

## X Trustees Ltd v A

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Jurats Crill, J. A. Clyde-Smith, OBE., Dulake
<b>Judgment Date:</b>	07 January 2021
<b>Neutral Citation:</b>	[2021] JRC 18
<b>Date:</b>	07 January 2021
<b>Court:</b>	Royal Court

**vLex Document Id:** VLEX-868554363

**Link:** <https://justis.vlex.com/vid/x-trustees-ltd-v-868554363>

### Text

[2021] JRC 18

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, OBE., and Jurats Crill and Dulake.

In the Matter of the Representation of X Trustees Limited

and

In the Matter of the D Trust and The E Trust

and

In the Matter of the Trusts (Jersey) Law 1984 (As Amended)

Between  
X Trustees Limited

Representors  
and  
A  
First Respondent  
  
and  
  
B  
Second Respondent  
  
and  
  
C  
Third Respondent  
  
and  
  
F  
Fourth Respondent  
  
and  
  
G  
Fifth Respondent  
  
and  
  
H  
Sixth Respondent  
  
and  
  
J  
Seventh Respondent  
  
and  
  
K  
Eighth Respondent  
  
and  
  
L  
Ninth Respondent  
  
and  
  
M  
Tenth Respondent  
  
and

N  
Eleventh Respondent

and

O  
Twelfth Respondent

and

P  
Thirteenth Respondent

and

Advocate Damian Evans as guardian ad litem of Q and R, minors  
Fourteenth Respondent

**Advocate J. P. Speck for the Representor.**

**Advocate J. M. Sheedy for the First, Second, Third, Fourth, Fifth and Sixth Respondents.**

**Advocate A. Kistler for the Seventh and Eighth Respondents**

**Advocate D. Evans as guardian *ad litem***

## **Authorities**

Trusts (Jersey) Law 1984 (as amended)

(Exchange of Information with Third Countries) (Jersey) Regulations 2008

*Channel Islands & International Law Trust Co. Ltd v Pike and 5 others* [1989] JLR Notes-13d.

*Re Moritz* [\[1959\] 3 All E.R. 767](#)

*E, R, O and L Trusts* [\[2008\] JRC 053](#)

*Re Y Trust* [\[2013\] JRC 126](#)

Lewin on Trusts (20th edition)

Trust — re directions to the Representor — reasons.

**THE COMMISSIONER:**

- 1 On 26<sup>th</sup> November 2020 the Court gave certain directions to the Representor (“X Trustees”) firstly in connection with proceedings it had commenced and is defending elsewhere, in which certain beneficiaries of the D Trust, of which it is trustee, are defendants and secondly for the disclosure of information to the Country 1 tax authorities. We now set out our reasons.

[The judgment has been heavily redacted to protect the interests of the Representor in any ongoing litigation, but it is published for the points of principle contained in it].

2 [Redacted]

3 [Redacted]

4 [Redacted]

5 [Redacted]

6 [Redacted]

7 [Redacted]

8 [Redacted]

9 [Redacted]

10 [Redacted]

11 [Redacted]

12 [Redacted]

13 [Redacted]

14 [Redacted]

15 [Redacted]

---

**[Heading redacted]**

16 [Redacted]

17 [Redacted]

18 [Redacted]

19 [Redacted]

20 X Trustees applied by way of a further Beddoes application for authority to continue the overseas proceedings. It also sought directions for disclosure of information directly and indirectly to the Country 1 tax authorities.

**Request for information under the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 ("TIEA")**

21 By letter dated 27<sup>th</sup> October 2020, X Trustees received three requests for information from the Jersey Comptroller of Taxes in respect of each of the E, the D Trust and another associated trust called the V Trust, following a request from the competent authority of Country 1. The V Trust had not been included in the reinstatement application because it was terminated in December 2011. The initial deadline for compliance with the notices was 26<sup>th</sup> November 2020 but after further liaison between the Comptroller and Maurant Ozannes, the Comptroller agreed to extend the deadline to 18th December 2020.

22 X Trustees had considered the contents of the notices and intended to comply insofar as it was able, and in doing so, wished to send a covering letter to the Comptroller to explain the background to the trusts, including the circumstances and process by which they were reinstated. Copies of the notices were served on the Jersey lawyers for all of the beneficiaries on 30<sup>th</sup> October 2020, and none had expressed an objection to X Trustees' intention to comply. X Trustees requested permission, however, to go beyond strict compliance with the terms of the notices and to provide the Comptroller with the judgment of [redacted], by which the trusts were reinstated. This was necessary in order for the Comptroller, and through him the Country 1 tax authorities to fully understand the history and circumstances of the trusts.

**[Heading redacted]**

23 [Redacted]

24 [Redacted]

### The law: Beddoe type relief

- 25 A brief summary of the position is contained in the case of *Channel Islands & International Law Trust Co. Ltd v Pike and 5 others* [1989] JLR Notes-13d which held (insofar as is relevant):

**“a. A trustee has an absolute right to apply to the court for directions under [then] Art. 47(3) of the Trusts (Jersey) Law, 1984 (“the Trusts Law”) concerning the bringing of an action which raises questions relating to a trust, at the expense of the trust fund (a “Jersey-applied Beddoe application”).**

**b. Since only a ‘court’ (defined by art. 1(1) of the Trusts Law as the Inferior Number of the Royal Court) may hear such an application, or any other application made under the Trusts law, neither a single judge nor the Judicial Greffier has jurisdiction to entertain an application under [then] Art. 47 or otherwise .**

**c. For an application to sanction the bringing of proceedings to succeed, the applicant need only show the existence of a *prima facie* case and need not go so far as to show a good arguable case on the substantive issues to be raised ( *West v Lazard Bros. & Co. (Jersey) Ltd*, 1987–88 JLR N-21, **followed**; *Johnson Matthey Bankers Ltd. v. Shamji*, 1984–85 JLR N-26, **not followed**).”**

- 26 Clearly the purpose of Beddoe-type relief is to provide certainty and protection to a trustee by predetermining the question of whether costs incurred in third party litigation were reasonable and should be borne out of the trust fund. If Beddoe-type relief is granted it removes any doubt as to the right of the trustee to be indemnified from the trust fund for its costs incurred in the third-party litigation.
- 27 The essential question for the Court on a Beddoe-type application is not whether the Court considers that the proposed actions of a trustee are the right ones, although Advocate Speck for the Representor submitted that in this case it is difficult to see what option was available to X Trustees other than to continue with the proceedings. Instead, the test is as to whether there is a *prima facie* case, which Advocate Speck submitted, with the benefit of the Country 1 and Country 2 advice obtained, was plainly satisfied.

### Procedure at the hearing

- 28 The Court followed the approach set out in the case of *Re Moritz* [\[1959\] 3 All E.R. 767](#) referred to in the case of *E, R, O and L Trusts* [\[2008\] JRC 053](#), where Sir Michael Birt, then Deputy Bailiff, stated (at paragraph 22) that the approach in Jersey is as follows:

***“Even where a beneficiary has an adverse interest (e.g. he will be the opposing party in litigation which the trustee proposes to commence) it is still usually appropriate to convene that beneficiary to the application for directions. However, as it made clear in *Re Moritz* [1959] 3 All E R 767, the Court may in such circumstances order that some or all of the written material produced to the Court by the trustee or other beneficiaries is not supplied to the adverse party and may also require the adverse party to leave the Court whilst it hears the trustee and other beneficiaries about the strength or weaknesses of the course of action which is proposed. Such a procedure is frequently adopted in this Court.”***

29 This approach was adopted more recently in *Re Y Trust* [2013] JRC 126 and see also Lewin on Trusts 20th edition at 48–150. The rationale for convening beneficiaries who have an adverse interest to such applications is two-fold:

- (i) So that the beneficiary may put forward material of which the Court should be aware before giving directions to the trustee, e.g. that beneficiary's own view as to the trustee's proposed course of action, and
- (ii) It might be thought unfair for the Court to make a decision which would affect the trust, and thus the beneficiary's interest, without giving him or her an opportunity to put their observations to the Court.

30 Accordingly, Advocate Sheedy was invited to address the Court on X Trustees' application and its proposals, and he and his colleagues then withdrew from the Court to enable the Court to be addressed on the merits of the advice received in respect of the overseas proceedings and the proposed disclosure of information.

31 Whilst Advocate Sheedy and the beneficiaries he represents (which included defendants in the overseas proceedings) had received a copy of Advocate Speck's detailed letter of 9<sup>th</sup> November 2020 explaining the purpose of the application to the Court and the orders X Trustees was seeking, the Court had directed that no documentation should be provided to Advocate Sheedy without leave. At the hearing, the Court authorised X Trustees to provide Advocate Sheedy with copies of the documents filed in both the application made on 3rd July 2020 and this application, with certain redactions.

**[Heading redacted]**

32 [Redacted]

33 [Redacted]

34 [Redacted]

35 [Redacted]

36 [Redacted]

37 [Redacted]

38 [Redacted]

### **Decision**

39 Taking first the TIEA, the Court was clear that to limit the response to the strict confines of the requests made by the Comptroller of Income Tax would be to give a very misleading picture of events to the Country 1 tax authorities. It was not in the interests of the trusts for the Country 1 tax authorities to be told of the 2011 restructuring which terminated the trusts and not the [redacted] judgment, by which the trusts were reinstated with retrospective effect. As a matter of law, the trusts had not been terminated by the 2011 restructuring, all of which had been set aside, so that the trusts have continued in existence.

40 Following the advice of X Trustees' tax advisor, X Trustees should now file the necessary Country 1 tax returns and in the covering letter to the Country 1 tax authorities which accompanied the returns, to explain the circumstances by which the trusts were reinstated.

41 As to the proceedings brought elsewhere, the Court agreed to grant the relief sought for the reasons put forward by X Trustees, namely:

(i) [Redacted]

(ii) [Redacted]

(iii) [Redacted]

(iv) [Redacted]

(v) [Redacted]

(vi) [Redacted]

(vii) [Redacted]

(viii) [Redacted]



42 As to the financial position of the D Trust (the E Trust having no material assets) and its ability to fund the overseas proceedings, this was set out in the fifth affidavit of Mr V, a director of X Trustees. The Court noted that in order to free up some additional liquidity, X Trustees was seeking bridging finance of approximately [redacted], using the two Country 2 properties forming part of the assets of the D Trust, with an estimated market value of approximately [redacted] as security, and this from [redacted] with whom terms had been agreed.

**[Heading redacted]**

43 [Redacted]