

Ogier Trustee v CI Law Trustees and Ors

Jurisdiction:	Jersey
Judge:	The Deputy Bailiff
Judgment Date:	08 November 2006
Neutral Citation:	[2006] JRC 158
Reported In:	[2006] JRC 158
Court:	Royal Court
Date:	08 November 2006

vLex Document Id: VLEX-793223061

Link: <https://justis.vlex.com/vid/ogier-trustee-vci-law-793223061>

Text

[2006] JRC 158

ROYAL COURT

(Samedi Division)

Before:

M. C. St. J. Birt, **Esq.**, Deputy Bailiff, **sitting alone.**

In the matter of the representation of Ogier Trustee (Jersey) Limited as Trustee of the A
Trust.

And in the matter of Article 51 and 53 of the Trusts (Jersey) Law 1984 (as amended).

Between
Ogier Trustee (Jersey) Limited
Representor
and
C.I. Law Trustees Limited

First Respondent
C.I. Law Trust Group Limited
Second Respondent
J-L.K
Third Respondent

Advocate K. J. Lawrence for the Representor.

Advocate W. Grace for the First and Second Respondents.

Third Respondent playing no part in the proceedings.

No Authorities

The Deputy Bailiff

- 1 I have to consider the question of the costs of proceedings instituted by Ogier Trustee (Jersey) Limited (“OTL”) in its capacity as trustee of the A Trust (“the Trust”). The proceedings arise out of a change of trustee on the 12th June 2006. The main asset of the Trust comprises shares in a BVI company called T International Limited. That company in turn owns shares in an English company formerly known as M Limited. The shareholding is said to have a considerable value.
- 2 The former trustee of the Trust was C.I Law Trustees Limited (“C.I. Law”) and Mr Nicholas Morgan was the director of C.I. Law. with responsibility for the Trust. C.I. Law was also trustee of another trust called the Ma Trust and Mr Morgan was again the responsible director. Originally the Ma Trust owned all the shares in T. International but it appointed 50% of the shares in T. International to the Trust and, following a complicated restructuring which involved the underlying business of M. Limited, it is said that T. International became wholly owned by the Trust. I should add that the Ma Trust was originally established by the father of the primary beneficiary of the Trust and the primary beneficiary of the Ma Trust is now her mother.
- 3 T International was administered in Jersey by C.I. Law. However, on 31st May, 2006, a few days before the change in trusteeship, the shares in T. International were transferred into the names of Newhaven Nominees Limited and NG Nominees Limited as to 50% each. These are both BVI companies. It appears that Mr Morgan is also a director of those companies but I was told today that he is not a shareholder.
- 4 I have read the affidavit of Mrs Ford of OTL and the accompanying correspondence. Miss Lawrence has also taken me through the key events and the essential history of this matter is not challenged by Mr Grace. I do not propose to summarise the history. Suffice it to say that OTL quite properly were, from the start of their trusteeship, concerned to establish

exactly what assets were owned by the Trust and equally importantly to get those assets under their control.

- 5 In the context of today's hearing the matter of particular importance to them was to establish whether the Trust owned 100% of T. International as they had been led to believe, and whether the documentary evidence supporting that state of affairs existed.
- 6 There was also a question of whether T. International held all its shares in M. Limited beneficially or whether it held 50% of those shares as nominee for the Ma Trust; but that is a matter for another day and was not at the heart of the matters which give rise to these proceedings.
- 7 On the transfer of a trusteeship the outgoing trustee is under a duty to co-operate fully and actively in the transfer by making all relevant documents and correspondence available promptly to the incoming trustee and by providing any explanation to questions reasonably raised by the incoming trustee. I have been taken through the chronology. Suffice it to say that Mr Grace has very properly conceded that OTL in fact showed considerable patience in this matter and it is clear that they were influenced in this by the unfortunate fact that Mr Morgan has been seriously ill during the course of this summer and has been in England for much of the time having heart surgery.
- 8 I am quite satisfied that the requests for documents and information made by OTL, and in particular as summarised in a questionnaire sent to Carey Olsen in August, were entirely reasonable and the information and documents requested should have been provided by the outgoing trustee.
- 9 As I say OTL were particularly concerned to establish whether the Trust owned 100% of T. International as they had been led to believe and whether there was documentary evidence to support that. They had been given evidence right at the beginning of their trusteeship as to the first 50% by reference to the shares held by Newhaven Nominees Limited and a declaration of trust executed by that company. However, they had received no response to their questions as to who was the registered shareholder of the other 50% and for whom, if anyone, that other registered shareholder held the shares. They had been informed about Newhaven Nominees Limited holding 50% but, until the answers to the questionnaire, they were not informed that NG Nominees Limited held the other 50% and I think that one can properly say that they were in effect given the run-around as between Newhaven and C.I. Law as to from whom they could get further information. Newhaven pointed them to Mr Morgan at C.I. Law and C.I. Law pointed them to Newhaven.
- 10 They did establish from the answers to the questionnaire that C.I. Law was saying that 100% of the shares in T. International were owned by the Trust and they discovered on that occasion that NG Nominees was the other shareholder. However, no documentary evidence was provided and the assertion as to 100% ownership was partially withdrawn

not long afterwards by Carey Olsen when they said simply that the Trust owned 'shares' in T. International rather than 100% of the shares. Accordingly it is quite clear that OTL were still not being given the position. Eventually they launched proceedings on 13th September seeking documents and information.

- 11 It was agreed between the parties that an affidavit in support of the representation should be filed by OTL on 16th October and that was done. It crossed with 13 lever arch files which were delivered by CI Law to OTL and which contained the relevant information about T. International. I should add that it is accepted by the OTL that considerable information about the Trust had been given earlier but it was the information about T. International which was sought, and in particular the Trust's interest in T. International.
- 12 In amongst the documents in the 13 files, OTL found a declaration of trust in relation to the other 50% executed by NG Nominees in favour of the Trust and they were, therefore, satisfied that there was documentary evidence that the Trust owned 100% of T. International. Having received these files, no further information was required and accordingly the purpose of the Representation had been served. That is why no substantive relief is sought today and the only issue before me is the question of costs.
- 13 Mr Grace very properly accepts that C.I. Law were guilty of delay in this matter and he has apologised on their behalf. He argues that that is not sufficient to make an order for costs today. He says I should either make no order as to costs or I should defer making any order concerning costs. He refers to the fact that Miss Lawrence has alluded to the possibility of the Trust seeking to recover from C.I. Law O.T.L.'s own costs incurred unnecessarily in this matter as a result of C.I. Law's failings and he says that I should not pre-judge that. But in my judgment I must today make a decision on this matter, which is now going to come to an end.
- 14 He says next that there is more to this than meets the eye. This really involves a dispute between the principal beneficiary of the Trust and her mother, as main beneficiary of the Ma Trust. Mr Morgan was caught in the middle; he was trying to sort it out and he had to be careful in what he disclosed. I do not think that that is an excuse for the failure to deliver the documents here. All that the incoming trustee was concerned about was to establish the position in relation to the Trust's ownership of T. International as it appeared from the records of the Trust kept by C.I. Law. There was no reason in my judgment for C.I. Law to delay in disclosing full details of who the registered shareholders were and full details of whether those registered shareholders had executed declarations of trust in favour of the Trust.
- 15 Mr Grace has said that insufficient allowance has been made by Miss Lawrence in her submissions for the knowledge which the principal beneficiary and her advisers already had about this matter. He asserted that she was a beneficiary who had been closely involved and they were fully aware of the position. Again, in my judgment, that is not to the point; this was a new trustee who undoubtedly had a duty to establish for itself what assets

were owned and to obtain the necessary evidence to prove that ownership, as well as gaining control. It was, therefore, entirely proper and reasonable for the incoming trustee to demand the information which it did.

- 16 Next he argues that C.I. Law did disclose information about the Trust. It was only in relation to the underlying company, T. International, that it was slow in providing information. But this is a case where according to the Trust's own records, T. International is 100% owned by the Trust. In my judgment a retiring trustee should undoubtedly provide full information to an incoming trustee about a company which is 100% owned. So often the underlying valuable assets are held in companies owned by a trust and it would be nonsensical if a trustee could absolve itself of its responsibility to give or pass over full information by saying that it has passed over the information about the trust but not about the underlying company.
- 17 I accept the point made by Mr Grace that Mr Morgan believes that there may be a query over the 100% ownership but it would have been too easy for that to have been mentioned in a covering letter when passing across the required documents.
- 18 Finally he submitted that I should make allowance for the fact that C.I. Law had faced a difficult time during this period. It was a transitional applicant in relation to being a registered trustee business under the relevant legislation and it had decided not to proceed with its application. It follows that it is now in a wind-down phase under the supervision of the Jersey Financial Services Commission. As a result there was a shortage of staff; furthermore, Mr Morgan had, as I have already mentioned, been unfortunately taken ill during the relevant period and indeed Mr Grace has handed up a schedule showing his absence and I fully accept that he spent much of the relevant time in hospital or in England near a hospital. Again, I do not feel myself that this amounts to an excuse. OTL was not asking for a lot of detailed information which could only be found in Mr Morgan's head. It was asking for conventional documentary evidence about ownership of the trust assets; in particular in this case, the key trust assets. That is something which any trust company should be in a position to produce even in the absence of a key director.
- 19 I am in no doubt that the proceedings launched by OTL in this case were necessary because of the failure of C.I. Law to comply with its duty to assist fully and promptly in the handover in the way I have described earlier. I have no hesitation in concluding that the costs incurred by OTL should be paid by C.I. Law and I conclude that that should start from 25th July, which was when the lawyers on behalf of OTL had been consulted and when warnings were given to C.I. Law that a representation would have to be brought if the necessary information was not provided.
- 20 The final issue is whether such costs should be on the standard basis or the indemnity basis as requested by Miss Lawrence. In my judgment the normal order where a trustee fails in its duty in this way should be an order for indemnity costs. It is very hard to see why costs incurred because of a breach of a fiduciary duty owed by a trustee should fall on the

beneficiaries. I consider that to be a special or unusual circumstance. It is very important to bring home to trustees their duty to comply fully when handing over a trusteeship.

- 21 I have considered whether the circumstances put forward by Mr Grace should lead me to depart from that and to say that standard costs would be appropriate here; but I come back to the finding that there was no valid excuse for C.I. Law to fail to comply with the request for information and I think it would be unjust and unfair for the costs which have been incurred solely as a result of the outgoing trustee's breach or failure to fall on the beneficiaries. I therefore order indemnity costs.