

## Re Carder Settlement

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Deputy Bailiff
<b>Judgment Date:</b>	07 November 2001
<b>Neutral Citation:</b>	[2001] JRC 224
<b>Reported In:</b>	[2001] JRC 224
<b>Court:</b>	Royal Court
<b>Date:</b>	07 November 2001

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### Text

[2001] JRC 224

ROYAL COURT

(Samedi Division)

Before:

M.C. St. J. Birt, Deputy Bailiff, **and** Jurats Le Ruez **and** Le Breton.

In re Carder Settlement

**Advocate** M.H.D. Taylor **for the Representor.**

**Advocate** B.H. Lacey **for the Viscount.**

**No Authorities**

In the matter of the Carder Settlement, the RJW Trust, the RW Trust, the Croft Settlement Trust, the Dow Settlement Trust, the Tawny Settlement Trust, and the Taylor Settlement Trust (the “1999 and 2000 Settlements”);

And in the matter of an application under Article 47 of the Trusts (Jersey) Law, 1984, as amended;

And in the matter of the Bankruptcy (Désastre) (Jersey) Law, 1990, as amended.

The Viscount, party convened.

Representation of Robert Wylde, the Settlor of the 1999 and 2000 Settlements.

Application for the replacement of the Trustee by another Trustee.

Deputy Bailiff

## THE

- 1 This is a Representation by Robert Wylde in respect of a number of Settlements, namely the Carder Settlement, established on 2<sup>nd</sup> January, 1997; the RJW Trust, established on 2<sup>nd</sup> January, 1997; the RW Trust, established on the same date; The Tawny Settlement Trust and the Taylor Settlement Trust, both established on 1<sup>st</sup> January, 1999; the Croft Settlement Trust, established on 1<sup>st</sup> January, 2000, and the Dow Settlement Trust, established on 28<sup>th</sup> February, 2000. All the Settlements are governed by Jersey Law and accordingly this Court has jurisdiction over them. The trustee of all the Settlements is Chimel Trustee Company Limited (“Chimel”).
- 2 On 12<sup>th</sup> July, 2001, following an application by the Jersey Financial Services Commission, the Court appointed two partners of Price Waterhouse Coopers to manage the affairs of Chimel. The Order was made pursuant to Article 2(2) of the Financial Services (Appointment of a Manager) (Jersey) Order, 2000. The background to the application was that the police had searched the premises and seized all the records of Chimel, pursuant to a warrant issued under the Investigation of Fraud (Jersey) Law, 1991. As a result the Jersey Financial Services Commission had issued a stop notice preventing the existing directors of Chimel from carrying on any financial services business.
- 3 In the light of that development the Representor wished to move the trusteeship of the Settlements to Walbrook Trustees (Jersey) Limited (“Walbrook”), a well established Jersey trust company.
- 4 On 4<sup>th</sup> October the Representor sought an order that the Trusteeship of the Settlements be transferred to Walbrook. Neither the managers nor the Financial Services Commission had

any objection at that time but the police, having previously stated that they had no objection, withdrew that statement on 4<sup>th</sup> October. Furthermore, on that day, the Court declared Chimel *en désastre* so that the administration of Chimel moved from the managers to the Viscount.

- 5 Since then the Representor, through his advocate, has been liaising with the Viscount and with Price Waterhouse Coopers whom the Viscount has retained as his agents to assist him in the administration of this complex *désastre*. In essence it remains the position that the Representor wishes a new trustee to be appointed so that the Settlements and their underlying companies can be properly administered. They are active trusts and companies with, we are told, very substantial assets. In particular there are some long outstanding invoices payable by two companies owned by two of the Settlements. These invoices are payable to a company called Gollyhott Trading Limited in respect of the provision of commodity future trading advisory services. That company is regulated by the Financial Services Authority of the United Kingdom.
- 6 The Representation before us today seeks the removal of Chimel as Trustee of all the Settlements and its replacement in each case by Walbrook. The complication arises because there is a criminal investigation being carried on into the affairs of Chimel and some of its clients. However, neither the Viscount nor PricewaterhouseCoopers, either in their capacity as managers or, more recently, as agents of the Viscount, have yet come across anything to suggest concerns in relation to the affairs of the Settlements and their underlying companies, although the Viscount emphasises that a fully exhaustive investigation has not been undertaken because of time constraints. Nevertheless on that basis there is, in our judgment, no reason to refuse this application. The Settlements are entitled to have their affairs administered and the Viscount accepts that, with his many onerous duties and limited resources, he is certainly not in a position to provide ongoing management of the affairs of active settlements and companies such as these; and indeed that is not really his rôle.
- 7 Accordingly we grant the Representation. We have been provided with a draft order. Paragraph 1 orders that Chimel be removed as trustee of all the Settlements and that Walbrook be appointed in its place. Paragraph 2 orders the Viscount to deliver up to Walbrook all books and records within five working days in relation to the Settlements and the underlying companies. Paragraph 4 authorises the Viscount to sign any necessary deeds of resignation on behalf of any current directors and other officers of underlying entities. Paragraph 5 orders: "that the Viscount ..... be held free and harmless from all or any liabilities of any nature whatsoever ..... which may arise ..... in connection with any discharge by the Viscount ..... of any functions under the Bankruptcy Law or in complying with any of the orders made herein". We are happy to make Orders as set out in more detailed language in paragraphs 1, 2, 4 and 5 of the draft order.
- 8 The sole dispute between the parties relates to paragraph 3(b) of the draft order. This provides that a sum should be retained in the hands of the Viscount in escrow towards not

only the fees of the Viscount and his agents during the period of the *désastre*, but also towards the fees submitted by the managers in respect of the period between their appointment as managers and the declaration of *désastre*. The paragraph provides that these sums be held back pending agreement, failing which adjudication, upon the quantum of the fee notes.

- 9 Mr. Taylor is willing, on behalf of the Representor, for this paragraph to apply in respect of the fees of the viscount and his agents during the period of *désastre* but he does not agree to its applying to the fees of the managers in respect of the period when they were acting as managers prior to the *désastre*. These latter fee notes total some £14,476. He argues that the managers are merely creditors like anyone else and they are not entitled to any form of security for their costs.
- 10 In our judgment that is not the correct way to look at it. The managers were appointed by the Court. They stood in the shoes of Chimel as trustee. They were in effect Chimel for the period that they were acting as managers. The fees in question are fees charged which Chimel would otherwise have charged for carrying out the administration of the Settlements and companies. In the ordinary case, when a trustee retires and a dispute arises over the fees which it proposes to charge, the retiring trustee will often retain the disputed amount pending agreement or resolution. We think it is perfectly reasonable for the same principle to apply in respect of the fees of the managers and we therefore approve paragraph 3(b), as originally drafted, so as to include the invoices of the managers as well as the invoices in respect of the *désastre*. We are told that this is subject to finalisation and the figure to be inserted, being the aggregate figure of the Viscount's fees and the manager's fees, is some £35,000. If that is incorrect the correct final figure should be agreed and put in the Order.
- 11 I have not mentioned paragraph 3(a) but we make an order as requested in that respect and we also order that if agreement is not arrived at within 28 days then the reasonableness of all or any of the fees will be referred to the Master for adjudication.
- 12 Subject to any observations of counsel it is our view that this judgment should be freely available as normal, notwithstanding that the hearing took place in camera. There is nothing in it that would justify it being given limited circulation.
- 13 We order that the Representor's costs be payable out of the trust fund on an indemnity basis.