

Sinel Trust v Rothfield Investments

Jurisdiction:	Jersey
Judge:	Southwell JA, Smith JA, Carey JA
Judgment Date:	14 March 2003
Neutral Citation:	[2003] JCA 48
Reported In:	[2003] JCA 048
Court:	Court of Appeal
Date:	14 March 2003

vLex Document Id: VLEX-793955645

Link: <https://justis.vlex.com/vid/sinel-trust-v-rothfield-793955645>

Text

[2003] JCA 48

COURT OF APPEAL

Before:

R.C. Southwell, **Esq., Q.C., President**; P.D. Smith, **Esq., Q.C.**; and Sir de Vic Carey, Bailiff of Guernsey.

Between
(1) Sinel Trust Limited
(2) Sinel Trust (Nominees) Limited
(3) Sinel Trust (St Helier) Limited
(4) Sinel Trust Secretaries Limited
Applicants
and
(1) Rothfield Investments Limited
(2) Jayne Ellis
(3) Mortimer Walters

(4) Grahame Sutton
(5) Danielle Mullins
(6) Joseph Brice
Respondents

and

(1) Marjorie Bamford;
(2) Anthony Paul Bamford;
(3) Mark Joseph Cyril Bamford
first Interveners

and

Olivier Verrey, Executor of the late Joseph Cyril Bamford
second Intervener

Advocate P.C. Sinel, a director, for the Applicants;

Advocate A. D. Hoy for the second, third, and fourth Respondents;

Advocate M. H. D. Taylor for the fifth & sixth Respondents;

Advocate C.J. Scholefield for the first Interveners;

Advocate F.B. Robertson for the second Intervener.

Authorities

In re Abacus (CI) Limited [\(2000\) JLR 165](#).

[Guardian Trust & Executors Co of New Zealand Ltd v Public Trustee of New Zealand \(1942\) AC 115](#).

[Carl Zeiss Stiftung v Herbert Smith \(No.2\) \(1969\) 2 Ch 276](#).

Dicey & Morris (13th Ed'n): Rules 40(1); 112; 130.

[MacMillan v Bishopsgate Investment Trust \(No.3\) \(1996\) 1 WLR 387](#).

Appeals: (1) by the Applicants, with leave to appeal granted by the Royal Court on 13th December, 2002; and (2) by the fifth and sixth Respondents from the Judgment of the Royal Court of that date, whereby the Applicants were directed to act upon the directions of the second Respondent and to transfer legal title in the issue share capital in the first Respondent to the second Respondent, or as she may direct; and whereby the Royal Court further declined the Applicants' applications to either (i) convene Sir Anthony Bamford, Mark Bamford and Marjorie Bamford ('the Bamfords')

to the hearing; or (ii) serve proceedings on the Bamfords seeking declarations as to the beneficial ownership of the issued share capital in the first Respondent.

Appeal by the second Respondent, under Article 13(c) (ii) of the Court of Appeal (Jersey) Law, 1961, with leave granted by the Royal Court on 25th February, 2003, from so much of the said Judgment of 13th December, 2002, as ordered that: (1) the applicants' costs of and incidental to the application for directions, including the costs of receiving the judgment handed down by the Court this day, be paid from the assets of the first Respondent on an indemnity basis in accordance with the Company Management Services Agreement executed between Sinel Trust Limited and the second Respondent, such costs to be determined by the Greffier Substitute if not agreed to determine their reasonableness; and (2) the costs of the fifth and sixth Respondents of and incidental to the application for directions be paid from the assets of the first Respondent on an indemnity basis excluding costs in connection with attendance in Court by the advocate for the fifth and sixth Respondents on the 5th and 6th December, 2002 (other than the costs of attending for one hour for a hearing in relation to costs), such costs to be taxed if not agreed.

Southwell JA

- 1 This is an interlocutory appeal from a judgment and order of the Royal Court on 13 December 2002 giving directions to trustees in relation to trust assets. In order to understand the circumstances leading up to the judgment and order of the Royal Court, it is necessary to set out briefly the history of this matter.
- 2 Mr Joseph Bamford ("Mr Bamford") founded with his wife Marjorie the business now well-known by the initials "JCB". They have two sons, Sir Anthony Bamford and Mr Mark Bamford. In about 1975 Mr Bamford left his wife, though they were never divorced, and set up home with Mrs Jayne Ellis who had been his secretary. They lived together until he died in London on 1 March 2001. Mr Bamford was apparently then domiciled in Switzerland.
- 3 In 1974 Mr Bamford had a Jersey company incorporated named Rothfield Investments Limited ("Rothfield"). The nine issued shares in Rothfield were held by trustees for Mr Bamford absolutely. On 31 March 1981 he wrote to the trustees with instructions to hold the Rothfield shares to the joint order of himself and Mrs Ellis and the survivor of them when one of them died. There were some changes of trustees but the Rothfield shares continued to be held in trust on this basis until Mr Bamford's death on 1 March 2001.
- 4 On 9 October 2001 Mrs Ellis entered into a company management services agreement with Sinel Trust Limited ("STL") relating to Rothfield. On 16 October 2001 the shares in Rothfield were transferred by the previous trustees to three wholly owned and controlled subsidiaries of STL, Sinel Trust Secretaries Limited, Sinel Trust (Nominees) Limited and Sinel Trust (St Helier) Limited ("the Trust Companies") each of which issued a declaration of trust in favour

of Mrs Ellis as sole beneficiary, governed by Jersey law. On the same day (16 October 2001) two employees in the STL group of companies, Mr Bart Wijismuller and Danielle Mullins, were appointed directors of Rothfield. Mr Wijismuller subsequently resigned. On 30 October 2001 Mr M Walters (a solicitor and adviser to Mrs Ellis), Mr G Sutton (a friend of Mr Bamford and Mrs Ellis) and Mr J Brice (another employee in the Sinel group of companies) were also appointed directors of Rothfield.

5 Under the will of Mr Bamford, Maître Olivier Verrey, a Swiss notary ("the Executor"), was appointed executor of Mr Bamford's estate. On 9 November 2001 the Executor obtained *ex parte* orders in Switzerland, by which (*inter alia*) the assets of Mr Bamford and Rothfield were frozen, and Mr Wijismuller and STL were required to comply with the requests of the Executor (such requests had been made previously by letter and were for information relating to Rothfield) under threat otherwise of criminal punishment. They have not complied with those requests.

6 It appears that under the will of Mr Bamford the following are the relevant clauses:

"3. BEING of British nationality I HEREBY DIRECT THAT this my Will and the devolution of my estate shall be governed by English law pursuant to the option granted to me by Article 90 paragraph 2 of the Swiss Federal Act of 18 December 1987 on Private International Law.

"5. I give all my shares in Global NV and Castor NV (both incorporated in the Netherlands Antilles) and other securities for money (including any bonds, convertible bonds, debt obligations, promissory notes and other debt instruments) in any private and/or unquoted company held by or beneficially owned by me at my death and forming part of the JCB Group of companies to Bermuda Trust Company of 6 Front Street, Hamilton, Bermuda upon trust to pay the income thereof to Jayne Ellis during her lifetime and subject thereto upon trust in equal shares absolutely for the AB Bermuda Trust One established on 25 July 1996 for the benefit of my son Anthony and his direct lineal descendants and the MB Bermuda Trust One established on 25 July 1996 for the benefit of my son Mark and his direct lineal descendants.

6. SUBJECT only to the legacy referred to in Clause 5 above I GIVE all the rest of my property of whatsoever nature and wheresoever situated, including my apartment at 15 rue du Bon Port Territet and the contents thereof to Jayne Ellis PROVIDED THAT if the said Jayne Ellis predeceases me or fails to survive me by ninety days then I give the said property to my son Mark."

7 By the end of 2001 relations between STL and the Trust Companies on the one hand, and Mrs Ellis and those advising her on the other hand, appear to have become strained. The Trust Companies had been requested by Mrs Ellis to transfer the shares in Rothfield to an Anguilla Trust (which might be formed by STL for this purpose). STL and the Trust Companies were raising the question whether they could safely do this in the light of the Executor's actions in Switzerland and the potential risks for STL and Mr Wijismuller of

criminal or civil sanctions in Switzerland. On 14 January 2002 by letter to Mr Walters STL proposed that Mrs Ellis or Rothfield should start proceedings in Jersey for a declaration against the Executor with a view to obtaining a Jersey judgment which would place the position of the Trust Companies beyond doubt. Mrs Ellis did not agree to do this.

- 8 On 29 January 2002 STL and the Trust Companies issued a representation in the Royal Court with leave of the Deputy Bailiff for service on Mrs Ellis and others, seeking as trustees directions of the Court as to what steps they should take in connection with the Rothfield shares and assets.
- 9 On 28 February 2002 Mr Bamford's wife and their two sons Sir Anthony Bamford and Mark Bamford (together "the Bamford Claimants") issued proceedings in Switzerland against Mrs Ellis, Rothfield, STL and others claiming (inter alia) that Mr Bamford's will be annulled, declarations that dispositions by Mr Bamford in favour of Mrs Ellis be annulled, restitution by Mrs Ellis of property including the shares in Rothfield, restitution by Rothfield, and other relief. Copies of these proceedings were apparently not received by STL until 17 April 2002. The relief sought by the Bamford Claimants has been set out more fully in subsequent court documents in Switzerland, and I will describe this relief in greater detail later in this judgment.
- 10 A letter dated 13 June 2002 was received by STL and Rothfield from a Swiss avocat acting for the Executor instructing them not to hand over securities or other property, then or previously, held directly or indirectly for the account or benefit of Mr Bamford, without the Executor's authority.
- 11 On 19 June 2002 Mrs Ellis started proceedings in the Chancery Division of the English High Court against the Bamford Claimants and the Executor, claiming (as the residuary beneficiary under Mr Bamford's will) inter alia, to have the will established, to declare that there was no valid agreement between Mr Bamford and his wife and sons as to the devolution of his assets on his death, and to determine what assets devolve on Mrs Ellis as residuary beneficiary under clause 6 of Mr Bamford's will. It is unclear what is the relationship between this action in England and the current proceedings in Switzerland, given that Switzerland is the country of Mr Bamford's domicile, and the Swiss courts are *prima facie* the courts having jurisdiction to determine these questions.
- 12 It appears that on 3 July 2002 STL and the Trust Companies received copies of letters dated 29 May 2002 from Mrs Ellis requiring termination of the declarations of trust dated 16 October 2001 and transfer of the shares in Rothfield to herself.
- 13 On 12 July 2002 STL and the Trust Companies filed an Amended Representation. In this pleading they referred to the proceedings started on 28 February 2002 by the Bamford Claimants in Switzerland (to which I have already referred) and summarised the relief sought in those proceedings by the Bamford Claimants. They also referred to the letter of

- 13 June 2002 from the Swiss avocat acting for the Executor. STL and the Trust Companies asked the Royal Court for directions (*inter alia*) whether or not to inform the Executor and the Bamford Claimants about the matters pleaded in the Amended Representation, including Mrs Ellis's attempt to remove the trust assets from Jersey, and what steps (if any) they should take in relation to the proceedings brought in Switzerland by the Executor and by the Bamford Claimants.
- 14 In early October 2002 STL and the Trust Companies issued a summons for directions as regards trial of their representation, which was heard on 16 October 2002 and orders were made for this purpose.
- 15 On 7 November 2002 Laytons, solicitors in London acting for the Executor, sent to STL an affidavit of Swiss law which, they stated, showed "why it is that both the Executor and the Bamford Sons believe that the assets held by [Rothfield] and managed by your trust company form part of the estate of Mr Bamford for Swiss tax purposes". They enclosed also a copy of Greffes de Paix issued by the Swiss Court on 8 May 2002 directing that securities of which Mr Bamford was the beneficiary were not to be handed over to anyone else. They requested an "unequivocal undertaking" to comply with the Swiss Court's Order of 9 November 2001 "in order to prevent enforcement proceedings in the Jersey Courts."
- 16 It appears that by July 2002 the Bamford Claimants had decided no longer to challenge the will of Mr Bamford in its entirety, but only the validity of clauses 3, 5 and 6 of the will (already quoted) under which (*inter alia*) Mr Bamford elected for English law as the law governing succession to his estate. By letter of 2 December 2002 Boodle Hatfield, solicitors in London acting for the Bamford Claimants, confirmed that this was the claim they were making in their Swiss proceedings, but reserved their right to bring additional claims elsewhere.
- 17 STL was summoned by the Swiss Court by virtue of the proceedings referred to in paragraph 9 above to appear on 12 December 2002 in proceedings "for reconciliation" brought by the Bamford Claimants against (inter alios) Mrs Ellis, Rothfield, STL and the Executor, claiming a large number of different elements of relief, including annulment of the gift by Mr Bamford to Mrs Ellis of the Rothfield shares, payment of Swiss francs 1,148,540,000 and interest by Mrs Ellis, payment by STL of Swiss francs 96,600,000 and restitution of the Rothfield shares, restitution by Rothfield of assets owned by Mr Bamford and payment of Swiss francs 96,600,000, and reduction of the lifetime gifts of Mr Bamford to Mrs Ellis by amounts equal to Swiss francs 287,140,000 to each of the Bamford sons and Swiss francs 215,350,000 to Mrs Bamford.
- 18 There came before the Royal Court (the Deputy Bailiff and Jurats Potter and Georgelin) on 5th and 6th December 2002 the applications of STL and the Trust Companies for directions, and also the application of Mrs Ellis that the Rothfield shares be transferred to her.

- 19 At the hearing on 5 and 6 December 2002 Mr Sinel for STL and the Trust Companies presented their case by reference to (*inter alia*) the potential risks to them of criminal penalties and civil judgments in Switzerland because of the claims to the trust assets made by the Executor and the Bamford Claimants. Mr Sinel argued, as he had throughout the period since STL and the Trust Companies had become aware of those claims, that the Executor and the Bamford Claimants should be given notice of these proceedings so as to be able, if they wished, to intervene and to argue against the order which Mrs Ellis sought for the transfer of the Rothfield shares to her.
- 20 On 13 December 2002 the Royal Court delivered judgment and made an order, that the Rothfield shares be transferred to Mrs Ellis (or to her order), authorizing the order to be sent to Boodle Hatfield for the Bamford Claimants, but only in a redacted form, and ordering that the costs of STL and the Trust Companies be paid from the assets of Rothfield on an indemnity basis.
- 21 Because this Court has not heard full argument on all the issues covered by the judgments of the Royal Court, I do not summarise the judgment fully. What is relevant for present purposes is the Royal Court's conclusion that the Bamford Claimants and the Executor should not first be convened to the Jersey proceedings, so as to give them an opportunity of putting their case to the Royal Court as regards the Rothfield shares and the assets held by Rothfield, before the Royal Court decided whether or not to order the transfer of the Rothfield shares to Mrs Ellis.
- 22 The Royal Court observed that
- “Technically STL is not a trustee.** Only the [Trust Companies] are trustees. However, STL is the parent of and controls the [Trust Companies]. Furthermore it is STL which has been joined to the Swiss proceedings instituted by the Executor and the petition issued by the [Bamford Claimants]. For the most part therefore we will not distinguish between them when considering the arguments which have been raised.”
- This Court has adopted the same course, not least because in my judgment it is clear that STL, which controls the Trust Companies in every respect, is a trustee.
- 23 The Royal Court did not directly consider at all the question whether the Executor and the Bamford Claimants ought to be given the opportunity to present their cases to the Royal Court, a question to which considerations of natural justice and Article 6 of the European Convention on Human Rights are not without relevance. The Royal Court did not consider whether the Executor and the Bamford Claimants could put forward either factual evidence, or evidence of Swiss law, or arguments in support of their cases and their claims in relation to the Rothfield shares or the assets held by Rothfield. Instead the Royal Court seems, quite erroneously, to have assumed that Mr Sinel was putting forward all the factual evidence, all the evidence of Swiss law, and all the arguments which the Executor and the Bamford Claimants could and would have put forward if given the opportunity to do so. This

was simply erroneous. All that Mr Sinel for STL and the Trust Companies was doing was to spell out the risks for them if the claims of the Executor and the Bamford Claimants were ignored, while reiterating the need to ensure that, as a first step, those parties were to be given the opportunity to be heard, a point which the Royal Court failed to address.

- 24 The Royal Court carried out a relatively brief examination of English law, and more briefly of Jersey law, and concluded on the limited information and arguments before it that the Executor and the Bamford Claimants could not establish any claim recognisable by the Jersey Courts to the Rothfield shares or assets.
- 25 This Court has heard argument directed only to the question whether, before the Royal Court embarked on any assessment of the rival claims by Mrs Ellis, the Executor and the Bamford Claimants, the Royal Court ought first to have convened the Executor and the Bamford Claimants as parties to the Jersey proceedings so that their evidence and arguments could be heard.
- 26 With all respect to the Royal Court, in my judgment this question has merely to be stated to be seen to admit of only one answer. To decide in favour of one party without having taken steps to give the other parties the opportunity to be heard was contrary to essential considerations of justice as administered in the Courts of Jersey, and contrary to the requirements of Article 6 of the European Convention on Human Rights. On this simple ground the judgment and order of the Royal Court cannot stand and must be discharged. If at any stage the matter comes before the Royal Court again there will have to be a different constitution of the Court.
- 27 As I have already indicated, this Court did not hear argument on all the other matters decided by the Royal Court. That was because it would have been a waste of time, money and the parties' efforts to hear such argument at a stage when the Executor and the Bamford Claimants had only recently become aware of the terms of the Royal Court's judgment, had only had time to put in limited evidence and submissions before this Court, and would justifiably have required substantial further time, together with sight of the documents filed in these Jersey proceedings, before they would have been expected to be in a position to present their cases to this Court. Accordingly I do not go on to consider the various ways in which the Royal Court sought to argue that any claim by the Executor or the Bamford Claimants to the Rothfield shares or assets would be bound to fail, subject only to these points.
- 28 The first point is that in order to arrive at its conclusions the Royal Court considered that it had to distinguish, so as to remove from the field of battle, the decision of the Privy Council in [*Guardian Trust & Executors Company of New Zealand Ltd v Public Trustee of New Zealand* \[1942\] AC 115](#), a case in which were stated the principles of equity applicable where a stranger to a trust claims the trust assets, and the position of the trustee faced with such a claim falls to be considered. Lord Romer in delivering the judgment of the Judicial

Committee said this at page 127:

“There does not appear to be any statute in force in New Zealand that governs the case. It falls therefore to be decided in accordance with the well established principles of equity. One of those principles is that if a trustee or other person in a fiduciary capacity has received notice that a fund in his possession is, or may be claimed by A, he will be liable to A if he deals with the fund in disregard of that notice should the claim subsequently prove to be well founded.”

The Royal Court added these observations on what Lord Romer said:

“Later, at page 128, Lord Romer made it clear that the question is not whether the fiduciary has acted honestly in disregarding the information received; the question is whether the person acting in a fiduciary capacity has had notice of the claim, and not whether he formed a favourable or unfavourable view as to the prospect of the claim succeeding. Lewin on Trusts at paragraph 26–20 suggests that this principle is quite independent of the principles under which a person wrongly distributing a fund may be held liable as a constructive trustee, whether on the grounds of dishonest assistance or knowing receipt.”

29 Lord Romer was one of the greatest equity judges of the twentieth century. It is clear that what he meant by “notice of a claim” was notice of a claim which is, *prima facie*, a reasonably arguable claim. Lord Romer was not referring to specious claims with no arguable foundation.

30 It appears that Advocate Hoy for Mrs Ellis, briefed presumably by her English legal advisers, submitted to the Royal Court as follows (see paragraph 39 of the Royal Court judgment):

“As to the comments of Lord Romer in Guardian Trust, [Mr Hoy] did not accept that these accurately represented the law. If the test were as set out in that case, any rumoured claim, however outlandish, would paralyse the administration of a trust and the enjoyment of the trust assets by the beneficiaries.”

The English lawyers briefing Mr Hoy must have known perfectly well that an equity lawyer of Lord Romer's eminence would not and could not have put the principle of equity in this way.

31 I note with regret that in paragraph 45 of its judgment the Royal Court seems to have given at least provisional credence to this misreading of Lord Romer's simple and accurate statement of the relevant equitable principle in English law.

32 The second point is that the Royal Court does not appear to have noted the nature or

extent of the claim in relation to the Rothfield shares and assets made by the Bamford Claimants in the Swiss Court which has jurisdiction in respect of the will of Mr Bamford. Examination of the relief claimed in the proceedings started in Switzerland by the Bamford Claimants on 28 February 2002 (see paragraph 9 of this judgment) would have shown to the Royal Court that their claims include proprietary claims to the Rothfield shares and assets, contrary to the conclusion which the Royal Court seems to have reached. The Royal Court, however, did not have before it in December 2002 further documents which have been placed before this Court on the appeals. I therefore take forward the history of the various proceedings since December 2002.

- 33 On 15 January 2003 Mr Sinel wrote to Boodle Hatfield solicitors acting for the Bamford Claimants, informing them of the making of the order of 13 December 2002 for the transfer of the Rothfield shares to Mrs Ellis. On 16 January 2003 the matter came again before the Royal Court (the Deputy Bailiff sitting alone) on an application by Mrs Ellis for a stay pending the appeal from that part of the Royal Court's order which directed that a redacted order be sent to the lawyers acting for the Bamford Claimants. At that hearing Mr Sinel disclosed that his letter had been sent to Boodle Hatfield. The Deputy Bailiff criticised Mr Sinel for allegedly making the sending of a redacted form of order nugatory, and in telling Boodle Hatfield more than would have appeared in the redacted order. The Deputy Bailiff rejected Mrs Ellis's application for a stay, directed what form the redacted order should take, and ordered that Mr Sinel should pay the costs of and incidental to the hearing personally. On 20 January 2003 Swiss lawyers acting for STL wrote to the Executor's Swiss lawyers informing them of the Royal Court's order for the transfer to Mrs Ellis of the Rothfield shares, in confirmation of a phone call on 15 January 2003.
- 34 On 22 January 2003 a further protective order was made by the Swiss Court against (*inter alios*) Mr Wijismuller, STL, the Trust Companies and Mrs Ellis, with further criminal sanctions of arrest or fine. Mrs Ellis applied for a stay of this order which was not granted except in relation to item VI, an order that Mrs Ellis transfer immediately (*inter alia*) the Rothfield shares to the Executor, which was stayed by the Swiss Court on 12 February 2003.
- 35 On 29 January 2003 (the reconciliation hearing in the Swiss Court on 12 December 2002 having proved ineffective) the Bamford Claimants filed in the Swiss Court their statement of claim in support of most of the relief originally sought on 28 February 2002 (see paragraph 9 above). The claim is against Mrs Ellis, Rothfield, STL, the Trust Companies, the Executor, and others. At the heart of the claim there are allegations that (i) Mr Bamford behaved unconscionably in failing to provide properly for his wife and for his sons; (ii) as part of this unconscionable conduct he devised a will by which, through electing for a Swiss domicile, he sought to avoid effect being given to the English law contained in the Inheritance (Provision for Family and Dependants) Act 1975, and through electing for the will to be governed by English law, he sought to avoid effect being given to the Swiss law providing for compulsory inheritance portions of his wife and sons; and (iii) he had reneged on the long-standing understanding with his family that the JCB group would remain entirely under the control of the Bamford family. I have already indicated in paragraph 17 above the scope

of some of the relief sought, which includes the annulment of the clauses of the will cited in paragraph 6 above, annulment of the gifts made by Mr Bamford to Mrs Ellis during his lifetime (including the shares in Rothfield) and their return to the Bamford Claimants, payment to them by Mrs Ellis of Swiss francs 1,148,540,000 with interest, restitution by STL and the Trust Companies to the Bamford Claimants of the shares in Rothfield, alternatively sums of Swiss francs 105,492,000 and 10,549,200 with interest, and restoration of the Bamford Claimants' compulsory inheritance portions totalling Swiss francs 1,085,000,000. This statement of their claims makes it clear (as in my judgment did their previous statements of the relief they sought which the Royal Court had before it) that the Bamford Claimants are claiming property in the Rothfield shares and assets.

- 36 So that there is no doubt, I make it clear that whether the title of Mrs Ellis or the claims of the Bamford Claimants (or indeed of the Executor) are well-founded is not a matter on which this Court at this stage can express any view. That is a matter which, if not agreed, may have ultimately to be decided by the Swiss Courts which as the Courts of Mr Bamford's domicile have jurisdiction to decide ownership of assets held by him at his death or disposed of by him before his death. Though the Bamford Claimants and the Executor have, as a result of learning at the eleventh hour of the Royal Court's judgment and of the existence of this appeal, been able to present arguments in support of their wish to be allowed to intervene through Advocates Scholefield and Robertson respectively, there has been as yet no effective consideration of their claims.
- 37 For reasons which I have endeavoured to set out, I conclude that the judgments and order of the Royal Court must be set aside. Instead directions must be given to STL and the Trust Companies to preserve the Rothfield shares and assets and to administer them, pending determination of the various claims in the Swiss Courts to whose jurisdiction Mrs Ellis has, I understand, submitted. The board of directors of Rothfield is at present in stalemate, having two directors nominated by Mrs Ellis (Mr Walters and Mr Sutton) and two directors nominated by STL (Miss Mullins and Mr Brice). That situation must not continue. Having regard to the history of this matter, I conclude that Mr Walters should cease to be a director of Rothfield, and Mr Wijsmuller (a senior person in the STL group of companies) should become once again a director of Rothfield. Provision should also be made for a further nominee, chosen by STL after consultation with Mrs Ellis and the Bamford Claimants, to be made a director of Rothfield if that is thought to be appropriate.
- 38 An asset management company in Jersey, Aberdeen Graham Asset Management Limited ("Aberdeen"), has for some time been actively managing the assets of Rothfield on a discretionary basis, apparently with the approval of STL and Mrs Ellis. I do not suggest that it is necessary or appropriate now to make any change from Aberdeen. But I do consider that in the directions this Court gives to STL and the Trust Companies provision should be made so that such a change can be achieved without a return to the Court, if at any time that is agreed to be appropriate.

- 39 It appears that

That is not acceptable. There will be further substantial costs to be met from the Rothfield assets in respect of STL's, the Trust Companies' and the Fifth and Sixth Respondents' costs in the appeals. The orders of this Court will be intended to ensure that past costs and fees are now paid, and future costs and fees are paid promptly. As Mr Sinel understandably stated to this Court, STL and the Trust Companies would prefer to be freed from the unwelcome role in which they have found themselves since October 2001, and if they are (as this Court requires) to continue in this role they are entitled duly to be paid. Mrs Ellis's cross-appeal against costs was wisely abandoned.

(i) STL and the Trust Companies have not been paid any of their costs incurred in these proceedings before the Royal Court which were ordered to be paid on an indemnity basis from the Rothfield assets;

(ii) STL and the Trust Companies have acted in the administration of Rothfield and the Rothfield shares and assets since October 2001 (or a date shortly after that) without payment of their fees at the rates agreed with Mrs Ellis.

40 Brief mention was made in the course of the submission to this Court of the practice of keeping confidential Beddoes applications to the Royal Court for directions by trustees. Where, for example, trustees apply to the Court for directions as to whether they should start or join as parties in legal proceedings, or whether they should defend legal proceedings, and the trustees provide to the Court the legal advice and other confidential material available to the trustees for the Court to consider, plainly the usual course should be followed of keeping such applications confidential and hearing them in camera. What went wrong in this case is that the Royal Court failed to appreciate that the Bamford Claimants and the Executor had to be given notice of the proceedings so that they could put forward evidence and submissions for the Court to consider, and that the taking of this step would bring to an end the confidentiality of the proceedings.

41 This Court provided to the parties copies of its draft directions and orders, and had the advantage of hearing detailed and helpful submissions on the draft. In deciding on the terms of the directions and orders the Court has taken full account of all those submissions. The aim of the Court has been to go no further than is necessary to ensure that Rothfield and its assets continue to be administered by STL and the Trust Companies until the disputes as to those assets between Mrs Ellis and the Bamford Claimants and the Executor have been resolved, whether by agreement or by the relevant courts.

42 The directions and orders which I propose that this Court should make are set out below.

Smith JA

I agree and have nothing to add.

Carey JA

I also agree.

(i) The Court of Appeal gives the following directions to the Applicants (Sinel Trust Limited, Sinel Trust (Nominees) Limited, Sinel Trust (St Helier) Limited, and Sinel Trust Secretaries Limited):

(a) the Applicants shall retain all the shares in the First Respondent, Rothfield Investments Limited ("Rothfield"), and shall not transfer, sell, charge or otherwise dispose of or deal with or in any way give effect to any disposal of or dealing with any shares in Rothfield, or issue or register or cause to be issued or registered any further shares in Rothfield in addition to the nine shares in Rothfield existing at the date of these directions and Rothfield and its directors shall not issue or register any transfer of such nine shares or any further shares in Rothfield;

(b) the Applicants shall ensure that the assets of and held by Rothfield, whether directly or indirectly, and whether in the name of Rothfield or in any other name are not transferred, sold, charged or otherwise disposed of or dealt with by Rothfield or by any other person or removed from Jersey;

(c) the Applicants shall use their best endeavours to ensure that the terms of the Discretionary Investment Management Agreement between Rothfield and Aberdeen Graham Asset Management Limited ("Aberdeen") of 24 October 2001, the Discretionary Investment Account of Rothfield with Aberdeen and the mandate of Rothfield to Aberdeen (copies of which are annexed to these directions, as Schedule 1 – "the Schedule 1 Agreements") are adhered to and that Aberdeen acts in accordance with such terms;

PROVIDED ALWAYS that nothing contained in sub paragraphs (a), (b) or (c) above shall prohibit the Applicants or the directors of Rothfield from

(1) managing the assets of Rothfield in the normal course of management and administration of such assets as trust assets;

(2) paying from the assets of Rothfield any costs ordered by the Royal Court or the Court of Appeal, whether before or after the date of these directions, to be paid out of the assets of Rothfield to the Applicants;

(3) paying from the assets of Rothfield any costs, fees or disbursements properly due to the Applicants or the directors of Rothfield as calculated in accordance with the terms of the Company Management Services Agreement (a copy of which is annexed to these directions as Schedule 2);

(4) acting on recommendations made by Aberdeen pursuant to the Schedule 1 Agreements in relation to assets of Rothfield, or paying to Aberdeen fees, charges or disbursements properly due in accordance with the Schedule 1 Agreements;

(5) after consultation with the Advocates acting for the Second Respondent ("Mrs Ellis") and the Second, Third and Fourth Interveners ("the Bamfords"), terminating the Schedule 1 Agreements between Rothfield and Aberdeen, and engaging another investment manager (or other managers) on terms as to performance and remuneration not less favourable to Rothfield than the Schedule 1 Agreements;

(d) the Applicants shall forthwith take such steps as are necessary to remove the third Respondent Mr Mortimer Walters from office as a director of Rothfield, and to appoint as a director of Rothfield Mr Bart Wijsmuller, and may take such steps in respect of any other person selected by the Applicants after consultation with the Advocates acting for Mrs Ellis and for the Bamfords as appropriate to appoint such person as a director of Rothfield;

(e) the Applicants shall within 28 days from the date of these directions inform the Advocates for the First Intervener Olivier Verrey ("Mr Verrey") and for the Bamfords in writing of all the current assets of Rothfield, giving the value, location and other appropriate details of such assets, and shall within 14 days thereafter confirm to such Advocates the details of such assets by affidavit;

(f) Rothfield shall supply promptly as and when available to Mrs Ellis, the Executor and the Bamford Claimants:

(1) quarterly valuations of its assets;

(2) copies of all reports from any investment advisers or investment managers which it engages to advise on or manage its investments (such reports to be commissioned by Rothfield at least quarterly);

(3) copies of all agreements entered into with investment advisers or managers in respect of advice on and management of its investments;

(4) such other information about its assets and its investment policies as may from time to time reasonably be requested;

(5) copies of such of its annual accounts or draft accounts as may be available for the last three financial years and provide such accounts on an annual basis;

(g) in so far as by these directions or the other provisions of this order this Court directs the Applicants or the Respondents to do something they must do that thing by their directors, officers, employees or agents or in any other way;

(h) in so far as by these directions or the other provisions of this order this Court directs the Applicants or the Respondents not to do something they must not do or procure the doing of that thing by themselves, or by their directors, officers, employees or agents or in any other way or by any other person or persons;

(ii) The Court gives to each of the material parties (namely the Applicants, Rothfield,

the directors of Rothfield, Mrs Ellis, Mr Verrey and the Bamfords) liberty to apply to the Royal Court in respect of these directions, provided always that 7 days' prior notice in writing shall have been given to each of the material parties of the terms of any such application together with copies of any evidence relied on in support of any such application.

(iii) The appeal of the Applicants is allowed, and the judgment and paragraph (1) of the Order of the Royal Court dated 13 December 2002 are discharged.

(iv) The other paragraphs of the said order dated 13 December 2002 are affirmed.

(v) Leave is granted to Mr Verrey and to the Bamfords to intervene in the proceedings and in the appeal from the Royal Court against the said judgment and order dated 13 December 2002.

(vi) The Applicants shall deliver forthwith to the Advocates acting for Mr Verrey and for the Bamfords copies of all documents filed with the Royal Court and the Court of Appeal by all parties for the purposes of the proceedings and the appeals and cross-appeals to the Court of Appeal, with the exception only of the documents to be excluded from such disclosure namely file 3, tab 28, pages 237–334 inclusive, the whole of file 4 (except pages 695–706, 713–763, 772 – 781, 810–811, 941–947, in each case inclusive, which are to be disclosed) and file 5, tabs 39–41, pages 983–1245 inclusive (except pages 1015–1016, 1101–1107, 1109–1115, and 1128–1167, in each case inclusive, which are to be disclosed), which were filed and placed before the Court of Appeal by the Applicants.

(vii) The cross-appeal on costs by Mrs Ellis is dismissed.

(viii) The Applicants' and the Fifth and Sixth Respondents' costs of and occasioned by the appeals and the Applicants' costs of and occasioned by the cross-appeal shall be paid from the assets of Rothfield on a full indemnity basis in accordance with the Company Management Services Agreement in Schedule 2 executed between STL and Mrs Ellis, such costs to be determined by the Greffier Substitute (if not agreed between the Applicants, the Bamfords and Mrs Ellis) to determine their reasonableness.

(ix) £100,000 shall be paid forthwith from the assets of Rothfield to the Applicants on account of the indemnity costs ordered to be paid in relation to these proceedings by the Royal Court and in relation to the appeal and cross-appeal by the Court of Appeal.

(x) Mrs Ellis shall pay to the Bamfords and Mr Verrey their costs of and occasioned by the appeal and their applications for leave to intervene on the standard basis to be taxed if not agreed.

(xi) The application by Mrs Ellis for leave to appeal to the Judicial Committee of the Privy Council is dismissed.