

Investec Trustees (Jersey) Ltd; Investec Co- Trustees (Jersey) Ltd v BC; LC; CH; AC (through her guardian ad litem Advocate Michael Cushing)

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	16 September 2013
Neutral Citation:	[2013] JRC 181
Reported In:	[2013] JRC 181
Court:	Royal Court
Date:	16 September 2013

vLex Document Id: VLEX-792823217

Link: <https://justis.vlex.com/vid/investec-trustees-jersey-ltd-792823217>

Text

[2013] JRC 181

ROYAL COURT

(Samedi)

Before:

Sir Michael Birt, Kt., Bailiff, **sitting alone**.

Between

IN THE MATTER OF THE COMO SETTLEMENT

Investec Trustees (Jersey) Limited
Investec Co-Trustees (Jersey) Limited
Representors

and
BC
First Respondent
LC
Second Respondent
CH
Third Respondent
AC (through her guardian ad litem Advocate Michael Cushing)
Fourth Respondent

Advocate E. C. P. Mackereth for the Representors.

The First Respondent appeared in person.

Advocate D. P. Le Maistre for the Third Respondent.

Authorities

Trusts (Jersey) Law 1984.

Trust — directions sought regarding the continuing proceedings.

Bailiff

THE

- 1 At the conclusion of the hearing on 14th August, I indicated that I would give a brief judgment explaining the reasons for my decision.

Background

- 2 The Como Settlement (“the Trust”) was established by deed dated 24th March, 1976, made between the settlor and Goddard Trustees (Jersey) Limited and Christopher Edward Lloyd as trustees. Goddard Trustees (Jersey) Limited has undergone various changes of name but since 1st March, 2004, has been called Investec Trustees (Jersey) Limited and is the first representor. The second representor Investec Co-Trustees (Jersey) Limited was appointed as trustee in place of Mr Lloyd in February 2002. The representors (“the trustees”) are therefore the current trustees of the Trust.
- 3 The Trust is governed by Jersey law and the beneficiaries of the Trust were the settlor, his second wife and the children of the settlor. By clause 4 of the trust deed, the trust fund, following the death of the settlor and the second wife, was to be held for the children of the

settlor in equal shares, with the respective shares vesting absolutely on a child attaining the age of 18.

- 4 The settlor died in October 2001 and the second wife died in on 26th February, 2002. The settlor left three children, namely the first respondent ("the daughter"), her brother the second respondent ("the son") and a half-sister the fourth respondent ("the half-sister"), who was born on 19th June, 1998, and is the child of the settlor and his third wife, the third respondent. It follows that, from 26th February, 2002, the daughter and the son each had a vested interest in one third of the trust fund (as they were both over 18 at the time). They retained a contingent interest in the remaining one third of the trust fund by reason of the possibility that the half-sister could die before attaining the age of 18.
- 5 It is understood by the trustees that, following the death of the settlor, a dispute arose between the daughter and the son on the one part and the third wife on the other part concerning the will and estate of the settlor. It appears that a compromise ("the Compromise") was reached in July 2004 whereby the daughter and the son instructed the trustees to hold their respective vested interests in the Trust for the third wife absolutely from the date of the letter of instruction 23rd July, 2004, and, in the event of the half-sister dying before reaching the age of 18, also to hold that further interest for the third wife absolutely.
- 6 It appears that the daughter subsequently brought proceedings in Italy in August 2009. According to the affidavit filed on behalf of the trustees by Mr Charles Pitter in the present proceedings, the daughter alleges in the Italian proceedings that the third wife concealed and/or undervalued assets of both the estate of the settlor and of the Trust and that she misappropriated various of such assets. As against the trustees, she alleges that they failed to provide her with accurate information about the Trust and her entitlement as a beneficiary and colluded with the third wife in concealing the true picture from her, with the result that she and the son agreed to transfer their interests under the Trust to the third wife without being aware of their real value.
- 7 Just prior to the institution of the Italian litigation, the trustees had on 2nd July, 2009, received a letter from Hunters, Solicitors, an English law firm, stating that the daughter and the son were concerned that assets in the Trust may not have been disclosed to them and that accordingly the assignment of their interest in the Trust may not have been valid. The letter requested disclosure of certain documents and information relating to the Trust and to the trustees' relationship with the settlor.
- 8 On 4th August, 2009, the trustees received a fax from the third wife stating that she considered that the daughter and the son had relinquished any right to the Trust and that accordingly she did not believe they had any right to any information about the Trust. She asked the trustees not to release any information of any kind, especially inventories of any of the companies that were involved with the Trust.

- 9 Various correspondence then took place in which the trustees expressed the view that the daughter and the son were entitled to information about the Trust for the period in which they had been beneficiaries, which on any view was the situation up to 23rd July, 2004, (and arguably thereafter in respect of the one third contingent interest), but the third wife, through her lawyers, remained opposed to the disclosure of any information.
- 10 In the circumstances, faced with this conflict, the trustees brought the present proceedings by representation dated 18th November, 2010. Although, in the prayer of the representation, there is a sweep up provision asking for “ *such other directions and orders on such other matters concerning the Trust and the Bare Trust as the Court shall consider appropriate*”, the only matter raised substantively in the representation is the request for directions concerning the disclosure of information about the Trust to the daughter and the son.
- 11 The parties referred to above have been convened to these proceedings instituted by the trustees and various orders have been made in the course of the proceedings.
- 12 On 1st February, 2011, by consent, an order was made that the trustees should disclose the information specified in the Act of the Court. In broad outline, the Court ordered disclosure of financial information concerning the Trust and certain companies (which seem to have been assumed at that stage to have belonged to the Trust) for the years 1999–2004.
- 13 On 19th December, 2011, the Court made a further order for the disclosure of information to the daughter and the son. In broad outline, the Court ordered disclosure of certain information concerning the Trust going back to 1976 and certain information concerning the question of ownership of two companies, to which I shall refer as AM and AR respectively. This was because the trustees were now asserting that these two companies were not (contrary to what had hitherto been asserted) owned by the Trust.
- 14 On 21st December, 2012, following a further hearing and for the reasons set out in a brief judgment given at the time, the Court ordered further disclosure, including disclosure of all financial information about AR and AM to the extent not previously disclosed.
- 15 In essence, the trustees assert that they have now disclosed everything material about the Trust and its underlying companies or possible underlying companies which is in its possession. They have nothing further to disclose.
- 16 It is clear that there is an issue as to whether AR and AM were owned by the Trust or not. There are a number of documents which have been disclosed which suggest that the trustees at various times considered that the two companies were owned by the Trust. However, their current stance, having reviewed all their files, is that they believe that these

companies were not owned by the Trust.

- 17 There is also an issue as to the assets of the companies. It appears that the trustees' records concerning these two companies are less than wholly satisfactory. The settlor was an art dealer and valuable paintings seem at various stages to have been acquired and perhaps disposed of by one or more of these companies. The daughter believes there is evidence that works of art are still owned by one or more of these companies, although it appears that the companies may have been dissolved. Furthermore, she says that the financial information produced on disclosure shows that the sum of US\$2,060,472 was transferred to an account with UBS in Switzerland in the name of AM but that this was apparently not recorded in the ledgers or financial statements of AM. It appears to be the case that UBS will not disclose any information about this account either to the daughter or to the trustees because there is an issue over the ownership of AM.
- 18 It is in these circumstances that the daughter has issued a summons in these proceedings which has been listed for hearing on 27th–28th November, 2013. That summons seeks a declaration that the Trust is the owner of AR and AM and certain consequential relief. It also seeks an order that the trustees should pay all the costs incurred by the daughter, and the accompanying letter has made it clear that the daughter is looking for reimbursement of all the costs she has incurred since 2001, because she feels that she was misled as to what was in the Trust at various times thereafter leading up to the compromise in 2004 and that she has since spent a large amount seeking to establish the position, which was not being helped by the 'shambolic' accounting records of the Trust.
- 19 The matter came before me on 14th August, simply for a directions hearing, so that I might consider orders for the production of evidence, skeleton arguments, etc. leading up to the hearing in November.
- 20 The trustees raised the issue as to whether the summons issued by the daughter fell within the confines of the proceedings commenced by the trustees' representation. They did not wish to seem obstructive and accordingly did not formally object to the hearing of the summons in November but they raised the issue for the Court's consideration.
- 21 I have to say that I agree with their concerns. The present proceedings are in effect proceedings brought under Article 51 of the Trusts (Jersey) Law 1984 whereby the trustees are seeking the directions of the Court as to what information they should disclose about the Trust to the daughter. They are administrative proceedings in relation to a Trust, they are not adversarial or hostile proceedings whereby one party seeks to vindicate a cause of action against another.
- 22 The proceedings have now run their course. The Court has in fact ordered the trustees to provide all the material information they have about the Trust (up to and including 2004) to the daughter and the trustees have complied with those orders. There is accordingly

nothing further left in these proceedings.

- 23 Furthermore, the background to the proceedings was that the daughter needed information about the Trust in order that she could decide what to do with it. She might apply the information received in connection with the proceedings in Italy; alternatively, she might institute proceedings in Jersey or elsewhere against the trustees (if she felt she had a claim against them) or against others. The whole intention was that, having received such information as the Court held she was entitled to, she would then assess the situation and, no doubt with the benefit of legal advice, consider what new proceedings were available to her and against whom.
- 24 It does not seem to me that it is open to her, within the present limited non-adversarial proceedings, to raise a question as to the ownership of AM and AR. I fully understand her concern that the trustees' stance on this has been unsatisfactory. There is ample evidence from the documents that at various times the trustees have made statements to the effect that the companies were owned by the Trust; now they are saying that they were not. Furthermore, I accept that the paucity of the financial records is such that there is uncertainty as to whether or not there is value in these companies, both of which appear in any event to have been struck off the register.
- 25 Nevertheless, it would be quite wrong to allow the present proceedings to somehow be transformed into much wider proceedings, particularly if those proceedings were of an adversarial nature. Adversarial proceedings must follow the Court's normal procedure of a plaintiff setting out his or her claim in full in an Order of Justice, specifying the nature of the cause of action and the relief sought. The daughter may wish to institute adversarial proceedings against the trustees alleging that she has been misled by them and suffered loss or incurred costs which she can recover as damages. She may bring some form of claim for breach of trust in relation to maladministration of the Trust up until 2004 or some claim based upon the losses she has suffered as a result of misleading information which the trustees gave to her. I wish to emphasise that I am not making any finding as to whether the trustees have behaved in any of these ways but, if the daughter believes that they have and that she therefore has a remedy, she must bring proceedings in the correct form so that all of the procedures and protections in relation to adversarial litigation are brought into play.
- 26 The daughter has in the past been represented by Advocate Gleeson and by Advocate Goulborn but she is now representing herself. At the hearing, I urged her now to seek legal advice from a Jersey advocate as to any cause of action which she may have and any new proceedings which she may properly bring. I fear that, if she continues to act in person in what is a complex procedural area, she may well incur unnecessary expense and, if she brings proceedings in the wrong form, find herself liable to pay the trustees' costs.
- 27 In summary, for these reasons, I concluded that the relief she was seeking in the summons due for hearing on 28th November was wider than was possible under the envelope of the

existing proceedings instituted by the representation of the trustees. I accordingly ordered that the only matter which could be considered at that summons was the question of the costs of and incidental to the proceedings instituted by the trustees' representation in 2010 and gave appropriate directions to that effect.