

Tanya Marya Dick Stock v Pantrust International SA and Richard George De Winton Wigley and James Richard De Winton Wigley and G. B. Trustees Ltd

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| Jurisdiction: | Jersey |
| Judge: | J. A. Clyde-Smith, Jurats Grime, Thomas |
| Judgment Date: | 06 November 2015 |
| Neutral Citation: | [2015] JRC 223 |
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Text

[2015] JRC 223

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, **Esq., Commissioner, and** Jurats Grime **and** Thomas

IN THE MATTER OF THE MANOR HOUSE TRUST AND IN THE MATTER FOR THE
RUSSIAN TRUST

AND IN THE MATTER OF ARTICLE 51 OF THE TRUSTS (JERSEY) LAW 1984

Between
Tanya Marya Dick Stock

Representor
and
Pantrust International SA
First Respondent

and

Richard George De Winton Wigley
Second Respondent

and

James Richard De Winton Wigley
Third Respondent

and

G. B. Trustees Limited
Fourth Respondent

Advocate S. C. Thomas for the Representor.

Advocate P. C. Sinel for the First to Third Respondents.

Advocate M. L. Preston for the Fourth Respondent.

Advocate P.C. Sinel for the second and third Defendants

Authorities

Representation of the Manor House Trust and the Russian Trust [\[2015\] JRC 208](#).

Trilogy Management Limited v YT & Ors [2014] JRC 214.

Letterstedt v Broers [1884] 9 App Cas 371.

Trust — representation in relation to the removal of trustees of the two trusts.

THE COMMISSIONER:

- 1 The Court sat on 27th October, 2015, to consider the representor's applications, brought by way of separate representations which we have considered together, for the removal of the trustees of the Manor House Trust and the Russian Trust ("the Trusts"). This judgment should be read in conjunction with the judgment of the Court dated 8th October, 2015, (*Representation of the Manor House Trust and the Russian Trust* [\[2015\] JRC 208](#)) which sets out the background and in paragraphs 80 — 83 foreshadowed the issue of removal.

We will use the same definitions.

- 2 The Panamanian Trustee and the first and second directors (together “the respondents”) resist the applications for their removal because by their answer, counterclaim and third party claims, filed on 16th October, 2015, in respect of the two representations, they deny that the true nature of the legal relationships created was that of discretionary trusts. The true nature of the legal relationship, they say, is that of agency between the Settlor as principal and respondents as agents. The relationship was more akin to that of a client and banker than to ordinary notions of Anglo-Saxon trusteeship and so the idea of the Court having a supervisory role has no relevance. The trusts were not in truth discretionary settlements established by declaration of trust by Barclaytrust. Alternatively, they plead that the terms of the deeds of trust have been overridden, varied and/or surpassed by agreement between the Settlor and the respondents.
- 3 The respondents assert that over many years they arranged loans at the Settlor's direction and for his benefit through entities affiliated with the respondents (“the Pantrust loans”) of which the balance outstanding is some \$29.5M. The Pantrust loans have now been assigned to the Panamanian Trustee, it would seem in its personal capacity. It was an express or implied term of the contractual relationship between the Settlor and the respondents, they say, that he would assume liability for the repayment of the Pantrust loans. The respondents allege a conspiracy by the Settlor, the representor, her brother and her husband (“the family”) to defraud the respondents by denying the existence of the Pantrust loans and counterclaim against the family for damages in the amount of the outstanding balance.
- 4 Advocate Sinel addressed the Court on the basis that his clients' assertion as to the true relationship was irrefutable. The family, he said, was perpetrating a fraud and using the Jersey proceedings for that purpose. The representor was not a beneficiary of any trust and had no *locus* in the matter; she was being used, fraudulently, by her father, the Settlor, who was the real person behind these applications.
- 5 The Court has made it clear that it cannot proceed on the basis that the respondents' claims as to the true nature of the relationship have been proved. In Paragraphs 50 and 51 of its judgment the Court said this:–

“50 Whether or not the trusts and subsequent deeds, up to and including the 2007 DORAS are shams would be a matter governed by Jersey law as the Trusts were governed by Jersey law at the time they were entered into. As it was held in the case of *In the matter of the Fountain Trust* [2005] JLR 359 at paragraph 14, in order for the Court to conclude that a document or transaction was a sham it is necessary that all the parties to it should have a common intention, that “documents are not to create the legal rights and obligations which they give the appearance of creating.”

51 We venture to suggest that there would be considerable hurdles to

overcome in proving that Barclaytrust were a party to any such common intention when the Trusts were established. Even so, there has been no finding by any court that the trust and subsequent deeds are shams. They are valid on their face and we must at this stage proceed on the basis that it was the intention to create valid trusts and treat them as valid, unless and until a court of competent jurisdiction determines otherwise; notwithstanding that, as alleged by the first director, for many years the trustee may have disregarded the trust and subsequent deeds and simply done as it was directed to do so.”

- 6 The Court notes in this context that whilst now claiming a sham, the respondents have been parties to numerous deeds executed on the basis that the Trusts are genuine, up to and including the 2015 DORAS.
- 7 Unless and until the Court determines otherwise following a full hearing, we must proceed on the basis that these are validly constituted trusts, which on their face they appear to be, and on that basis, the position of the respondents as trustees of the Trusts is untenable.
- 8 It is well established that the Court should order the removal of a trustee, where the trustee has refused to resign, in circumstances where the trustee's continuation in office is detrimental to the good administration of the trust- see *Trilogy Management Limited v YT & Ors* [2014] JRC 214 approving *Letterstedt v Broers* [1884] 9 App Cas 371.
- 9 We would summarise the position in relation to the Trusts as follows:—
 - (i) The Panamanian Trustee has had its licence to conduct business cancelled by the Panamanian regulator, and it is therefore presumably illegal for it to remain as trustee of the Trusts.
 - (ii) The Panamanian Trustee has by the 2015 DORAS appointed two of its own directors (the first director and the second director) as personal trustees, apparently in direct contravention of an order of the Panamanian regulator to allow the Settlor to decide who should be appointed in its place. Advocate Sinel was unable to say whether the 2015 DORAS were effective, and thus there is confusion as to which of the respondents is trustee.
 - (iii) All of the respondents deny the existence of valid trusts—a stance hardly compatible with the office of trustee.
 - (iv) The respondents have a conflict between their personal interests in the repayment of the Pantrust loans and their duties as trustees. In his second affidavit, the first director exhibits lists of the loans made over the years, but there is no indication as to whom the loans were made. We note in this respect that the respondents do not claim repayment of the loans by the Settlor as debtor, but seek damages in the amount of the loans. The first director deposes at paragraphs 18 and 19 of his second affidavit that these loans often needed no actual transfer of monies, as they were dealt with by

an adjustment of the client's account, leading Advocate Sinel to comment that in essence they had been providing the Settlor with a very substantial overdraft facility. Also exhibited to his second affidavit are a number of deeds of assignment between La Hougue Financial Management Services Corp ("La Hougue"), an entity affiliated to the respondents, and the Panamanian Trustee. The preamble states that the Trusts are indebted to La Hougue and the benefit of that debt is then assigned to the Panamanian Trustee. However, it is well established, certainly under Jersey law, that a trust is not a legal entity and it is conceptually inaccurate to talk in terms of a trust being indebted. It will be the Panamanian Trustee, as trustee, that will be indebted to La Hougue if it had borrowed funds in its capacity as trustee. This has not been the subject of full discussion but by way of provisional comment there would seem, therefore, to be two possibilities:—

(a) The Panamanian Trustee, as trustee, has taken the benefit of an assignment of a debt due by itself as trustee. As it would become both debtor and creditor, the debt would be extinguished.

(b) The Panamanian Trustee has taken the benefit personally of an assignment of a debt due by itself as trustee. This seems more likely as there is no reference in the deeds to the Panamanian Trustee acting in its capacity as trustee of the Trusts. This raises the question of whether the Panamanian Trustee can owe money to itself in two different capacities, and even if that is possible, it raises an issue as to conflict between its personal interests as creditor and its interests as a debtor trustee.

Whatever the true position, which will only become clear at trial, it seems clear that the respondents have a conflict of interest.

(v) Relations between the respondents and the family have irretrievably broken down, making it difficult for them to work in harmony in the interests of the trust estates.

(vi) There are trust assets which need to be administered. In particular, there is a large mortgage over the Jersey residential property, the interest of which has not been paid.

10 The fourth respondent ("G.B. Trustees") has a licence to conduct trust company business in Jersey and is entirely independent of the family. It is prepared to take on the role of trustee of the Trusts. There is no question in our minds that it should be appointed, firstly so that there is certainty as to who the trustee actually is, secondly to have a trustee which acknowledges that there actually are trusts and thirdly to have a trustee which has no conflict of interest and is able to administer the trusts' assets in the interests of the trust estates. We are, therefore, going to remove the respondents as trustees of the Trusts and appoint G. B. Trustees, as trustees of the Trusts in their place with immediate effect.

11 Consequential orders will need to be made to place G. B. Trustees in possession of the trusts' assets and we will come to that shortly. Serious issues have been raised, however, by the respondents and unclear as the picture may be at this stage, there is *prima facie* evidence of substantial sums being made available by the respondents to or for the benefit

of the Settlor over many years, some \$US29.5m of which is outstanding and we take the view that justice requires that the trusts' assets be preserved to meet any order the Court might ultimately make. G. B. Trustees must therefore exercise its powers to maintain and preserve the trusts' assets, so that they remain available for that purpose.

Consequential orders

- 12 The respondents must take immediate steps to place G. B. Trustees in control and possession of all of the assets comprised within the trust funds of the Trusts and we make that order. The respondents, to the extent that they are trustees, will have the benefit of any release and their equitable right to follow the trusts' funds for liabilities properly incurred provided by law. They will not, however, seek to retain any part of the trusts' funds by way of security, over and above the security they have already apparently obtained to which we refer below, and this in the light of the particular circumstances of the Trusts and the orders that we are making to preserve the trusts' funds pending the outcome of the substantive proceedings.
- 13 For the purposes of an effective handover, G. B. Trustees needs to know what assets there are and to be given sufficient information to enable it to administer those assets. To that end, we order in relation to each of the Trusts, that within 21 days the respondents provide G.B. Trustees in so far as they are reasonably able (with an explanation if they are not reasonably able to do so supported by affidavit):—
 - (i) With up to date accounts of the trust and each underlying company comprised within the trust fund.
 - (ii) With a schedule of every asset and liability and its location comprised within the trust fund.
 - (iii) In respect of each corporate entity comprised within the trust fund, with the names and addresses of the officers and administrators and how the shares of those entities are held.
- 14 Thereafter, the respondents shall provide G. B. Trustees with such further information as it may reasonably require to enable it to administer the trusts' assets.

Security in favour of the Panamanian Trustee

- 15 A discrete issue arises in relation to security apparently taken by the Panamanian Trustee over certain of the trust assets. In his first affidavit, the first director has exhibited structure charts which indicate:—

(i) In respect of the Russian Trust, a charge over the London flat, a charge over the shares in the company that owns the Jersey flat and cross guarantee and signed promissory notes, all in favour of the Panamanian Trustee.

(ii) In respect of the Manor House Trust, a charge over the Jersey residential property and again a cross-guarantee and signed promissory note, all in favour of the Panamanian Trustee.

16 None of the security documentation has been exhibited and we have no information as to the circumstances in which that security was granted and whether it was in favour of the Panamanian Trustee as trustee (in which case G. B. Trustees will assume the benefit of that security as successor trustee), or, as seems more likely, in favour of the Panamanian Trustee personally in respect of the Pantrust loans.

17 Advocate Thomas asked that the respondents be ordered to release that security for the following reasons:—

(i) It was unclear how such security was created and/or it is unknown in respect of what liabilities the security was taken.

(ii) The granting of such security by the Panamanian Trustee to itself is vitiated by a conflict of interest and liable to be set aside at the beneficiaries' insistence.

(iii) There is an extant dispute in Colorado in which the Panamanian Trustee is asserting claims to which it has yet to be found to be entitled.

(iv) Such continuing direct security held over the assets of the Trusts amounts to unacceptable degree of continuing control and also undermines the ability of the incoming Trustee to manage the trust property effectively, such as by refinancing the mortgage over the Jersey residential property.

18 Whilst it may be unusual for a trustee to take security over trust assets it wholly controls in respect of a liability owed to it personally, we are not prepared to order such a release without first seeing the relevant documentation, secondly understanding the circumstances in which the security was taken and thirdly allowing the respondents to address us on the issue. At the same time, the existence of such security may well impede the ability of G. B. Trustees to take control of the trusts' assets and the issue must therefore be resolved without delay. We therefore order the respondents to provide:—

(i) Within 21 days copies of all the security documentation that exists in favour of the Panamanian Trustee in relation to the Trusts and any of the assets within the trusts' funds.

(ii) Within 5 weeks an explanation by way of further affidavit of the full circumstances in which that security was obtained and the basis upon which it was granted by the

entities concerned, with copies of all relevant meetings, minutes, resolutions and correspondence being exhibited thereto.

- 19 The parties will attend upon the Bailiff's Judicial Secretary this afternoon to fix a date for a further hearing (estimated, we would suggest, half a day) for the Court to consider whether or not the security held by the Panamanian Trustee should be released, the hearing to take place as soon as possible, before the Court as currently constituted if practicable, after the expiration of 5 weeks, allowing the parties reasonable time to file sequential skeleton arguments and authorities on dates that we ask them to agree.

Ongoing case management

- 20 In terms of ongoing case management, we think it would be more efficient for that to be delegated to the Master, both in terms of the pleadings and procedural issues that he normally deals with, any issues that arise out of the orders we have made against the respondents for the provision of information (and the timetable for compliance) and any applications that may be made in the future by G. B. Trustees for further information.

Ongoing injunction

- 21 On 8th October, 2015, the Court ordered that the respondents "shall retain and preserve and shall not actively or by omission part with, charge, remove, or in any way dispose of, deal with or diminish the value of any assets of either the Russian Trust or the Manor House Trust that are located in the Island of Jersey or elsewhere save as with the prior written consent of the representor's Jersey legal advisers."
- 22 Pending the transfer of the trusts' assets to G. B. Trustees and to the extent and so long as the respondents remain in control or possession of any of the trusts' assets, that order will remain in force, save that instead of the written consent of the representor's Jersey legal advisers, it will now be the written consent of G. B. Trustees.

G. B. Trustees

- 23 We invite G B Trustees to confirm prior to our handing down this judgment and making the orders set out above that it agrees to be appointed as trustee of each of the Trusts on the basis that, save as may otherwise be directed by the Court and for the payment of its reasonable fees, costs and expenses, it will maintain and preserve the trusts' funds for the purpose of meeting any orders the Court might ultimately make in relation to the Trusts in the substantive proceedings and any of the entities comprised within the trusts' funds.
- 24 We will also authorise G.B. Trustees to change the proper law of the Trusts back to that of

Jersey law. That may not obviate the need for the Court to consider the applications by the representor to have the 2007 DORAS set aside, but it will bring immediate clarity as to the proper law that is now to apply.

25 Finally, there will be liberty to apply.