [114] James must bear some responsibility for that irresponsible approach. The other beneficiaries should not be burdened with all of the costs in relation to what unfolded and which they were powerless to stop.
- [115] As per the reference in the *Aber Estate* case at para. 68, there is a difference between hard-fought litigation that turns out to be misguided on the one hand, and malicious counterproductive conduct on the other. This case is on all fours with that proposition. James has taken a misguided approach to this case, but it has not been a scandalous or egregious position. As a beneficiary he was entitled to information about the progress of the administration of the Estate but his response when he determined he was not receiving

the answers he wanted was disproportionate. As such, a blended costs award is appropriate as per the principles set out in *Aber Estate* and James must be responsible for 60 percent of the legal costs payable from his share of the Estate. The balance of the legal costs are payable from the Estate.

- [116] As for the quantum of legal fees, James suggests that the \$41,396 in legal fees incurred by the ETDL between December 31, 2020 and August 18, 2021 were not “akin to services provided in the passing of accounts” as described by the ETDL. Those fees were incurred to respond to the Prior Proceedings and were not incurred in relation to the administration of the Estate.
- [117] James states that dockets provided from Beard Winter LLP do not provide a breakdown per task, they only provide a cumulative number of hours spent. It is therefore difficult if not impossible to determine what tasks related to the Application to Pass Accounts as opposed to issues related to the administration of the Estate. Some of the dockets do not identify which lawyer entered the docket and others lack detail of the exact work done. James therefore submits that the ETDL’s legal fees ought to be reduced as they are not reasonable.
- [118] James interprets the Cavanagh Order of August 17, 2021 as meaning that the ETDL is limited in recovering more than \$20,000 in legal fees from the Estate. The amount actually claimed is almost triple that set out in the Cavanagh Order.
- [119] I do not agree that the ETDL’s legal fees should be reduced nor are they unreasonable. The dockets are clear and those entries where it is unclear who did the work are for smaller amounts.
- [120] As for the issue raised with respect to the Cavanagh Order of August 17, 2021, the \$20,000 for reasonable expenses in relation to the Passing of Accounts is subject to further Court Order. That further Order is my Order dated September 28, 2022, which permits the ETDL to pay his reasonable expenses from the Estate including professional costs.
- [121] As for the legal fees incurred between December 31, 2020 and August 31, 2021, these should not be reduced. However, in the event that costs are sought from James for the Prior Proceedings, James may reference those dockets in the event that the Court is inclined to order him to pay costs for the Prior Proceedings. The costs were necessarily incurred to respond to the multiple Prior Proceedings and are a liability of the Estate.
- [122] I do not see why the ETDL should not be paid his costs on a full indemnity scale. The ETDL should be made whole in these circumstances and receive full indemnification for his legal fees. The ETDL has not acted unreasonably or in self-interest. As such, and according to the principles in *Rigsby*, the ETDL should recover his full indemnity costs.

ORDERS AND COSTS

- [123] Given all of the above, I make the following Orders:

- a. The ETDL is entitled to compensation in the amount of \$70,670.71 inclusive of HST payable from the Estate.
- b. Beard Winter LLP is entitled to its legal fees in the all-inclusive amount of \$60,000. James Manos is required to pay a portion of those fees on a partial indemnity scale from his share of the Estate being the sum of \$36,000. The balance shall be paid from the Estate.
- c. Nicholas Manos is entitled to his costs of \$6,000, \$3,600 of the \$6,000 is payable from James' share of the Estate and the balance is payable by the Estate.
- d. The amended signed Judgment is attached.

C. Gilmore, J.

Released: March 28, 2023

CITATION: Estate of Georgia Manos, deceased, 2023 ONSC 1962
COURT FILE NO.: CV-21-00670135-00ES
DATE: 20230328

ONTARIO
SUPERIOR COURT OF JUSTICE
ESTATE'S LIST
IN THE MATTER OF THE ESTATE OF
GEORGIA MANOS, deceased

BETWEEN:

Doug Lewis, Estate Trustee During Litigation

Applicant

– and –

James Manos

Respondent

Nicholas Manos, a Person with a Financial Interest in
the Estate

Anastasia Dellaportas-Manos, a Person with a Financial
Interest in the Estate

JUDGMENT ON PASSING OF ACCOUNTS

C. Gilmore, J.

Released: March 28, 2023