

Tanya Marya Dick Stock v Pantrust International SA

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| Jurisdiction: | Jersey |
| Judge: | J. A. Clyde-Smith, Jurats Fisher, Thomas |
| Judgment Date: | 04 March 2016 |
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Text

[2016] JRC 53

ROYAL COURT

(Samedi)

Before:

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

Between
Tanya Marya Dick Stock
Representor
and
Pantrust International SA
First Respondent
Richard George De Winton Wigley
Second Respondent
James Richard De Winton Wigley
Third Respondent

G B Trustees Limited
Fourth Respondent
John William Dick (Senior)
First Third Party Respondent
John William Dick (Junior)
Second Third Party Respondent
Darrin Stock
Third Third Party Respondent

Advocate S. C. Thomas for the Representor.

Advocate N-L. M. Langlois for the First and Third Respondents.

Advocate M. L. Preston for the Fourth Respondent.

Authorities

Stock -v- Pantrust International and Others [\[2016\] JRC 021](#) .

Companies (Jersey) Law 1991.

Towers v Premier Waste Management Limited [\[2011\] EWCA Civ 923](#) .

Companies Act 2006.

Trust — further matters arising following removal of first to third respondents as trustees.

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

AND IN THE MATTER OF ARTICLE 511 OF THE TRUSTS (JERSEY) LAW 1984

THE COMMISSIONER:

- 1 This judgment deals with further matters that have arisen consequential upon the removal of the first to third respondents as trustees of the Manor House Trust and the Russian Trust (together “the Manor House and Russian Trusts”) and the appointment of the fourth respondent as trustee in their place. We will refer to the second respondent as “Richard Wigley”, the third respondent as “James Wigley”, the first respondent as “Pantrust” and to the first to third respondents together as “the former trustees”. We will refer to the fourth respondent as “the new trustee”.

Second Charge over St John's Manor

- 2 In its earlier judgment of 22nd January, 2016, (*Stock -v- Pantrust International and Others* [\[2016\] JRC 021](#)) at paragraphs 48–51, the Court had declined to lift the second charge over St John's Manor and surrounding grounds in favour of Pantrust. This judgment needs to be read in conjunction with that earlier judgment, but for ease of reading, we set out those paragraphs again:-

“48 The position in relation to the second charge created over St John's Manor and surrounding grounds in 2014 appears to us to be different in this way:-

(i) The request for financial assistance would appear to have come from St John's Manor Limited to Pantrust to assist it in servicing the mortgage in favour of HSBC. The mortgage had previously been serviced from funds made available by Land Securities Investors Limited, which was then in Chapter 11 bankruptcy .

(ii) The facility letter was addressed by Pantrust to St John's Manor Limited, as opposed to being addressed to itself, as trustee. Pantrust was not lending to itself. It was signed on behalf of Pantrust by Richard Wigley and countersigned and accepted by both him and James Wigley on 3rd April 2014 .

(iii) Minutes of the meeting of directors on 24th March 2014 resolving to grant this security do purport to declare an interest on the part of the directors. There are arguments as to whether this discharges their obligation under Article 116 of the Articles of Association and Article 75 of the Companies Law, but at least there is reference to the existence of a conflicting interest .

49. It seems likely that as a result of the Colorado proceedings which commenced in August 2013, there was a need in 2014 for funds to be made available to service the HSBC loan. What we do not have is any evidence from Richard Wigley as to whether any sums were in fact advanced by Pantrust either to St John's Manor Limited or directly to HSBC pursuant to this facility. It seems curious that the former trustees do not appear to be seeking repayment of this loan by St John's Manor Limited to Pantrust. Instead it forms part of the former trustees' claim against John Dick Sr and the family for an indemnity and damages, but even so, in the interests of justice, it is necessary for us to inquire as to whether, in fact, any funds have been paid by Pantrust pursuant to this facility letter .

50. It is, of course, the existence of the second charge over St John's Manor and surrounding grounds that is causing the new trustee its greatest difficulty, but in the circumstances, we are not prepared, certainly at this stage, to order the removal of the charge. The new trustee is now in receipt of the bank statements of HSBC, and at the same time, the former trustees must still be in possession of their own accounting records, and in particular, the accounting records of their client accounts through which, as we understand it, any payments would have been made .

51. We will therefore give directions for the Court to be provided with evidence as to the existence of funds being paid by Pantrust under this facility before hearing further argument on all aspects of this second charge. The onus will be on the former trustees to demonstrate that funds have been so paid."

- 3 Further evidence in this respect was filed by Richard Wigley in his fourth affidavit of 28th January, 2016, and by Oliver Paul Egerton- Vernon of the new trustee in his third affidavit of 5th February, 2016.
- 4 Richard Wigley exhibited extracts from Pantrust's computerised ledger system which he said showed draw-downs under this facility of £842,947.73p. Of this, Oliver Egerton- Vernon accepts that £484,840.14p had been advanced under the facility and applied in the repayment of the HSBC mortgage. He acknowledges that two earlier payments of £150,080 each made on 10th January, 2014, and 24th April, 2014, had been made by Pantrust and applied to the repayment of the HSBC mortgage, but he argues that these two advances pre-dated the facility which is noted as being available from 24th April, 2015.
- 5 The remaining sums which Richard Wigley claims as being due under this facility are disputed by Oliver Egerton- Vernon, but the key point is that the evidence shows at least £785,000.14p being advanced by Pantrust to St John's Manor Limited and applied towards the HSBC mortgage, of which the new trustee accepts £484,840.14p came within the facility; a substantial sum.
- 6 Advocate Langlois conceded that there was an inconsistency in the position of the former trustees in that they have included this loan within the Pantrust loans which form the basis of their counter claim in the Jersey proceedings, rather than pursuing St John's Manor Limited. She informed us that the pleadings would be amended to remedy this inconsistency.
- 7 The new trustee did not dispute that in March 2014 St John's Manor Limited was in need of funding to service the HSBC loan and that funding to the extent set out above was indeed made available by Pantrust for that purpose. Richard Wigley explained that Pantrust had provided the funds from third party lenders for whom it was acting as agent and the facility would not have been made available without the security granted. He pointed out that this facility was made available after the fall out between the former trustees and the Dick family.
- 8 Advocate Preston submitted that notwithstanding the advance of these substantial sums by Pantrust to St John's Manor Limited in order to service the HSBC loan, the second charge should be lifted because:-

(i) The security was as much a fiction, he said, as the security which the Court removed in its judgment of 22nd January, 2016, (see paragraphs 45–47).

(ii) No unconflicted mind considered the issue of the registration of the second charge.

(iii) Only lip service was given to the conflict of the directors in agreeing to the security. The minutes of 24th March, 2014, record only the following:-

“The Chairman noted that, under the Articles of Association of the Company, no declared interest prevented any of those present from being entitled to vote at or from being counted in the quorum of the meeting.”

(iv) The table produced by Richard Wigley appears, he said, to show Pantrust drawing down part of the loan facility in order to repay itself, before then making various payments from the facility which were in dispute and which should not have been made. This has not been explained by Richard Wigley.

- 9 In addition Advocate Preston submitted that Richard and James Wigley (the two directors of St John's Manor Limited who agreed to the facility and the second charge) were in breach of their obligations under Article 75(1) and (2B) of the Companies (Jersey) Law 1991 (“the Companies Law”) which provides as follows:-

“75 Duty of directors to disclose interests

(1) A director of a company who has, directly or indirectly, an interest in a transaction entered into or proposed to be entered into by the company or by a subsidiary of the company which to a material extent conflicts or may conflict with the interests of the company and of which the director is aware, shall disclose to the company the nature and extent of the director's interest .

...

(2B) Any disclosure at a meeting of the directors shall be recorded in the minutes of the meeting.”

- 10 As a consequence, the new trustee, as the shareholder in St John's Manor Limited, applies under Article 76(1) to set the security aside. That article is in these terms:-

“76 Consequences of failure to comply with Article 75

(1) Subject to paragraphs (2) and (3), where a director fails to disclose an interest of the director under Article 75 the company or a member of the company may apply to the court for an order setting aside the transaction concerned and directing that the director account to the company for any profit or gain realised, and the court may so order

or make such other order as it thinks fit.”

- 11 Advocate Thomas, for the representor, referred the Court to this passage from a judgment of Mummery LJ in the English Court of Appeal decision of *Towers v Premier Waste Management Limited* [2011] EWCA Civ 923, in which he said this in relation to the equitable principles and duties underlying the general statutory duties placed upon directors under the *Companies Act 2006*, which we accept are broadly equivalent to the requirement under Article 74(1) of the Companies Law for directors to act honestly and in good faith with a view to the best interests of the company and under Article 75(1) to disclose conflicts of interest:-

“9 In Boulting v Association of Cinematograph Television and Allied Technicians [1963] 2 QB 606 AT 636 Upjohn LJ said that the principle has nothing to do with establishing that the director is guilty of fraud or corruption. In the case of a company director the principle recognises the primacy of the interests of the company which he is trusted not to betray. Thus a company is entitled, in the words of Upjohn LJ ‘to the undivided loyalty of its directors’. We have been reminded by counsel for the appellant that Upjohn LJ referred to the rule as being a broad and flexible one to be fashioned according to changing circumstances and to be applied with common sense and realistically: see 636 and 638. That approach to the formulation and the application of the principle does not, however, undermine the strict nature of the liability enshrined in the principle where it applies. The rationale and the justice of the principle lie in its strict regard for the protection for those interests potentially at risk from a director who does not give his undivided loyalty to the company .

10 Thus a director's liability for disloyalty in office does not depend on proof of fault or proof that a conflict of interest has in fact caused the company loss : Foster Bryant Surveying Ltd v Bryant [2007] EWCA Civ 200: [2007] BCC 804. A director's potential conflict of interest may arise, for example, in connection with a business opportunity. If a director obtains the opportunity for himself, he will be liable to the company for breach of duty regardless of the fact that he acted in good faith or that the company could not, or would not, take advantage of the opportunity.

11 As explained by Lord Russell of Killowen in *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 124 at 144 the liability of a fiduciary to account for the profit made by use of his position:

‘...in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as to whether the profit would or should otherwise have gone to the plaintiff, or whether the profiteer was under a duty to obtain the source of the profit for the plaintiff, or whether he took a risk or acted as he did for the benefit of the plaintiff, or whether the plaintiff has in fact been damaged or benefited by his action. The liability arises from the mere fact of a profit having, in the stated circumstances, been made. The

profiteer, however ***honest and well intentioned, cannot escape the risk of being called upon to account.***

12 Equity's response of strict liability to account for breach of a fiduciary duty is similar whether the liability is triggered by an event which breaches the loyalty duty, or the 'no conflict principle' or the 'no profit principle'.

- 12 Article 75(1) of the Companies Law is reflected in Article 116 of the Articles of Association of St John's Manor Limited but Advocate Langlois drew our attention to Article 125 of the Articles of Association which is in the following terms:-

"Save as in these presents otherwise provided, a Director shall not, as a Director, vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor, save as aforesaid, shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to the following:

(a) Any contract or arrangement giving the Director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company;

(b) ...

(c) ...

(d) Any contract or dealing with any other company in which the Director is interested only as an officer, creditor or employee, or as holder of shares or other securities; or

(e) ...

And these prohibitions may at any time be suspended or relaxed to any extent and either generally or in any particular case or class of cases, by Extraordinary Resolution of the Company" (her emphasis)

- 13 We accept that the equitable principles set out by Mummery LJ above underlie the general duties owed by directors under the Companies Law and Advocate Langlois did not dispute that, as she put it, the position of Richard and James Wigley as directors of St John's Manor Limited, coupled with Pantrust's role as agent for the third party lenders, might be said to give rise to at least a "sensible possibility" that their duty in one capacity might conflict with their duty in another capacity, namely their position as directors and, we believe in the case of Richard Wigley, beneficial owner of Pantrust. That potential conflict, however, she argued fell within the scope of Article 125(d) of the Articles of Association which authorised the directors to vote on the facility with Pantrust in which they both had an interest and it is not open to St John's Manor Limited to complain about it now.

- 14 She accepted, however, that the provisions of Article 75(1) of the Companies Law overrode

the Articles of Association and whilst she conceded that Richard Wigley, as chairman, did not expressly declare the nature and extent of their interest in the facility being offered by Pantrust, she said it had been declared implicitly, as the minutes referred to the provisions of articles.

- 15 If that was not accepted by the Court, then she referred the Court to Article 76(3) of the Companies Law, which is in these terms:-

“76(3) Without prejudice to its power to order that a director account for any profit or gain realised, the court shall not set aside a transaction unless it is satisfied that –

(a) the interests of third parties who have acted in good faith thereunder would not thereby be unfairly prejudiced; and

(b) the transaction was not reasonable and fair in the interests of the company at the time it was entered into.”

- 16 The burden of proof in satisfying the Court of the two matters referred to in Article 76(3) is, she said, upon the new trustee as the shareholder seeking to have the security set aside and she submitted that it was unable to discharge that burden. The new trustee had not advanced any case that the facility was not reasonable and fair and in the interests of St John's Manor Limited.
- 17 Furthermore, the existence of this charge was not impeding the new trustee in its role as trustee or affecting its ability to secure re-financing. Pantrust had offered to subordinate its security to any new lender. It was the factors identified by Oliver Egerton- Vernon in his affidavit that were likely to prove far greater obstacles, namely the size of the HSBC loan, the history of repayment arrears and the financial position of the Manor House Trust.

Decision

- 18 It must be borne in mind that we are dealing with the issue of the second charge at an interlocutory stage before the full circumstances of the relationship between the former trustees and John Dick Senior have been fully investigated and the evidence tested.
- 19 There is little doubt in our minds, however, on the basis of the evidence as presented to us that Richard and James Wigley were in a position of conflict when, as directors of St John's Manor Limited, they considered whether or not to accept the facility offered by Pantrust and to grant Pantrust a second charge over St John's Manor and surrounding grounds. That conflict arose out of their position as directors and, in the case of Richard Wigley, his position as the beneficial owner of Pantrust.

- 20 Whilst that may be a conflict which permitted them to vote under Article 125(d) of the Articles of Association, that article in our view presupposes that the conflict has already been properly declared under the provisions of Article 116 of the Articles of Association and under the overriding requirements of Article 75(1) of the Companies law to disclose “**the nature and extent**” of that conflicting interest and to have that recorded in the minutes. The disclosure made by them manifestly does not discharge their duties in this respect.
- 21 That failure does, therefore, entitle the new trustee to apply under Article 76(1) of the Companies Law to have the transaction set aside, the transaction in this case meaning the second charge. That provision is permissive and according to its terms, the setting aside of the transaction is required to be in conjunction with a direction that the directors account to the company for any profit or gain realised.
- 22 The new trustee is not seeking to set aside the facility as a whole (through which it might be thought that Richard and James Wigley have profited through their interest in Pantrust) and in any event, St John's Manor Limited has substantially benefited from that facility. Instead, the new trustee seeks to set aside the second charge (only), not for the purpose of obtaining any profit or gain which Richard and James Wigley may have made through Pantrust having that second charge, but because its existence is, it claims, impeding the administration of the Manor House Trust and its ability to refinance the HSBC loan.
- 23 We have some doubt, therefore, whether, notwithstanding the failure to adequately disclose their conflict, this is a transaction that the Court should, in its discretion, set aside under Article 76(1) of the Companies Law. Quite apart from that, the new trustee faces the hurdle presented by Article 76(3) of the Companies Law which stipulates that, without prejudice to the Court's power to order that a director account for any profit or gain realised, it will not set aside a transaction unless the two stipulated conditions apply. We agree with Advocate Langlois that the burden of satisfying the Court in this respect lies on the new trustee, as the member seeking to have the transaction set aside.
- 24 The factual matrix is complex but at this interlocutory stage, our reading of the evidence in relation to this particular matter is that in March 2014 St John's Manor Limited was in financial difficulty and was unable to service the very substantial mortgage in favour of HSBC from its own resources or from any resources within the Manor House Trust. For whatever reason, the Dick family were not willing or able to finance it themselves or from resources available to them and Pantrust therefore made this facility available. It was used in substantial part for its stated purpose, namely to service the HSBC mortgage. It is inconceivable, we think, that the family were not aware that the HSBC mortgage over this important property (which we believe comprises the family home) was being met from this source, yet there is no evidence of any complaint over the granting of the facility and its subsequent use for that purpose.
- 25 There is nothing to gainsay the evidence of Richard Wigley that there are third party lenders behind Pantrust (and in any event we think it is likely that this is the case) and their

interests would be prejudiced by the setting aside of the second charge in favour of their agent Pantrust. Whether or not there are third party lenders, the interests of Pantrust would be prejudiced if it were to become an unsecured lender. Bearing in mind that the funds advanced have been used to benefit St John's Manor Limited in large part, this would be unfair.

- 26 In the context of this matter, we think that Pantrust, in making these funds available, was acting in good faith. There is no evidence to suggest that any third party lenders to Pantrust were not acting in good faith. We suspect that Advocate Preston may have misinterpreted the table set out by Richard Wigley in his fourth affidavit, when he asserts that the funds were used in part to repay Pantrust, but even if there are areas of dispute over the use to which some of the funds drawn down were put, there is no escaping the fact that this facility was used in substantial part for its stated purpose, namely the servicing of the HSBC loan. No case has been put forward to us that the terms of the facility itself were unreasonable or unfair.
- 27 Following the hearing, but before this judgment was handed down in draft, the Court was informed by Advocate Baker, for the representor, that the Colorado proceedings have now been adjourned to 17th August, 2016, with mediation to take place in the interim. In a further affidavit from the representor (which appears to be undated), she deposes that US counsel for Richard Wigley and Pantrust had sought the adjournment in order to resolve issues relating to his clients' sworn discovery responses in the Colorado proceedings. His clients had stated that the loan documentation in relation to the Pantrust loans had been prepared and executed at the time of the loans, i.e. the dates reflected in the documents, but that it had now been determined that the documentation for the Pantrust loans was collectively created and executed at the same time in 2013. In addition to correcting this error, US counsel felt obligated as officers of the Colorado court to investigate and confirm the accuracy of all of the discovery responses.
- 28 This is clearly a serious matter, suggesting, as Advocate Baker says, that this documentation was manufactured and falsely dated, but both Baker & Partners and Sinels confirm in correspondence between them that the loan by Pantrust to St John's Manor Limited is not included in the Pantrust loans being claimed in the Colorado proceedings.
- 29 The Court considered the loan documentation to which US counsel referred at paragraph 9 of its earlier judgment of 22nd January, 2016, which on the face of it dated from 1994 to 2012 (which we did note was almost identical in terms) and which it would now appear may have been created in 2013. Security was taken over the assets of the Russian Trust pursuant to that loan documentation which this Court set aside for the reasons set out in paragraphs 6 – 47 of that judgment.
- 30 The position in relation to the loan by Pantrust to St John's Manor Limited is different in that this facility was made available in 2014 and the second charge created at that time was put in place through Jersey lawyers. There is no suggestion that this documentation was

manufactured and falsely dated. We have found that substantial sums were advanced under it. Whilst this new information may enable the new trustee to question the good faith of Pantrust in relation to the Pantrust loans which are the subject of the Colorado proceedings, it does not follow that Pantrust acted in bad faith in relation to the loan to St John's Manor Limited. If we are wrong in saying this, then we are still left with the second requirement under Article 76(3)(b) and, to reiterate, no case has been advanced by the new trustee that this facility was not reasonable and fair.

- 31 In the circumstances, the new trustee fails to discharge the burden upon it under Article 76(3) of the Companies Law. We are not satisfied firstly that the interests of third parties who have acted in good faith would not thereby be unfairly prejudiced and secondly that the transaction was not reasonable and fair in the interests of St John's Manor Limited at the time it was entered into. We decline, therefore, to set aside the second charge in favour of Pantrust over St John's Manor and surrounding grounds. There will, in the circumstances, be liberty to apply.

Trust Assets

- 32 The new trustee had come across a letter dated 11th August, 2004, sent by Richard Wigley to Barclays Private Clients in relation to a guarantee proposed to be given by John Dick Senior and which lists a number of assets under the heading "Other trusts' assets", six of which had not been transferred by the former trustees to the new trustee, namely:-

- (i) Three apartments in Colorado;
- (ii) Two apartments in Toronto;
- (iii) An antique doll collection;
- (iv) Hooper Industries (China);
- (v) The Adastral mining investment; and
- (vi) The Belize land investment.

- 33 The new trustee issued a summons on 29th January, 2016, seeking an order placing these assets under the control of the new trustee. In response, Richard Wigley filed a fifth affidavit dated 11th February, 2016, (the day before the hearing) in effect saying that none of these assets either now exist or are under the control of Pantrust. The new trustee was in the process of considering his response and therefore no order was sought from the Court at the hearing. It would seem that the new trustee's main focus is on Hooper Industries, the 2014 annual return for which lists Richard Wigley as a director and La Hougue Boete SARL as a shareholder, which might be thought to be inconsistent with the explanation given by Richard Wigley in his affidavit.

- 34 As no order is sought at this stage, there is no need for further comment from this Court on these particular assets, save to reiterate what was said in Court, namely that now that John Dick Senior is a party to these proceedings and bearing in mind the apparently close working relationship between him and the former trustees, it seems to the Court that any future requests for information in relation to the assets or former assets of the Manor House and Russian Trusts should be addressed to John Dick Senior (from whom we would expect the fullest co-operation) as well as the former trustees.
- 35 There is one asset not listed in the summons, namely 3NP LLC ("3NP") which the Court considered in its judgment of 22nd January, 2016, at paragraphs 3(iv) and 4, and which we set out again for ease of reading:-

"3(iv) 3NP LLC "3NP". This is a company incorporated in Colorado which has the benefit of approximately \$1.9M currently injunctioned in an account in Colorado at the instance of the representor, imposed, as we understand it, to prevent the former trustees having access to those funds at a time when they were still trustees of the Manor House Trust. Advocate Preston, for the new trustee, took us through a number of documents as summarised in his email of 12th November 2015 to 3NP's US advisers, indicating that 3NP is an asset of the Manor House Trust, including, in particular, its own responses to discovery requests in the Colorado proceedings in which it confirms that it is an asset of the Manor House Trust. In his letter of 26th November 2015, Advocate Sinel said the position in relation to 3NP was very confused and difficult and his clients were taking advice. He wrote again on 4th December 2015, stating that, following a review of the company filings, it was quite clear that it was owned by another company, TIC Lending LLC ("TIC") and was not owned by the Manor House Trust. He further pointed to pleadings filed by the representor both in Jersey and Colorado in which she had asserted that 3NP was owned by Richard Wigley and a Mr Fishman .

(4) The assertions in the representor's pleadings were based upon her understanding at the relevant time and have little relevance, in our view, to the issue of 3NP's actual ownership. If we had to make a decision on the basis of the evidence now before us, we would find on the balance of probabilities that it is an asset of the Manor House Trust. However, there are two reasons why we do not think it appropriate to make such a finding: -

(i) 3NP is a Colorado based entity .

(ii) We are faced with the bare assertion contained in Advocate Sinel's letter of 4th December 2015, that 3NP is owned by TIC. We have not seen the company filings on which that assertion was based, nor has TIC been given an opportunity to be heard before this Court to substantiate its claim to ownership. Natural justice requires that it be given such an opportunity .

(iv) Whilst it would seem that the ownership of 3NP is not a matter in

dispute in the Colorado proceedings, its assets are currently enjoined there and we are cautious about making an order which might interfere with the conduct of those proceedings, the final hearing in respect of which is to take place, we understand, in March of this year. What is of concern here to the representor and to the new trustee is the sum of \$1.9M, the release of which could bring very welcome cash-flow relief to the Manor House Trust. On balance, we feel that the lifting of the representor's injunction over these funds in Colorado and orders as to where those funds should then be paid should be the subject of an application to the Colorado courts."

- 36 The evidence that the Court had before it at that time is summarised in an e-mail dated 12th November, 2015, from Advocate Preston to the US legal advisers to the first to third respondents. Quoting from that e-mail (but not from the underlying documents):-

"In order to avoid any argument or attendant delay in relation to the question of the ownership of 3NP, I have attached the following documents:

1. Fifth Amended Disclosure Statement to Accompany Chapter 11 Joint Plan of Reorganization – pages 19, 20 and 21. Please note the reference to Mr Wigley and his position that the trustee of the Manor House Trust "owns" 3NP. NB this was filed by LSI an entity which is controlled by a Mr Fishman (a close associate of Mr Wigley). I have only sent the relevant section of this document as it is 6MB however, let me know if you wish me to courier the whole document over.

2. Affidavit of Richard Wigley dated 9 January 2014. In paragraph 8 of the affidavit, Mr Wigley states that "beneficial ownership has since transferred to Pantrust in its capacity as trustee of a foreign trust". The foreign trust appears to be the MHT.

3. 3NP's Reply in support of its motion to increase bond amount. Page 3, section C, 3rd paragraph 3. "the fact that Manor House Trust may be the beneficial owner of 3NP". Fairfield and Woods are Mr Wigley's lawyers.

4. Note of a meeting between Mr Wigley's lawyers and the Dick family's counsel (21.11.13). Paragraph 3 – Mr Wigley's lawyers confirm that 3NP is a "Manor House Asset".

5. Defendant 3NP's responses to Plaintiff's first set of discovery requests of 31 January 2014. I refer to the responses to requests 6, 10 and 13 which confirm that 3NP is beneficially owned by the Manor House Trust (copy attached)"

- 37 Since that time, the new trustee has come into possession of a copy of an e-mail from Richard Wigley to Alan Fishman dated 26th January, 2013, in which he expresses the view that 3NP is owned by the Manor House Trust and a copy of a deposition taken on oath from

Richard Wigley before the Colorado courts on 9th December, 2015, which Advocate Langlois confirmed was authentic. In his evidence, Richard Wigley says in summary:-

- (i) He owns TIC. TIC holds the shares in 3NP for Pantrust, which in turn holds the same for “the John Dick entities”.
- (ii) 3NP was formed on instructions of John Dick Senior for the purpose of acquiring certain FNB notes (First National Bank) with a loan from Pantrust Clients of around US\$1.9M.
- (iii) The loan was repaid from the sale proceeds of a property in Jersey, Le Câtelet, owned by St John's Manor Limited, which is in turn owned by the Manor House Trust.
- (iv) Part of the proceeds of the notes (US\$1.9M) was injunctioned before the Colorado courts at the behest of “the Dicks”.
- (v) If released from that injunction, that money would be payable to the Manor House Trust.
- (vi) Richard Wigley would not agree to its release *“because I don't have control of the Manor House Trust”*. He would agree to its release if it was used to pay down the Pantrust loans. There was no written agreement to that effect, but John Dick Senior had been advised that this was how these sums would be used and he had not objected.

- 38 An e-mail from Richard Wigley of 22nd November, 2013, refers to the *“3NP/ Manor House Trust situation”*. In it, he says that if the monies were released, they would be used to pay down the debt from St John's Manor as opposed to being used to pay down the Pantrust loans.
- 39 This further evidence is important because, in addition to further supporting the contention that 3NP is an asset of the Manor House Trust, it confirms that TIC is owned by Richard Wigley and is acting as nominee for one of “the John Dick entities” of which the Manor House Trust is the only contender. The Court on the previous occasion had been concerned about making an order without giving TIC, the shareholder in 3NP, an opportunity of being heard.
- 40 Taking all of this evidence into account, it is clear to us that 3NP is an asset of the Manor House Trust and it should now be transferred to the new trustee. We accept that 3NP was not listed in the new trustee's summons, but this new evidence is dealt with in paragraphs 9 – 12 of Oliver Egerton- Vernon's third affidavit and the former trustees have not therefore been taken by surprise.
- 41 Advocate Langlois argued that we should leave this matter to the Colorado courts, but unlike the Colorado courts, we are exercising a supervisory jurisdiction in relation to this

trust and over what assets should be transferred from the former trustees to the new trustee. We are not seeking to interfere with the injunctive proceedings over the funds in Colorado, for which an application to the Colorado courts will indeed be necessary.

- 42 Richard Wigley is resisting the release of US\$1.9M because he wants that sum utilised to pay down the Pantrust loans, but that does not constitute a valid reason for resisting the transfer of the company itself to the new trustee, which he has the power to procure through his company TIC.
- 43 TIC has not been convened and notwithstanding all the evidence pointing firmly to 3NP being an asset of the Manor House Trust, we think it right to give it liberty to apply at its own risk as to costs (and any potential orders for security for costs) within 14 days of this judgment being handed down (of which it will have notice through Richard Wigley) to show cause why it should not transfer 3NP to the new trustee, failing which we order Richard Wigley to procure that transfer within the following 14 days.

Summary

- 44 Thus, in summary, (i) we decline to set aside the second charge in favour of Pantrust over St John's Manor and its surrounding grounds, (ii) we adjourn *sine die* the new trustee's summons dated 29th January, 2016, (iii) give TIC liberty to apply at its own risk as to costs (and any potential orders for security for costs) within 14 days of this judgment being handed down to show cause why 3NP should not be transferred to the new trustee, failing which we order Richard Wigley to procure that transfer within the following 14 days and (iv) there will be liberty to apply.