

# Barclays Private Bank & Trust Ltd (now known as Zedra Trust Company (Jersey) Ltd) v Advocate Steven Chiddicks representing the minor beneficiaries of the ZIII Trust

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	J. A. Clyde-Smith OBE., Jurats Blampied, Ramsden
<b>Judgment Date:</b>	10 March 2020
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<b>Court:</b>	Royal Court

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## Text

[2020] JRC 44

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith OBE., **Commissioner, and** Jurats Blampied **and** Ramsden.

Between  
Barclays Private Bank & Trust Limited (now known as Zedra Trust Company (Jersey)  
Limited)  
Representor  
and  
Advocate Steven Chiddicks representing the minor beneficiaries of the ZIII Trust  
First Respondent

and

The estate of C  
Second Respondent

and

Equity Trust (Jersey) Limited  
Third Respondent

and

Geneva Trust Company (GTC) SA (formerly known as Rawlinson & Hunter Trustees SA)  
Fourth Respondent

**Advocate M. P. Cushing for the Representor.**

**Advocate J. Harvey-Hills for the Second Respondent.**

**Advocate J. M. P. Gleeson for the Fourth Respondent.**

### **Authorities**

*Representation of Zedra Trust Company (Jersey) Limited re ZIII* [\[2019\] JRC 069](#)

*Rawlinson & Hunter Trustees SA v Chiddicks and others* [\[2019\] JCA 106](#)

*Re IMK Family Trust* [\[2008\] JLR 250](#)

*Representation of the Z Trusts* [\[2015\] JRC 214](#)

Trusts.

### **THE COMMISSIONER:**

- 1 The Fourth Respondent, ("GTC"), seeks the Court's approval to it being appointed trustee of the Z III Trust in place of the Representor ("Zedra").
- 2 The ZIII Trust is in the course of being wound up by Zedra, pursuant to the order of the Court dated 26<sup>th</sup> April, 2019, for the reasons set out in the Court's judgment of that date ( *Representation of Zedra Trust Company (Jersey) Limited re ZIII* [\[2019\] JRC 069](#)). The insolvency procedure put in place by the Court is attached to that judgment.
- 3 Creditor claims have been submitted and inspection has taken place. Advice on those claims has been taken by Zedra, which is on the cusp of announcing its decision as to

whether those claims should be admitted or not, and this pursuant to paragraph 8.1 of the insolvency procedure. Any creditor dissatisfied with its decision can have the matter referred to the Court.

4 As at 26<sup>th</sup> April, 2019, the principal creditors of the ZIII Trust were noted as being:

(i) Mr E as executor of the Estate of his mother C with a claim of £87.04 million.

(ii) GTC, in its capacity as trustee of the ZII Trust, with a claim of £230.36 million (which as we understand it includes interest) and a further claim in the sum of £2.2 million in respect of an interest free loan.

(iii) The Third Respondent ("Equity Trust") with a claim of £90,920.26, being unrecovered costs of litigation it was involved in as a former trustee, together with its costs in proving that claim in the sum of £316,769.28 (as at 10<sup>th</sup> October, 2019); a total of £407,689.54. Following the decision of the Court of Appeal of 28<sup>th</sup> June, 2019, ( *Rawlinson & Hunter Trustees SA v Chiddicks and others* [\[2019\] JCA 106](#)), the claims of Equity, if proved, would take priority over the other claims in the insolvency. There is a background of hostility between the D family and Equity Trust.

(iv) Buckingham Securities & Investments Plc ("Buckingham"), in the sum of £1.9 million, which it claims to have incurred on behalf of the ZIII Trust. This company is beneficially owned by Mr E.

5 Equity Trust has a further indirect interest (potentially) in the winding up of the ZIII Trust, in that it has a claim against the ZII Trust in the sum of £18 million. The ZII Trust is also "insolvent" (using that technically inappropriate term) and until recently, its only known asset was its claim against the ZIII Trust.

6 GTC as trustee of the ZII Trust and the Estate of C represent more than 99% of the creditor claims against the assets of the ZIII Trust in terms of value. It is the case that apart from Equity Trust, all of the creditors of both the ZII Trust and the ZIII Trust are connected to D family trusts or the D family.

7 In terms of the progress in the winding up of the assets of the ZIII Trust, the Court had an affidavit from Mr Alan Victor Tidy, the managing director of Zedra, dated 27<sup>th</sup> January, 2020, reporting that some fifteen companies within the trust structure had been dissolved and valuations obtained of the assets held in England, but he reports that Mr E has not been cooperative in that process, so that it has not been possible for Zedra's agents to inspect the same. It would appear that Mr E is in *de facto* control of these assets, and reluctant to relinquish that control.

8 Zedra's agent, Savills, unsuccessfully requested access from Buckingham to underlying

English properties held within the trust namely Property 1 and Property 2. Savills had to resort to “drive by” valuations. Zedra's agent, H R Owen, was not able to inspect a Rolls Royce used by Mr E but ultimately owned by the trust and had to resort to a “walk around” valuation where it was parked in Berkeley Square.

- 9 Going back in time, on 28<sup>th</sup> December, 2016, the Court had given approval for the appointment of GTC as trustee of the ZIII Trust, consistent with the wishes of the family at that time that GTC should be trustee of all of the Z trusts, with a view to a re-structuring that would avoid insolvency altogether, but that appointment never took place, because of a falling out between Mr E and GTC. Zedra remained as trustee and ultimately on 26<sup>th</sup> April, 2019, the Court appointed it to conduct the winding up. Equity Trust had favoured the appointment by Zedra of an independent insolvency practitioner to deal with that winding up process, and Mr E favoured the appointment of a different trustee, Helm Trust Company Limited (“Helm”), which administered a private trust company that would be taking over as trustee of all of the associated Z trusts other than the ZII Trust. In the Court's judgment of 26th April 2019, *Representation of Zedra Trust (Jersey) Limited re ZIII Trust* [\[2019\] JRC 069](#) Commissioner Clyde-Smith said this at paragraphs 18–20:

**“18 All the creditors are agreed that the ZIII Trust should now be wound up.** There has already been a substantial delay, in which costs have inevitably been incurred, reducing the amount available for distribution to the creditors. There are only two issues. Firstly, who should conduct the winding up and secondly, what kind of insolvency regime should be imposed .

**19. I see no point in going through the cost and delay of appointing a new trustee (Helm) to conduct the winding up, when we have a perfectly competent professional trustee in place, already fully familiar with the trust and its assets. The vague reference to possible hostility on the part of the family does not justify a change in trustee at this very late stage. I am not aware of any conflicts of interest which might inhibit Zedra from properly discharging its duties and obligations in the winding up, whereas there is a possibility that Helm might find itself, in a position of conflict with its management of the private trust company if it takes over the trusteeships of the remaining Z Trusts (other than the ZII Trust). The winding up should therefore be undertaken by Zedra .**

**20. Nor do I consider it necessary or proportionate to require Zedra to use its powers as trustee to appoint an independent insolvency practitioner. Even if it did so, it would remain a trustee of the assets and would not unreasonably seek legal advice as to the steps it was advised to undertake by its appointee; the reality is that the appointment of such a practitioner would add another layer of costs to the process, when Zedra was perfectly able to undertake the process itself.”**

As can be seen, it was not suggested by any party at that stage that Zedra was in a position of conflict in carrying out this role, although it is fair to acknowledge that one of the purposes of the appointment of an insolvency practitioner advanced by Advocate Jordan

was that he or she could investigate any potential past breaches of trust.

- 10 On 9<sup>th</sup> October, 2019, Advocate Gleeson, for GTC, wrote to Advocate Cushing, for Zedra, stating that there had been a change in circumstances justifying the appointment of GTC as trustee of the ZIII Trust in place of Zedra:
- (i) Mr E had now resolved his differences with GTC and was supportive of it being appointed as trustee.
  - (ii) It had come to GTC's notice that Zedra had a potential conflict in relation to the very substantial losses suffered by ZIII Trust, as a consequence of its decision in 2006 (when it was called Barclays Trust Company (Jersey) Limited) to acquire the Company 1 for a total consideration of £474.3 million, a business which failed shortly after the acquisition causing substantial losses to the ZIII Trust. Subsequent litigation pursued by Zedra in the English High Court (with Court sanction) to seek damages for alleged professional negligence on the part of Ernst & Young LLP in providing due diligence services in relation to this acquisition were unsuccessful, the costs being incurred being a considerable drain on the cash reserves of the ZIII Trust.
- 11 Advocate Gleeson stated that Zedra's handling of these matters needed to be investigated independently. He did not make it clear how it was intended that an investigation into Zedra would be funded, but the use of the trust fund of either trust for that purpose would need the prior sanction of the Court.
- 12 The Court inquired as to why this potential conflict on the part of Zedra had not been raised in April 2019, when no issue of conflict had been identified by any of the parties. Advocate Gleeson explained that the material developments were:-
- (i) the judgment of the High Court in the Company 1 litigation, and
  - (ii) information obtained in the claim brought by GTC as trustee of the ZII Trust against the former trustee, which had been successfully settled with a payment into the ZII Trust of substantially more than is needed to pay the priority claim of Equity Trust in full. Whilst the ZII Trust remains insolvent on the balance sheet test, its financial position has now been transformed.

### **Position of the parties**

- 13 Zedra was in the hands of the Court. It would continue with the winding up or retire in favour of GTC, whichever course the Court required, but it accepted that it could not investigate itself in relation to the Company 1 investment and subsequent litigation if that was part of the winding up process. The terms of the deed of appointment and retirement of trustees had been circulated and agreed with GTC. Zedra's concern in continuing the winding up was the lack of cooperation from Mr E over the realisation of English cited

assets which he appeared to control. We can see that as a consequence of this lack of co-operation, the winding up of these assets may be difficult and costly. In terms of the creditor claims, Zedra had a neat package of documents with its draft determinations, which it was in a position to pass on to a new trustee.

14 Advocate Jordan had not been allowed by Equity Trust to appear at the hearing for commercial reasons and reasons of proportionality, but she had written to the Court on 28<sup>th</sup> January, 2020, raising the following points. In summary:-

- (i) Equity Trust's liability was incurred seven years ago. It had now gone through the process of lodging its claim under the insolvency procedure, and Zedra was about to issue its determination. Pursuant to the judgment of the Court of Appeal, its claim would take priority over the other creditors. The appointment of another trustee to take over the insolvency process at this stage would cause further delay and potentially result in Equity Trust incurring yet further legal fees in dealing with the new trustee.
- (ii) Any new trustee should be unconnected and not tainted by other interests or relationships. GTC had an obvious conflict in that it was a major creditor in its capacity as trustee of the ZII Trust. It would have to adjudicate on its own claim. If GTC was appointed trustee, it should delegate the winding up process to an independent insolvency practitioner.
- (iii) The conflict of GTC was more pronounced because of its relationship with Mr E, who was materially behind all of the decisions that led to the insolvency of the ZIII Trust, and whose influence compromised the position of GTC.
- (iv) The remaining assets of the ZIII Trust should be secured and properly valued as a matter of urgency.
- (v) Assuming Equity Trust's claim against the ZIII Trust was admitted by Zedra, its priority claim could be paid, which would leave it with no further standing in these proceedings and it would not need to take a position on GTC becoming trustee. It was within the power of the parties to determine Equity Trust's position.

15 Mr E, as the executor of the Estate of C supported the appointment of GTC. Advocate Harvey-Hills, on his behalf, informed us that the private trust company administered by Helm (Sijar Trust Company Limited) had been appointed as trustee of the ZIV-VIII Trusts inclusive, leaving GTC as trustee of the ZI and II Trusts, and Zedra as trustee of the ZIII Trust.

16 GTC had managed the claim against the former trustee of the ZII Trust successfully, and Advocate Harvey-Hills said it made sense for it and its legal team to investigate the potential claim against Zedra, a claim which could constitute the biggest asset of the ZIII Trust. The material generated by Zedra under the insolvency procedure was not extensive; it would not be a costly exercise, he said, for GTC to take over that process. It would

continue under the supervision of the Court and any conflict could be managed.

- 17 Advocate Gleeson, for GTC, strongly denied the suggestion that GTC was under the influence of Mr E or that its position was in any way compromised. He said there was no evidence to support these allegations. Inevitably there was a working relationship between GTC and Mr E, because although he was not a beneficiary of any of the trusts, his two children were, and his company, Buckingham, has historically and continues to act as adviser. He pointed out that the claim against the former trustee of the ZIII Trust had involved the very real possibility of Mr E being drawn in by the former trustee as a third party, and although that had not happened, Advocate Gleeson's firm had conducted the litigation without any involvement of Mr E. The potential claim against Zedra, if pursued, would also give rise to the possibility of Mr E being drawn in by Zedra as a third party. GTC would, he said, adopt the work of Zedra, although we note it would not be bound by it, and the conflict with its position as trustee of the ZII Trust would be managed by it remitting that claim to the Court and surrendering its discretion.
- 18 Furthermore he said the appointment of an insolvency practitioner, as suggested by Advocate Jordan, would add a significant additional layer of costs in addition to those of the trustee who would remain in office. Significant costs would, he said, be incurred in simply reading in as any appointee would be entirely new to the matter. GTC and its lawyers have, by contrast, been involved in the matter since 2015, and have considerable background knowledge.

## Decision

- 19 In earlier discussions as to the winding up of an insolvent trust, three options have been canvassed by the parties before the Court:-
- (i) for the winding up to be conducted by the incumbent professional trustee under directions from the Court;
  - (ii) for the winding up to be conducted by an insolvency practitioner under powers delegated by the incumbent professional trustee;
  - (iii) for the appointment of a receiver.
- 20 There is only one case in which the Jersey Court has appointed a receiver, namely the case of *Re IMK Family Trust* [2008] JLR 250, although the Court recognised in that case that it was a power to be exercised very sparingly (see paragraph 106). In April 2019 it was not suggested by any of the creditors of the ZIII Trust (and it is not suggested today) that a receiver should be appointed. The Court was persuaded that it was more cost effective for Zedra, a professional trustee, to conduct the winding up, and it was appropriate to do so because it was independent of the interested parties and there was no perceived conflict.



21 Now the possibility of a claim against Zedra has been raised for the first time, and from the information available to the Court it is a claim that, in the interest of the creditors as a whole and, potentially, the beneficiaries, should at least be investigated. Self evidently, Zedra cannot conduct that investigation. It was also self evident that such an investigation would be best conducted by a new trustee, which would have access to the trust records, and which would have the locus to bring proceedings against Zedra if so advised, and if such proceedings are sanctioned by the Court. At the same time, Zedra is well advanced in the winding up process it has been directed to undertake, and is about to issue its determinations on the claims that have been filed by the creditors. The appointment of a new trustee now would interrupt and delay that process at least to some extent, but whoever is trustee it seems clear that the task of winding up the assets of the trust will be difficult and costly, given Mr E's lack of co-operation.

22 There would appear to be four options:-

(i) Zedra to complete the whole winding up process before a new trustee is appointed to investigate the claim against it. The advantage of Zedra continuing the winding up is that there should be no delay in the creditor claims being determined, although it is in the same position as any other trustee to complete the winding up of the assets. The disadvantage is that the investigation into the claim against Zedra will be delayed by what could be a substantial period.

(ii) Zedra to retire in favour of a wholly unconnected new trustee which would complete the winding up process. This disqualifies both GTC and Helm, who are connected through their trusteeships of other Z trusts and their working relationship with Mr E. No candidate has been put forward and it may well be difficult to find a willing professional trustee, as opposed to an insolvency practitioner, to take on an insolvent winding up and potential litigation. The advantage of appointing a wholly unconnected trustee is that it can investigate the claim against Zedra and complete the winding up process. The disadvantage is that it will delay the creditor claims being determined, although it would be in the same position as any other trustee to complete the winding up of the assets.

(iii) Zedra to retire in favour of GTC which would complete the winding up process. The advantage of the appointment of GTC is that it too will be able to investigate the claim against Zedra, and is in a good position to do so because of the information it has already obtained. The disadvantage of the appointment of GTC is that it is a major creditor of the ZIII Trust in its capacity as trustee of the ZII Trust, and is perceived by Equity Trust, the only unconnected creditor, as being under the influence of Mr E. Immediately upon its appointment, it will have to refer its claim as trustee of the ZII Trust against the ZIII Trust to the Court, with the costs that that will incur. The disadvantage is that it will delay the creditor claims being determined, although it would be in the same position as any other trustee to complete the winding up of the assets, save that because of its working relationship with Mr E it may be more difficult for it to take steps to secure and realise the trust assets, steps which may well be opposed by Mr E.



(iv) Zedra to retire in favour of GTC and GTC to undertake the investigation into the claim against Zedra, but for the winding up of the ZIII Trust to be otherwise delegated to an insolvency practitioner. The advantage of such an appointment is that GTC can investigate the claim against Zedra and the winding up will be under the control of a wholly unconnected insolvency practitioner. The disadvantage is that it will delay the creditor claims being determined to some extent and will incur the costs of an insolvency practitioner, both in reading in and conducting the winding up, in addition to the ongoing costs of GTC.

- 23 The Court has given consideration to Zedra continuing on with the winding up process. Settling the creditor claims is clearly well advanced, but in the light of Mr E's lack of cooperation the process of winding up the assets of the trust may take some considerable time. Now that a potential claim against Zedra has been identified, a claim that may be substantial, we do not think it appropriate that its investigation should be delayed. We therefore discount the first option and conclude that Zedra should retire in favour of a new trustee. As no unconnected trustee has been put forward we can also discount the second option.
- 24 In supporting the third option, Advocate Gleeson placed some emphasis on the judgment of the Court of the 20<sup>th</sup> October 2015 ( *Representation of the Z Trusts* [\[2015\] JRC 214](#)) when the Court was considering the appointment of GTC (then Rawlinson & Hunter Trustees SA) as trustee of both the ZII and III Trusts. He referred to this passage of the judgment at paragraph 37:

***“In all we do not think that there are issues of conflict which prevent Rawlinson & Hunter being appointed as trustee which cannot be managed under the supervision of the Court”***

- 25 This was, of course, said in the context of the ZII Trust and at that time, and in the circumstances then prevailing, it was not thought necessary to order the winding up of either trust and the imposition of an insolvency procedure. In terms of the ZIII Trust the Court accepted that Zedra would remain as trustee and that there was ***“some advantage in it doing so”*** in the light of the loan due to the ZII Trust (paragraph 42). It was understood then that the claim of Equity Trust against the ZIII Trust would soon be settled (paragraph 19(ii) and 43). The circumstances then prevailing of the ZII Trust included:

- (i) Its total lack of liquidity.
- (ii) The claim of Equity Trust being contingent upon the outcome of the Angelmist proceedings.
- (iii) Rawlinson & Hunter's fees for acting as trustee being met from another source.

- 26 Matters have moved on since then in relation to both trusts in that *inter alia*:

- (i) The Court has now ordered the winding up of the ZIII Trust by Zedra and put an insolvency procedure in place.
- (ii) In separate contemporaneous proceedings the Court has in principle ordered the winding up of the ZII Trust, but left over to the Commissioner the issue of who should conduct that winding up and the precise terms of the insolvency procedure to be put in place.
- (iii) The Angelmist proceedings have concluded and Equity Trust now has a claim against the ZII Trust of £18 million.
- (iv) The ZII Trust now has substantial funds available to it.
- (v) Equity Trust's claim against the ZIII Trust has not been settled.
- (vi) All of Equity Trust's claims, if proved, will take priority, subject only to the appeal to the Privy Council on the priority issue.

27 The Court is concerned at the sheer extent of the conflicts that GTC has or which may arise if appointed trustee of the ZIII Trust:

- (i) As trustee of the ZI Trust it has a major claim against the assets of the ZII Trust.
- (ii) As trustee of the ZII Trust it has to deal with and determine that claim.
- (iii) As trustee of the ZII Trust it has a major claim against the assets of the ZIII Trust.
- (iv) As trustee of the ZIII Trust (if appointed) it has to deal with and determine that claim.
- (v) As trustee of the ZIII Trust (if appointed) it has to secure and wind up the assets of the trust, which may bring it into conflict with Mr E, with whom it has a working relationship.
- (vi) As trustee of the ZIII Trust (if appointed) it may come into conflict with Mr E over the claim submitted by his company Buckingham.

28 Added to this is the contention of Equity Trust that the winding up of both trusts should be conducted by someone who is unconnected and its perception that GTC is under the influence of Mr E.

29 The Court is of the view that it should take a holistic approach to the affairs of the two trusts, as it did in October 2015, and ensure that both trusts are wound up in the interests of the creditors of each trust as a body and in a manner that is consistent and proportionate. There is a strong argument that an independent insolvency practitioner should be appointed to

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conduct the winding up of the ZII Trust, at least.

- 30 The position in relation to the ZIII Trust may become clearer if Equity Trust's claim is paid, leaving it with no standing in relation to that trust. We have seen a letter dated 13th February 2020 from Advocate Cushing to Advocate Jordan informing her that the principal creditors of the trust have requested that its claim be paid in full, but on condition that if the Privy Council overturns the decision of the Court of Appeal on the priority issue, it will repay the costs element of the claim. That condition has not been accepted by Advocate Jordan. It is not appropriate for the Court to comment on these negotiations other than to note that if the claim is paid in full, then, as Advocate Jordan says in her letter of the 28<sup>th</sup> January, 2020, it will have no further standing in the proceedings concerning the ZIII Trust. To the extent that Equity Trust would have an ongoing indirect interest in the winding up of the ZIII Trust as a creditor of the ZII Trust, that interest would stand to be protected through whoever is conducting the winding up of the ZII Trust.
- 31 The Court is therefore going to adjourn this matter to a date to be fixed by counsel before the Court as currently constituted (if possible), when it will decide how to proceed in relation to both trusts.
- 32 We should add that following the hearing, the Court received an affidavit from Mr Rodney Hodges, a director of GTC, dated 12<sup>th</sup> February, 2020, expanding on the issue of GTC's relationship with Mr E and on the issue of GTC's conflict. We have not invited any response to this from the other parties as it does not affect our decision as to how to proceed.