

G.B. Trustees Ltd v Tanya Marya Dick Stock

Jurisdiction:	Jersey
Judge:	T. J. Le Cocq, Jurats Ramsden, Christensen
Judgment Date:	21 June 2019
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Text

[2019] JRC 115A

Royal Court

(Samedi)

Before:

T. J. Le Cocq, **Esq., Deputy Bailiff, and** Jurats Ramsden **and** Christensen.

Between
G.B. Trustees Limited
Representor
and

(1) Tanya Marya Dick Stock
First Respondent

(2) John William Dick II
Second Respondent

(3) Advocate Howard Sharp QC (acting for minor and unborn beneficiaries)
Third Respondent

(4) Lilianfeld Holdings Limited

Fourth Respondent
(5) John William Dick
Fifth Respondent

Advocate M. L. Preston for the Representor and the Fourth Respondent.

Advocate S. J. Alexander for the First Respondent.

Advocate D. Evans for the Second Respondent.

Advocate H. Sharp QC., Respondent for the minor and unborn beneficiaries, in person.

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

Authorities

Dick Stock -v- Pantrust and Others [\[2016\] JRC 021](#).

Trust — property.

THE DEPUTY BAILIFF:

- 1 GB Trustees Limited (“the Trustee”) is the trustee of a Jersey law settlement called The Russian Trust (“the Trust”). The two adult primary beneficiaries of the Trust are Tanya Marya Dick Stock (“Tanya”) and John William Dick II (“JWD II”). The minor and unborn beneficiaries are represented by Advocate Howard Sharp QC (“Advocate Sharp”). Lilianfeld Holdings Limited (“Lilianfeld”) is held by the Trust. John William Dick (“JWD”) is the economic settlor of the Trust.
- 2 By Representation dated 15th March 2018 (“the Representation”), the Trustee sought a determination from the Court as to whether it holds the shares in Lilianfeld on the terms of the Trust or whether it holds them instead on trust for Tanya or indeed for anyone else, and if so, whom. This is a matter of some moment because Lilianfeld holds the title to a property in St Petersburg, Russia (“the St Petersburg Apartment”).
- 3 The course of the Representation has been somewhat tortuous. On 29th March, 2018, Tanya issued a summons seeking to set aside service of the Representation on her on the grounds that this Court had no jurisdiction to determine it or, alternatively, that the appropriate forum for determination were the courts of Cyprus. The hearing on jurisdiction took place on 5th June, 2018, and this Court dismissed Tanya's application. The Court then proceeded to deal with the substance of the Representation and evidence commenced on 12th June, 2018. Unfortunately over the two days allowed for evidence,

Tanya's evidence was not concluded nor was the evidence of JWD or JWD II. As a result, the hearing was adjourned until 27th and 28th September 2018. In the intervening period a number of additional affidavits were sworn. The hearing proceeded on 27th and 28th September, 2018, and the evidence of Tanya was concluded as was that of JWD and JWD II. As a result of further evidence produced, however, it became necessary to afford an opportunity for another witness, Mr Daniel McLaughlin ("Mr McLaughlin"), to be examined and cross-examined. Evidence was concluded in December 2018 and closing submissions in writing were submitted earlier this year.

- 4 The matter has also been delayed in part by an allegation that Tanya was in contempt of an order of this Court (which had granted an injunction to restrain certain actions before the Russian Court in connection with the St Petersburg Apartment) and that too was dealt with in December 2018. Tanya was held to be in contempt of an order of the Court but has since purged that contempt by taking the steps that the Court then required. At the same time Tanya's legal adviser, Carey Olsen, ceased acting for her and her current lawyers, Mourant Ozannes, took over her representation. There appeared to us to have been differences as to what we had been told by Tanya's former lawyers, presumably on instruction, and what we were subsequently told by Tanya in evidence.
- 5 The Trustee, understandably, has taken a neutral stance in these proceedings although it expressed the view that on the evidence it had available to it, it believed that it held Lilianfeld on trust for the Trust and not for Tanya or some other person and that Lilianfeld owned the St Petersburg Apartment. Tanya asserts that Lilianfeld was held for her or Lilianfeld held the St Petersburg Apartment on her behalf. The evidence for the Trustee was given by Mr Oliver Egerton-Vernon ("Mr Egerton-Vernon") who filed a number of affidavits and who was examined and cross-examined at some length. The Trustee's views were supported by JWD II, JWD and by Advocate Sharp.
- 6 During the course of the hearings before us a very substantial amount of evidence was given and documentation referred to. We have not in this judgment referred to all of that evidence or documentation but we have taken it into account. Similarly we have considered the arguments contained in the closing submissions of all of the parties. What follows in this judgment is what to our mind are the most significant elements of the testimony and documentary evidence and the conclusions that we draw from that evidence.

The Russian Trust

- 7 The Trust is a discretionary settlement created by a declaration of trust dated 20th April, 1974. The original trustee was Barclaytrust International Ltd and at the time of the creation of the Trust its proper law was expressed to be that of Jersey. Whilst a number of trusts and other entities connected to JWD appear to have settled assets on the Trust, there was no dispute before us that JWD was the economic settlor of the Trust.

- 8 In 1989 JWD was excluded as a beneficiary of the Trust and Tanya, JWD II and their respective children and remoter issue were appointed as primary beneficiaries with the lineal descendants of JWD and his parents and others appointed as secondary beneficiaries. Tanya has no children, and JWD II has three sons who are among those beneficiaries represented by Advocate Sharp.
- 9 The Trust has had a number of trustees in succession to the original trustees including La Hougue Boete Société Fiduciaire Avec Responsabilité Limitée (“La Hougue Boete”), Mr Richard Wigley (“RW”) and his son James Wigley (“JW”) and their company Pantrust International SA (“Pantrust”). RW was a director of La Hougue Boete and RW and JW were directors of Pantrust which was itself a Panamanian fiduciary services company. Until the appointment of the Trustee in 2015, RW was either a trustee or director of the corporate trustee of the Trust.
- 10 On 6th November, 2015, the Trustee was appointed as trustee of the Trust in place of RW and JW who were at that time trustees. By then the proper law of the Trust had purported to have been changed from the law of Jersey to the law of Panama but on 6th September, 2016, the Royal Court determined that the proper law of the Trust is, and has always been, that of Jersey.
- 11 It is not necessary to set out great detail about the operation of the Trust over the period between its inception and the current proceedings. Some detail is relevant but much of the background can be ascertained from a number of judgments of the Court dealing with certain aspects of, in particular, the transfer of the trusteeship from RW and JW to the Trustee and circumstances surrounding that.

Lilianfeld Holdings Limited

- 12 Lilianfeld is a company registered in Cyprus and its directors are two Jersey companies associated with the Trustee. The only shareholders in Lilianfeld are two companies registered in Cyprus which we were told hold their shares as nominees for the Trustee.
- 13 By judgment dated 22nd January, 2016, (*Dick Stock -v- Pantrust and Others* [\[2016\] JRC 021](#)) (“the January 2016 Judgment”) the Court amongst other things ordered that RW and JW transfer the shares in Lilianfeld to the Trustee. At paragraph 3(iii) of the January 2016 Judgment the Court, under the heading of “Lilianfeld Holdings Limited”, said this:—

“... this is a company incorporated in Cyprus which owns a property in St Petersburg. The new trustee contends that Lilianfeld is an asset of the Russian Trust, whilst the former trustee contends that it is beneficially owned by the Representor to whom it has offered to transfer the same. As the Representor supports the transfer to the new trustees rather than to her, it was agreed that it

would be a waste of time and cost to further debate the issue. With the consent of the Representor, therefore, the former trustees will procure the transfer of the shares in Lilianfeld to the new trustee. ...”

- 14 The Representor in those proceedings was Tanya and accordingly it appears that before this Court in those proceedings Tanya has positively asserted that the shares in Lilianfeld were an asset of the Trust. She was represented in those proceedings by counsel.
- 15 Tanya has, before these proceedings, made a number of other assertions concerning the ownership of Lilianfeld. We have already set out above the stance taken by Tanya in the hearing that culminated in the January 2016 Judgment.
- 16 There is exhibited to Mr Egerton-Vernon's first affidavit an exchange of emails which also point to the view that Tanya held about the ownership of the shares in Lilianfeld at that time. In her email of 9th November, 2015, to Mr Egerton-Vernon she says:—

“... We need to include Lilianfeld Holdings as well – I believe it is part of the Russian Trust as well and we need to get that under control as well. ...”

- 17 Later in that exchange on the same day Tanya writes again to Mr Egerton-Vernon by email in the following terms:—

“Great – I have a book (of course) that I have started at the Manor that shows the Russian Trust making payments to Lilianfeld over the years... I hope to give it to you completed, with the proviso that something else always crops up, upon my return at Thanksgiving....”

- 18 In a letter sent by Baker and Partners (then acting for Tanya) of 9th November, 2015, that firm says to a Cypriot law firm:-

“Owing to the lack of transparency and the asset structure of the Russian Trust and the Manor House Trust it is not yet clear whether Lilianfeld Holdings Limited and its assets are in fact assets of the Russian Trust or Manor House Trust. We write to you on the assumption that Lilianfeld Holdings Limited is a trust asset....”

- 19 It appears to us, therefore, that at that time Tanya was of the view and belief that the shares in Lilianfeld were owned by the Trust. She must have instructed her lawyers to write accordingly for them to have done so.
- 20 Tanya argues, and indeed has stated in evidence that, these communications should not be taken as an indication by her of her belief in the position that actually existed with regard to Lilianfeld and the St Petersburg Apartment. She urges that we should not underestimate

her desire to secure the removal of Lilianfeld and / or the St Petersburg Apartment from the control of RW and JW or Pantrust. We find it difficult to accept this assertion at face value. Firstly Tanya had been represented during the proceedings leading up to the January 2016 judgment and the position could have been clarified at that point. Furthermore she could in her communications with the trustee or indeed before the Court expressly have reserved her position with regard to the ownership of Lilianfeld and/or the St Petersburg Apartment and made it clear that any transfer was agreed by her as a matter of expediency without prejudice to any rights going forward. It is not suggested to us that any of those things were done.

- 21 Furthermore, we also have before us copies of a transcript of a deposition taken from Tanya on oath in proceedings relating to another trust called The Dick Family Trust before the courts of Colorado in 2015. Part of the deposition relates to the Trust and the following appears to us to be relevant:—

At page 234 of the transcript:

“Q: Are you a beneficiary of the Russian Trust?”

A: Yes

Q: Since when have you been a beneficiary?

A: Wow. That's a long time .

Q: Do you know when you were named as a beneficiary of the Russian Trust?

A: Sometime in the 80s.”

At page 237 of the transcript:

“Q: Can you identify any distributions that were made to you from the Russian Trust?

A: Again, I have problems because of the limited information that Wigley and Fishman have provided. And its difficult to know how they booked it and out of what entity they've made a distribution...

Q: No, my question is, can you identify – whatever your problems may be in trying to sort out the records, can you identify for me any particular distribution made to you by the Russian Trust?

A: Let's see. The purchase of the apartment in St Petersburg, Russia, I assume came out of the Russian Trust because the company that holds it is a Russian Trust asset. So therefore, in my mind, the Russian Trust must have been the one who

acquired it .

Q: But you didn't acquire it? Another company acquired it, which is owned by the Russian Trust?

A: Me personally?

Q: Yes

A: No, I personally did not .

Q: Do you not understand my question? My question was what distributions you – not some other entity, you – receive from the Russian Trust?

A: Well, the fact that I get the right to live there is a distribution .

Q: Apparently the company that owns this apartment allows you to stay there for free; is that right?

A: Yes ...” .

- 22 It is apparent, therefore, from that exchange that Tanya on oath was giving her understanding of the position, namely that she was a beneficiary of the Trust, Lilianfeld was owned by the Trust, Lilianfeld owned the St Petersburg Apartment; and she was permitted to reside there free of cost. Moreover, it is clear in that transcript that Tanya does not suggest that she acquired the St Petersburg Apartment or that she owned it.
- 23 We did not find Tanya's explanation to us of the things that she said in the deposition in Colorado convincing. It was asserted by her that she had not in some way been clear in her own mind about how everything could work, she had not prepared to be examined on the matter of the Trust and that she answered to the best of her knowledge. We are not persuaded by these submissions. Tanya's answers are not in any sense equivocal or qualified by reference to any uncertainty on her part. We think that she was asserting the position as she believed it to be. We find it difficult to accept that she could have forgotten that, as she now asserts, the St Petersburg Apartment and Lilianfeld were held for her.
- 24 In closing submissions, Tanya's legal advisers referred to other excerpts from the transcript which suggest that Tanya generally qualified her answers by saying that she did not have access to the documentation. As we have said, in our judgment the answers that she gave above were not qualified in any way by her nor were they equivocal.
- 25 Furthermore, it appears that Tanya executed a settlement agreement in connection with proceedings in Colorado which required the former trustees to co-operate with the re-instatement of and transfer of Lilianfeld and all of its assets, including but not limited to the St Petersburg Apartment to the Trustee as trustee of the Trust.

- 26 It is clear, therefore, that prior to her assertion that the St Petersburg Apartment and/or the shares in Lilianfeld were held by the Trustee beneficially for her and not on the Trust, Tanya had asserted on a number of occasions in formal court proceedings, both in Colorado and in Jersey, a contrary position.

Tanya's case before this Court

- 27 It is fair to say that even during the course of these proceedings Tanya's evidence and parts of her case with regard to the ownership of the St Petersburg Apartment and/or Lilianfeld has changed.
- 28 In her affidavit of 29th March, 2018, Tanya claimed to have funded the purchase of the St Petersburg Apartment using the proceeds from the sale of certain real estate in the United States which were owned personally by her and from distributions that she had received from The Dick Family Trust 1 (DFT1) (referred to below) and the Trust.
- 29 In her affidavit of 24th May, 2018, Tanya stated that the purchase had been funded from distributions received by her from DFT1 and the Trust and “as a result of the sale of properties held in a trust called JT Realty Trust which was created for my benefit to hold property for me”.
- 30 In her affidavit of 11th June, 2018, Tanya asserted that the purchase had been funded using distributions from DFT1 and the proceeds of real estate sales in the United States (including the property known as Flagship Wharf). There no longer appeared to be an assertion that the purchase had in part been funded by a distribution from the Trust.
- 31 In her affidavit dated 25th September, 2018, (“the Eighth affidavit”) she asserted that the funds used to purchase the St Petersburg Apartment had been provided either by her directly or from distributions from DFT1. There was no mention of distributions from JT Realty Trust. The Eighth affidavit exhibits a report from Mr Daniel McLaughlin (“Mr McLaughlin”) whose evidence is referred to below.
- 32 Mr McLaughlin provides accountancy services and works for Tanya and her husband and the other parties understandably objected to the provision of a statement or report by Mr McLaughlin without the ability to cross-examine him. Accordingly, the Court adjourned for him to give his evidence in person. This evidence is referred to below.
- 33 In a statement of claim launched by Tanya in proceedings before the courts of St Petersburg dated 20th November, 2018, Tanya claims that she (and not Lilianfeld) is the legal owner of the St Petersburg Apartment. This appears to be the first time which she has

asserted that Lilianfeld was not the legal owner.

- 34 Tanya's oral evidence again was slightly different. This was to the effect that she had purchased a property known as Surrey Lane in the United States and had "flipped it" and used the proceeds to purchase a property known as Flagship Wharf mentioned above. She asserted that she had paid a deposit although it appears to us that in fact Flagship Wharf had been purchased entirely through mortgage financing. The payments made with regard to the mortgage had come from the Trust.
- 35 It appears from the review of ledgers relating to monies received into and paid out of the Trust that in fact this assertion by Tanya could not have been correct. The proceeds from the sale of the Surrey Lane property were not received until August 1996 and they could not have been used to purchase Flagship Wharf. Flagship Wharf was not sold until June 1998 and the proceeds can accordingly not have been used to purchase the St Petersburg Apartment in 1996.
- 36 It is clear from the evidence, however, that the St Petersburg Apartment was purchased for Tanya's use. The evidence before us was that JWD had sought employment for Tanya through a friend and business colleague located in St Petersburg and although she had initially lived in a hotel which was an expensive exercise, she had found the St Petersburg Apartment.
- 37 When she found that apartment she discussed its purchase with JWD. In a letter from her to her father on 25th July, 1996, Tanya explains why in her view it is a good purchase. Amongst other things she says:
- "Monthly rental rate on property \$7500 in the event we don't sell it when I leave. Because of the quality of renovation and lack of similar properties in location the property will easily retain its value."*
- 38 She also wrote a lengthy letter to JWD dated the 2nd August, 1996, in which she set out, in some 41 numbered paragraphs, a number of things which needed to be purchased for the apartment and other expenses which needed to be paid for it in connection with the apartment.
- 39 These letters, and indeed other documentation, suggest to us that Tanya was very much seeking JWD's agreement and approval to the purchase of the St Petersburg Apartment and indeed for the payment of not insubstantial sums relating to its set up and running. This seems to us to be consistent with the evidence that we heard to the effect that in the earlier period of the administration of the Trust the trustees at the time effectively looked to JWD to a significant extent for directions to how the funds of the Trust were to be used.
- 40 The St Petersburg Apartment was initially purchased in Tanya's own name by contract

dated 12th September, 1996, and she subsequently transferred it into the name of Lilianfeld in 1997.

41 We do not think it necessary to go into detail with regard to the circumstances in which the St Petersburg Apartment came to be transferred into the name of Lilianfeld. It is clear from the correspondence that we have seen that the purchase of the St Petersburg Apartment was organised by and through the then trustees of the Trust. Tanya appears, on the surface of the documentation shown to us, to have little or no involvement in dealing with the transaction.

42 It is clear that the Trust has held Lilianfeld and the successive trustees of the Trust have administered that company from the time of its inception. Tanya, in evidence, suggested that the administration by the trust of Lilianfeld was a matter of “convenience”.

43 A letter passing between the then trustee in July 1997 to Cypriot lawyers is illustrative of the view taken by the then trustee. In that letter RW says about the purchase of the St Petersburg Apartment:-

“...it would appear that the best course of action would have been to acquire it through a Cyprus corporation. Will you be prepared to act on our behalf to acquire the property, the beneficiary of such Cyprus company being a trust under our trusteeship?”

44 Indeed in a response to that communication the Cypriot law firm, by letter dated the 28th July, 1997, offers a number of different corporate entities to RW who then, on the 1st August, 1997, responds:

“We wish to proceed with the name Lilianfeld Holdings Limited.... Lilianfeld Holdings Limited will have its registered office with yourselves, have the minimum authorised and paid up capital, the shareholders being your Nominee Companies with declarations of trust in favour of La Hougue Boete Societe Fiduciaire....which company will in turn hold the shares to the order of The Russian Trust.”

45 We do not need to set out in full the documentation that has been put before us and the above suffice to illustrate what we understand the view of the then trustees to have been.

46 Other documentation is also suggestive that the trustees at the time viewed the St Petersburg Apartment and Lilianfeld as owned by the Trust. For example in a memorandum dated the 5th August, 1999, from RW to Wayne Weaver the following appears with regard to the St Petersburg Apartment:

“The property was initially acquired in the name of Tanya Dick in the autumn of

1996, this being a temporary position, at which time we took tax advice and proceeded to re-register the property in the name of Lilianfeld, which was completed earlier in 1998.

We seek your advice as to how best to reflect this in the accounts and whether Lilianfeld's account should reflect a loan from the trustees of the Russian Trust (a Jersey discretionary trust), which Trust provided the purchase monies and costs, as per the attached schedule, totalling US\$ 663,674. Effectively, Lilianfeld is owned by the Russian Trust and your guidance as to how to complete the accounts so as to best reflect this in the most tax efficient way would be appreciated."

47 That memorandum goes on to say:

"To answer the question as to whether the tenant pays rent, we should indicate that there is purely an informal arrangement at present and the tenant is covering all the carry costs of the property, it being our intention to either sell the apartment or formally let it in the not too distant future."

- 48 Nothing that we have seen in the ordinary administrative documentation relating to the Trust suggests that the trustees from time to time viewed either Lilianfeld or the St Petersburg Apartment as Tanya's property although clearly it had been acquired for her use for the period of her sojourn in St Petersburg.
- 49 Tanya also makes reference to two Letters of Wishes executed by JWD in July of 2007 and January 2014 respectively. These Letters of Wishes make references to JWD's wishes and refers to provision having been made for Tanya already.
- 50 This so Tanya asserts demonstrates that the St Petersburg Apartment should be considered her property as clearly that is what the economic settlor, JWD himself considered.
- 51 JWD's evidence on that matter is that he had not concentrated on the letters of wishes and, as is indeed the case, they were not in any event binding documents. In our judgment, the better view is that those letters of wishes, to the extent that they evidence any understanding of the matter at all, would demonstrate, firstly, that Tanya did not in fact fund the purchase of the St Petersburg Apartment out of her own funds and, secondly, it is more likely than not that the JWD statement that he had provided for her was a simple recognition of the fact that the Trust owned a property which it held for her use and which might, upon his death, be distributed to her.

Evidence as to credibility

52 During the course of the evidence before us, two issues were raised which were suggested by the other parties to undermine Tanya's credibility. They both relate to the alleged provenance and potential fabrication of documents.

The Power of Attorney

- 53 In February 2018 Tanya made a complaint to the St Petersburg police in relation to the unlawful seizure of the St Petersburg Apartment. Tanya had maintained in evidence at various points that she could speak Russian adequately and confirmed through counsel on an earlier occasion that the complaint that she made to the St Petersburg police was made in her own name and she did not use any Power of Attorney to suggest that she was representing Lilianfeld.
- 54 However, it appears that in the documentation given to the Russian police, Tanya was described as *"the official representative"* of Lilianfeld "in accordance with the Power of Attorney...". A copy of the purported Power of Attorney was provided and it is dated 6th October, 2014, apparently executed by JW and on its face it lasts for some 5 years which would have made Tanya Lilianfeld's authorised attorney at the time of her complaint to the St Petersburg police. The difficulty with this document lies in the fact that there is an almost identical document, also signed by JW and also dated 6th October, 2014, which lasted for only 3 years and would, accordingly, if that had been the only Power of Attorney, have expired prior to Tanya's complaint to the St Petersburg police.
- 55 Tanya's evidence was that she asked JW to give her the additional and longer dated Power of Attorney which included additional wording relating to law enforcement and taking actions in the courts.
- 56 She was challenged on this in cross-examination and it was suggested to her that the longer dated Power of Attorney was in fact prepared much more recently than October 2014 and was prepared by her or on her behalf because she knew that she needed to have some kind of credibility and authority to make a complaint to the St Petersburg police. It was, in other words, a forgery.
- 57 Tanya maintained in cross-examination that she had procured the longer dated Power of Attorney from JW. She said in evidence:—

"Yes, I badgered him into it, because I knew I was going to get into a legal battle with Richard Wigley and Pan Trust because, well, I had already sued Alan Fishman in the US and I knew that, very, very shortly I was going to be suing Richard Wigley and I was trying to get something that was going to, I knew they were going to attack my home. I knew they would try and attack me and I was trying to figure out how to best protect myself and I wanted more time. So, yeah, they did give me a longer one and they did add more language."

- 58 Furthermore, Tanya's evidence was to the effect that she had asked for the longer dated Power of Attorney when she had seen the shorter dated Power of Attorney and realised it was not sufficient for her purposes. She had then asked for another one.
- 59 It is unclear to the Court the precise circumstances in which the longer dated Power of Attorney came into existence but we did not find Tanya's evidence convincing. It is not at all clear to the Court why the longer dated Power of Attorney should bear precisely the same date as the first one which had been, as was typical of others in the past, for a duration of 3 years. It seems to us implausible that the longer dated Power of Attorney would have been executed with the same date nor that Tanya would have anticipated difficulties with the courts in connection with the ownership of the St Petersburg Apartment. The Court does not, on balance, accept her explanation as to the genesis of the longer dated Power of Attorney and nor does the Court understand why Tanya should have been so clear through counsel that she had not used a Power of Attorney when in fact, on any analysis, she had purported to do so. As we understand it proceedings already existed between RW and Pantrust and Tanya prior to October 2014. Tanya's explanation is implausible.
- 60 In the context of her evidence throughout the proceedings, Tanya has represented her knowledge of the Russian language in different ways. Initially she asserted that her understanding and ability to speak Russian was adequate but later laid claim to ignorance of that language when explaining things that had been done on her behalf including the process of commencing the proceedings before the Russian Court, referred to in paragraph 4 above. The Court also views that as unsatisfactory.

Page 88 Document

- 61 In 2018, Tanya had disputed the jurisdiction of this Court to deal with the current proceedings. The Court determined that challenge on 5th June, 2018, against her, asserting that it did indeed have jurisdiction. Two days later, Tanya exhibited in an affidavit a document known in the proceedings as "page 88" which bears the date of 7th December, 1997. We refer to this document in detail.
- 62 It is headed "The Lilianfeld Holdings Limited Trust" and is a declaration by Jennifer Beryl Rimeur, a director of Lilianfeld, to the effect that she:—

"Hereby as of this date place any shareholding in Lilianfeld Holdings Limited, namely all shares in the company, into a simple trust for the benefit of Tanya M Dick, the trustees of which will be Mr Richard George de Winton Wigley and myself and upon request of Tanya M Dick the assets of the Trust, namely the St Petersburg flat ... shall be passed over for no consideration to Tanya M Dick or her assigns.

I expressly wish by this action to exclude these assets from any other trust under

our administration, the creation of this Trust being a transfer of the aforementioned assets whether held by Lilianfeld Holdings Limited now or at some date in the future."

- 63 It is then signed, apparently, by Ms Rimeur and counter-signed by RW as director and there is apparently a manuscript signature of a witness, the identity of who is not revealed on the face of the documentation.
- 64 It is argued on Tanya's behalf that the existence of this document is key. Firstly it is argued that the document reflects the existence of a trust on its face which indicates that Lilianfeld is held for Tanya. Secondly, it is argued, that even if there is a want of formality and the document is not legally effective it shows the basis on which Tanya understood the position and was prepared to transfer the St Petersburg Apartment to the Trust.
- 65 It is fair to say that that document was disclosed for the very first time into these proceedings in June 2018, which was shortly before the scheduled trial of the proceedings on 12th June. It had not been disclosed in proceedings anywhere else or referred to in any other document. Nor has the existence of "The Lilianfeld Holdings Limited Trust".
- 66 Neither did this document appear to feature in any other documentation dealing with the transfer of the St Petersburg Apartment from Tanya's name into Lilianfeld or other correspondence. La Hougue Boete's client list records the existence of the Trust and a number of other entities but does not record the existence of "The Lilianfeld Holdings Limited Trust".
- 67 Page 88 is itself a rather strange document in as much as it appears to be signed by two of the directors of Lilianfeld expressing a trust of that company's shares although the declaration is made by Ms Rimeur alone and merely appears to be counter-signed, for some inexplicable reason, by RW. RW appears to have signed it using his full first name which was, we were told, not normally something he did for formal documents.
- 68 Tanya's former legal advisers indicated to the Court that they had first been provided with the document on 31^s May, 2018. Tanya gave evidence as to where the document had come from. We do not need to go into that evidence in detail, save to say that we viewed her answers as unsatisfactory. Again, it is suggested that this document has been created by Tanya, or on her behalf, after the event to support her claim in these proceedings.
- 69 Suffice it to say that the Court has concerns about the provenance of the page 88 document although notes that it has no legal effect.
- 70 These two documents, the Power of Attorney and the page 88 document, have been deployed by Tanya late in the day and no satisfactory explanation has been provided (nor

indeed originals) such as the Court can be comfortable that they are original and can be evidence supporting Tanya's claim.

- 71 The picture as we see it of Tanya's position with regard to the purchase of the St Petersburg Apartment is at best confused and, at worst, changes to suit what she perceives to be the immediate requirements at the time. The position taken before this court in 2016 and on oath on depositions in the courts of Colorado are serious and formal statements and positions and the evidence that she has given in affidavits and indeed personally lead us to the view that, at best, she has no clear understanding of how the St Petersburg Apartment was purchased and what the source of funds were.
- 72 We have had the opportunity to consider Tanya's evidence before us at length and indeed the affidavit evidence and other evidence that she has called in support of her case. In our judgment, she did not fund any part of the purchase of the St Petersburg Apartment with her personal assets and the purchase was funded through the Trust.

Dick Family Trusts 1 and 2

- 73 As we have said we received evidence concerning a potential source of funds for the purchase of the St Petersburg Apartment from a number of individuals. The evidence concerned two trusts known as The Dick Family Trust 1 ("DFT1") and The Dick Family Trust 2 ("DFT2"). These are trusts set up in Colorado. Tanya is the beneficiary of DFT1 and JWD II is the beneficiary of DFT2.
- 74 Each of those trusts owned 49.5% in Land Securities Investors Limited which in turn owned valuable real estate assets known as Ryland. This was sold in 1996 and generated some US\$1million, which was paid in two instalments. It appears that one of the instalments, some US\$586,982 was transferred direct from Land Securities Investors Limited to the Trust and not via either DFT1 or DFT2. It appears to be this sum that was used to purchase in part the St Petersburg Apartment. The second instalment was also transferred directly to the Trust.
- 75 Although Tanya suggested that this transfer supported her claim that she funded the purchase of the St Petersburg Apartment, there does not appear to us to be any reason to suppose that the first instalment (or indeed the second instalment) bypassing as they did both DFT1 and DFT2, derived from DFT1, Tanya's Trust, rather than DFT2. If Tanya had been correct then the entire first instalment would have been treated as money paid to DFT1 and therefore for her benefit. We can see no logical reason why that should be the case on our understanding of the structures and in the absence of any clear documentary evidence to suggest that this payment was in fact a distribution for Tanya's benefit.
- 76 In fact, Mr McLaughlin does not suggest with regard to the origin of the funds, that JWDII received any benefit from the proceeds of sale of Ryland and it is difficult for us to

understand why he has concluded as he did that the money paid from the sale of Ryland was exclusively for Tanya's benefit.

- 77 From the evidence that we have heard it is clear that when the Trust was being administered by the former trustees, together with another trust relating to the Dick family known as the Manor House Trust, it was administered in a confusing and sometimes byzantine manner. This may be in part because those former trustees placed undue regard or priority to the personal requirements and instructions of JWD and sought to give effect to those requirements without necessarily respecting the niceties of the Trust and other structures. We do not need to go into the detail of that and indeed it is in part referred to in other judgments of this Court, including the January 2016 Judgment.
- 78 Suffice to say that the records kept by the former trustees do not provide for a clear understanding nor do we find much of the documentation deriving from those trustees completely reliable.
- 79 As we have said, Mr McLaughlin gave evidence on Tanya's behalf and he was cross-examined by the other parties at some length. In short, we did not think that Mr McLaughlin was able to provide any clarity with regard to the origin of the funds used to purchase the St Petersburg Apartment. Although he was intending to identify source of funds and purported to attribute that source to funds owned legally or beneficially by Tanya, it is clear that he had not taken into account full financial circumstances and, indeed, that his analysis could equally have applied to DFT2 in which JWD II was interested as well as to DFT1 in which Tanya was interested. We do not think his evidence shows that the sale of Flagship Wharf in Boston contributed to the purchase of the St Petersburg Apartment and, as we have said, in fact the sale of Flagship Wharf did not take place until 6th June, 1998, whereas the purchase of the St Petersburg Apartment took place in 1996. In any event, it does not appear that Mr McLaughlin supports the view that the Flagship Wharf property had been purchased with the assistance of a deposit from Tanya and in fact that it had been purchased due to the loans from the Trust and a mortgage. Mr McLaughlin as we have said had suggested that DFT1 was the source of funds for the acquisition of the St Petersburg Apartment. We do not think that he gave sufficient or any account to the potential for the funds to originate at least equally from DTF2 nor indeed that both DFT1 and DFT2 owed a substantial debt to the Trust and that may well provide an explanation for the transfer of funds from DFT1 and DFT2's investment to the Trust. We also note that Mr McLaughlin in attributing payments into the Trust as being made by DFT1, did not draw our attention to mirror payments made from DFT2. This is to us a serious omission.
- 80 In Mr Egerton-Vernon's first affidavit he speaks of a portfolio debt being owed by DFT1 and DFT2 to the Trust and the fact that funds received from Land Securities Investors Limited were received in payment of the portfolio debt. It is also of concern that there is no mention in Mr McLaughlin's report of the portfolio debt because it seems to us that this may well provide, as we have indicated, an explanation for the payment of monies from the sale of assets ultimately owned by DFT1 and DFT2 to the Trust.

81 For these reasons, and generally, we did not find Mr McLaughlin's evidence of assistance to us and certainly not as providing support for Tanya's case.

Evidence of JWD

82 JWD is the economic settlor of the Trust and he was in a position to give evidence of the circumstances surrounding the acquisition of the St Petersburg Apartment. His evidence was clear to the effect that in his view the St Petersburg Apartment was owned by the Trust and that had been his intention. He painted a picture of Tanya having difficulty finding employment upon graduation and that he had introduced her to a business colleague of his who was based in St Petersburg. She had secured employment and had lived in hotels but it had been better to find a place to purchase.

83 He commented upon a number of documents. With regard to letter of wishes produced in 2007 and 2014, he confirmed that they had been produced by Tanya and her husband for him to sign. In it the St Petersburg Apartment was expressed as being considered as "*her property*". His intention, so he explained, was that upon his death the St Petersburg Apartment would in fact be distributed to Tanya. This was simply an expression of wishes, however, because the Trust was discretionary in nature and he was fully aware that the trustees of the Trust were not bound to abide by any such wishes.

84 He confirmed that when, in another letter of wishes relating to a different trust he said that he had "*provided separately*" for Tanya, he meant that this was by way of accommodation in St Petersburg to live in whilst she worked there. He did not intend to suggest that it had been distributed out to her. He expressly denied that he had ever said during the course of any mediation in the United States that the St Petersburg Apartment was Tanya's.

85 He was asked to comment upon the ledgers produced by the former trustees and he confirmed that they were simply a record of monies expended by the Trust on Tanya's behalf and that none of the funds had originated from her.

86 He had never seen the Page 88 document before.

87 He accepted that, at least in the early stages of the Trust and of the Manor House Trust, the former trustees would in effect follow his direction to a large extent. In our assessment JWD told the former trustees what he wished to achieve and relied upon them to deal with the administrative and legal niceties.

88 JWD presented to us as a candid and truthful witness who gave measured evidence.

Evidence of JWD II

- 89 JWD II did not give evidence at length. He confirmed his understanding of the position with regard to the Trust and expressed his belief that the current proceedings derive from the fact that JWD and Tanya had fallen out.

Conclusion

- 90 It is difficult to evaluate what weight should properly be given to Tanya's evidence. The fact is that, as we have indicated above, her evidence given before us is at odds with what she has said on oath to other courts in other places and she has frequently changed her case and evidence. As we have indicated she has also permitted the shares in Lilianfeld to be transferred to the Trustee notwithstanding that the previous trustee, with whom she was in dispute, indicated that it was prepared to transfer the shares in Lilianfeld to her. As we have said, her position taken before the Royal Court in 2015 and 2016 in connection to the transfer of assets to the Trustee was quite clear. We did not find Tanya's evidence reliable nor did we find reliable the evidence called on her behalf.
- 91 The evidence of JWD on the subject is entirely unequivocal. He impressed the Court as a truthful witness who was careful in his answers and his evidence was to the effect that Tanya had no assets of her own that could be used for the purchase of the St Petersburg Apartment and she was wholly dependent on funds that had been provided through his trust structure for those purposes. The letter that Tanya wrote to him when she found the St Petersburg Apartment to his mind was the discussion of an investment opportunity in St Petersburg and the provision of an apartment for her occupation which he was providing. It was not intended to be owned by her absolutely at that time and was always intended to be a trust asset.
- 92 The fact that the St Petersburg Apartment was purchased initially in Tanya's name was, in our judgment, a short term expedient designed to meet the needs of a quick acquisition but was never intended to reflect either the true nature of the ownership nor the position going forward. Within a short delay Tanya had readily transferred the St Petersburg Apartment to Lilianfeld and thereafter, until the commencement of these proceedings, had expressed it as being an asset of the Trust. That to our mind reflected the true position and her understanding. She was in effect holding the St Petersburg Apartment for a short period as the Trust's nominee and she dealt with the St Petersburg Apartment accordingly.
- 93 In short, in our judgment, the shares in Lilianfeld and hence the St Petersburg Apartment that it holds, were funded by the Trust and were always intended to be an asset of the Trust. It was to be available to Tanya in her status as a beneficiary but it was not intended that she had any interest in the shares in Lilianfeld or the Trust other than a beneficiary permitted to occupy that property. It was anticipated that the St Petersburg Apartment might be sold by the Trust after Tanya had no further use for it. Lilianfeld is held and owned by the Trust and the St Petersburg Apartment is held and owned by Lilianfeld.

94 There is some possibility that Tanya had become concerned about the shares in Lilianfeld and the St Petersburg Apartment because she feared the prospect of losing her ability to occupy the apartment to which she had become attached when she realised that, she having no children but JWD II having children, the Trustee was not going to consider her interests and those of JWD II alone as she would be a minority beneficiary, but would also consider the interests of JWD II's children.

95 As is clear we have not in this judgment set out a detailed explanation of all of the evidence contained in the affidavits, the oral testimony or the documentation. In our judgment on the balance of probabilities the position that comes from all of the evidence referred to within this judgment and otherwise placed before us, is:—

(i) Tanya, through the good offices of JWD, secured employment in St Petersburg and needed accommodation in that city;

(ii) She initially had hotel occupation but looked for alternative accommodations;

(iii) She located the St Petersburg Apartment. She required JWD's agreement because of the measure of control he exercised over the Trust and any source of funds, and entered into correspondence with him seeking the purchase of the apartment;

(iv) The St Petersburg Apartment was initially purchased in her name, in effect as nominee, whilst it was decided how the apartment would be formally held;

(v) It was determined that the St Petersburg Apartment should be held through Lilianfeld which has happened, the transfer being made on 4th December, 1997, and that company has been administered as an asset of the Trust since that time.

(vi) Tanya did not fund the purchase of the St Petersburg Apartment from her own assets nor was the purchase funded by a distribution to her from the Trust.

(vii) It was anticipated by JWD and the former trustees that the St Petersburg Apartment would be for Tanya's use and enjoyment for so long as she remained in St Petersburg and had use of it. Thereafter it might be sold or retained as an investment. The Letters of Wishes to which we have made reference above suggest that, at the time of their execution at least, it was JWD's expressed wish that the apartment would become Tanya's legally, and in effect be distributed to her, after his death. Those wishes were not of course binding.

(viii) Accordingly, in our judgment the shares in Lilianfeld and the St Petersburg Apartment are assets of the Trust and are not held by the trustee for Tanya or for any other person. Tanya might reasonably expect to occupy the St Petersburg Apartment as a benefit conferred upon her as one of the beneficiaries of the Trust as she characterised in her deposition in Colorado, other things being equal.