

## Representation of Ansbacher Trustees

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	F. C. Hamon, O.B.E., Jurats Le Breton, Le Cornu
<b>Judgment Date:</b>	13 February 2009
<b>Neutral Citation:</b>	[2009] JRC 25A
<b>Reported In:</b>	[2009] JRC 25A
<b>Court:</b>	Royal Court
<b>Date:</b>	13 February 2009

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### Text

[2009] JRC 25A

ROYAL COURT

(Samedi Division)

Before:

F. C. Hamon, O.B.E., **Esq., Commissioner, and** Jurats Le Breton **and** Le Cornu.

Representation of Ansbacher Trustees (Jersey) Limited

And in the Matter of The Representation of C Corporation Formerly The CH Trust

And in the Matter of Articles 51 And 55 of the Trusts (Jersey) Law 1984, As Amended.

Between  
Ansbacher Trustees (Jersey) Limited  
Representor  
and

- (1) Suryakant Chhaganal Suchak  
Respondents  
(2) Shirish Chhaganal Suchak  
(3) Madhu Chhaganal Suchak  
(4) Indira Dilip Thakkar  
(5) Dilip J. Thakkar

**Advocate M. H. Temple for the Representor.**

**Advocate J. Harvey-Hills for the minor and unborn children.**

**Advocate L. J. Springate for the Second Respondent.**

**Advocate M. L. Preston for the Third Respondent.**

### **Authorities**

Law of Trusts and Trustees, Underhill and Hayton.

*States Greffier v Les Pas Holdings* [\[1998\] JLR 196](#).

*Bespoke Investments Ltd v Lincoln Nominees Limited and others* [\[2005\] JRC 098](#).

### **THE COMMISSIONER:**

- 1 The three beneficiaries of the C Corporation ("the Trust") are Mr Shirish Suchak, Mr Madhu Suchak and Mr Suryakant Suchak. The Trustee of the Trust is Ansbacher Trustees (Jersey) Limited while the minor and unborn beneficiaries are now represented as well as the other parties who appeared before us today. They are Advocate Temple for the Trustee, Advocate Springate for Mr Shirish Suchak, Advocate Preston for Mr Madhu Suchak and, of course, Mr Harvey-Hills for the minor and unborn beneficiaries. We sat yesterday and I am delivering this judgment with the consent of the two Jurats who will not be present, as will not be two counsel who are leaving the Island. There is intense family disagreement about the division of the assets of this discretionary family settlement which has been ongoing since March 2007. We should point out that there is a Protectors' Committee whose members are Mr Suryakant Suchak (the settlor of the Trust), Mr Dilip and Mrs Indira Thakkar. At one point during yesterday's hearing Advocate Springate said that the Trustee would act on the instructions of the Protectors' Committee and that the settlement deed dated 7<sup>th</sup> February, 2009, which is signed by everyone except Mr Madhu Suchak should be accepted by the Trustees. That is not accepted by the Trustee and, indeed, a careful reading of the Trust deed does not lead us to that conclusion. To use the words of Underhill and Hayton on the Law of Trusts and Trustees:—

***"There is a grave danger that the trustee will be regarded as in the Protector's thrall."***

- 2 There have, because of the family disagreements, now been a total of five adjournments of the Trustee's representation (on 22<sup>nd</sup> February, 2008, 20<sup>th</sup> March, 2008, 30<sup>th</sup> April, 2008, 21<sup>st</sup> August, 2008, and 5<sup>th</sup> December, 2008). These have all been with the consent of the parties. Any further delay will increase the costs and further devalue the Trust. Furthermore the family disagreement is causing vast problems to the Trustee.
- 3 The Trustee has (as one would expect) taken a neutral stance but it has formulated heads of terms for the Principal Beneficiaries to negotiate, drafted Instruments of Appointment and Indemnity, suggesting that the matter be referred to a mediator and agreeing to the numerous adjournments that have occurred, thus allowing the principal beneficiaries to negotiate a settlement of the family disagreement.
- 4 Matters have come to a head because Messrs Appleby have terminated their advice and no longer act for Mr Madhu and Mr Shirish Suchak (these two brothers have now fallen out and Advocate Preston is acting for Mr Madhu Suchak and Advocate Springate is acting for Mr Shirish Suchak:—both at very short notice.)
- 5 As we have said we have before us an agreement which is headed “Settlement Deed of Suchak Family's wealth” which is signed by Mrs Kantaben C Suchak, Mr Shirish Suchak, Mr Suryakant C Suchak but is not signed by Mr Madhu Suchak (who was not at the negotiation and does not agree with it). It is headed with these words:-

*“This Deed of Settlement is in two parts. Part 1 relates to assets under Trust which concerns the Trustees of C Corporation. Part II deals with the Suchak Family's (presently unallocated) wealth outside the said Trust. Both read together will take care of the settlement of the family's wealth between four family members viz (1) Mrs Kantaben C Suchak, (2) Mr Suryakant C Suchak (3) Mr Shirish C Suchak and (4) Mr Madhu C Suchak.”*

- 6 We have a very detailed affidavit on one of the numerous files given to us by Ozannes acting for the Trustee by Mr Paul Monks, a Client Service Director of Ansbacher Trustees (Jersey) Limited. It is dated 9<sup>th</sup> February, 2009, and it gives a full flavour of the family dispute. It concludes with these words:-

*“Conclusion*

*42. The Trustee has given the Principal Beneficiaries of the Trust numerous opportunities to resolve the Family Disagreement concerning family assets and Trust Assets and has endeavoured to assist them with this process from a neutral perspective. The reason the Trustee adopted this approach was because it considered that it was in the interests of the beneficiaries overall to achieve an amicable negotiated solution to the Family Disagreement. Sadly, to date this has not proved possible and the Family Disagreement appears intractable.*

*43. The Trustee has concluded that it is now in the interests of the beneficiaries as a whole that the Trust Assets be appointed to the Principal Beneficiaries to give them certainty and avoid further arguments between them concerning those assets and to end the adverse consequences of the Family Disagreement in terms of administrative and legal costs and for the proper administration of the Trust.*

*44. The Trustee therefore respectfully seeks directions from the Royal Court to approve the appointments of assets as set out in Ozannes' letters dated 28 January, 2009, or one final adjournment of this matter on the terms set out in Ozannes' email to Bedell Cristin dated 6 February, 2009."*

- 7 One of the matters that has most concerned us is a letter from a firm of notaries in Montreal:- Watson, Poitevin Turcot and Prévost. The letter is signed by Mr Prévost and is dated 5<sup>th</sup> February, 2009, and refers to the purchase of a property in Montreal for C\$7,000,000 which is available " *to complete the transaction no later than February 27<sup>th</sup>, 2009*". We advised counsel to leave the matter there but we now have a further letter signed by Mr Prévost and addressed to Mr Shirish Suchak and dated 11<sup>th</sup> February, 2009. It says:-

*"Following our letter addressed to you on February 5, 2009, we have spoken with Mr Paul Durocher, president of Reliable, which indicated to us that he has not the intention to postpone the disbursement of the proposed financing to you after February 27, 2009, since the proposed transaction is supposed to have occurred a few months ago !.*

*Consequently, the date of February 27, 2009, is an absolute deadline after which Reliable will not be liable in any manner whatsoever."*

- 8 We heard for the first time that HSBC would be an alternative funding arrangement but we have no letter from that bank and we have ignored the suggestion.
- 9 We have read with growing concern the voluminous papers. No agreement has been reached and we have taken very careful note of the Trustee's lawyers' letter of 28<sup>th</sup> January, 2009. In the consent order of 20<sup>th</sup> October, 2008, (which details the terms of the proposed settlement) it says at paragraph 6:-

*"In the event that the settlement is not agreed within seven weeks hereof, the Representor will continue with its summons and its application by representation to terminate the Trust and appoint its assets as it shall by the exercise of its discretion think fit whether or not in accordance with the Head of Terms".*

- 10 That consent order was dated as far back as 2<sup>nd</sup> October, 2008. Despite having read Mr Madhukemar Suchak's affidavit of 1<sup>st</sup> October, 2008, we have decided that enough is

enough. We have considered the question of an adjournment (Mr Madhu Suchak has asked for an adjournment until 3<sup>rd</sup> April, 2009, (or such other time as directed by the Court). We are not prepared to grant a further adjournment (see *States Greffier v Les Pas Holdings* [1998] JLR 196).

- 11 The question of mediation has also exercised our minds and we have looked at the case of *Bespoke Investments Ltd v Lincoln Nominees Limited and others* [2005] JRC 098 which provides guidance as to the matters the Court will consider when determining the question of arbitration. One of the questions asked is whether the mediation has a realistic prospect of success. We are not prepared to tolerate further delay and, in our view, mediation would merely prolong this case into future uncertainty, particularly as we heard that the tax (both UK and Canadian) is problematic and advice will be needed.
- 12 Today, after the judgment had been agreed with the learned Jurats but before it was delivered, this note was received by the Bailiff's Judicial Secretary:-

*"Dear Miss Le Mottee*

*The parties are due back before Commissioner Hamon at 11:00 am this morning so that he may give his judgment in respect of the above matter. Accordingly, Commissioner Hamon had indicated that he did not propose sitting with the Jurats for the purpose of giving that judgment.*

*However, an issue has arisen following yesterday afternoon's hearing, such, that we believe it may in fact be necessary for the Learned Jurats to be present. Please can you confirm if they would be available at 11.00 am if necessary.*

*Attached is the latest correspondence exchanged between the parties which highlights the issue that has arisen. Please can you ensure that a copy of the attached is forwarded for the attention of Commissioner Hamon as soon as possible.*

*Should the parties reach any agreement in the meantime, we will of course let you know.*

*Kind regards*

*Rebecca McNulty*

*Lawyer".*

- 13 Shortly before the Court sat this morning a reply was received from Advocate Jowitt for the Trustee. It reads:-

*"For our part we see no point in reopening argument in this matter:—the beneficiaries knew perfectly well the extent of the trustees' holding in Chalais Canada and thus the extent of the interest in the air India claim which the*

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*trustees could appoint.* There can have been no confusion on their part. We see no reason why the Commissioner should not proceed to make an order in this case today.”

- 14 We therefore approve the draft Act of Court with the amendment that 3(a) and (b) shall read the First to Fifth Respondents and with this amendment to (1):-

*“except that the Representor shall take note of the letter received this morning which highlights the issue that has arisen in regard to the Air India claim held by Chalais Holdings (Canada) Limited. It shall exercise its discretion in this regard.”*