

S and A v Standard Chartered

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	18 July 2003
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Text

[2003] JRC 132

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, Bailiff, **and** Jurats Mrs Le Ruez **and** Bullen

In the matter of the E Trust

And in the matter of the Trusts (Jersey) Law, 1984: Articles 47 and 49.

Between
S and A
Applicants
and

(1) Standard Chartered Grindlays Trust Corporation (Jersey) Limited; and
(2) M

Respondent

Advocate P. Sinel for the Applicants.

Advocate F.B. Robertson for the First Respondent.

Advocate A.P. Begg for the Second Respondent.

No Authorities

Representation by the Applicants for directions

Bailiff

THE

- 1 This is an application made by representation pursuant to Articles 47 and 49 of the Trusts (Jersey) Law, 1984 by two beneficiaries S and A of a discretionary settlement known as the E Trust.
- 2 The representation has been served upon the remaining beneficiary M and on Standard Chartered Grindlays Trust Corporation (Jersey) Limited, as Trustee of the E Trust, to whom we refer as the "Trustee". Most of the matters formerly in contention have now been resolved between the parties themselves and a draft Act has been prepared by Counsel and placed before us. Two substantive issues, however, could not be agreed and require our adjudication. In order to set the ruling in context we must explain a little of the background.
- 3 S and A are brothers who set up, with financial support from M, a trading company in Dubai to which we shall refer as TAL. TAL is owned by another company TAHL which is in turn owned by the Trustee. TAL was successful and for reasons which we do not need to recount, S, A and M sought to disguise that success. The accounts of TAL were doctored so as to misrepresent the financial position of the Company.
- 4 It goes without saying that this was done without the knowledge or consent of the Trustee which is a reputable local trust company. As Sir Walter Scott would have predicted "Oh what a tangled web we weave when first we practise to deceive". This manipulation of the accounts of TAL led to difficulties for the company and its fortunes have recently been in sharp decline. All the beneficiaries have now agreed that TAL should be sold as soon as possible and the proceeds of sale remitted to the Trustee.

- 5 There are disputes between the beneficiaries as to how the proceeds should be applied, but the beneficiaries have also agreed that a forensic accounting examination of the affairs of the company should be undertaken with a view to producing a genuine statement of financial affairs. There has been difficulty in finding a firm of chartered accountants to carry out the work but KPMG has now agreed to do so.
- 6 It has been agreed that TAL should be offered first to the beneficiaries before being offered for sale to the public. The draft Act of the Court provides that the directors of TAL shall:

“3.5 Take such steps as are necessary and appropriate to enable M, A and S each of “the beneficiaries” to bid openly as against each other for TALD as defined above on or before 10 July 2003 subject to a minimum bid price of US\$3,459,000.

3.6 In the event that none of the beneficiaries make a bid which exceeds the above minimum bid price, TALD shall be offered for sale in public open bidding on or before 14 July 2003 subject to a reserve of US\$3,038,000.”

- 7 We should also record that the two directors of TAL who are in Dubai are firmly of the view that the company should be sold. They are said to have a closer connection with S and A than with M. That is the background to the decisions that we have to make.
- 8 Mr Begg who appeared for M said that his client was concerned about two issues. First, he wanted a provision in the Court Order that a loan of US\$1,000,000 from M to TAL should be repaid immediately out of the proceeds of sale. Secondly, he wanted the auction referred to in paragraph 3.5 of the draft act referred to above to take place by sealed bids delivered to the trustee rather than in open competition between the beneficiaries.
- 9 Dealing with the first objection, both Mr Sinel for S and A, and Mr Robertson for the Trustee, contended that in the light of the history of manipulation of the accounts of TAL it would be unsafe and inappropriate to return any funds to M until the forensic examination by KPMG had been completed. We agree and we refuse this application by Mr Begg.
- 10 The second issue is more difficult. Mr Sinel urged that an open and transparent auction between the beneficiaries would be the best way to obtain the highest price for TAL, which in turn would be in the best interests of everyone. Ordinarily we would have agreed. There are, however, special factors in this case which persuade us to the contrary. An open auction will only be fair if each beneficiary is equally well-informed about the activities and likely value of the company. In other words, if there is a level playing field each player has an equal chance of succeeding.
- 11 That appears, however, not to be the case here. The valuation of TAL by KPMG refers to three special contracts with the Ministry of Defence in Pakistan, which they have not been able to value. It seems that A has a close relationship with officials in the Pakistani Ministry

of Defence. It follows that he will be in a better position than either of the other beneficiaries to know the value of those special contracts. If there is an open auction A may well be able to secure the company at a price which he knows to be below its true value.

- 12 An auction by closed bid is more likely to require each beneficiary, in ignorance of any other bids being submitted, to tender what he genuinely believes to be the value of the company. We propose, therefore, to order that the preliminary auction amongst the beneficiaries be achieved by the delivery of sealed bids to the Trustee to be opened in the presence of counsel for the three beneficiaries.
- 13 Other minor amendments to the text of the draft Act of the Court were agreed by counsel and we have no need to itemize them. The only exception is in relation to paragraph 9 of the draft Act. In this respect we accept the submission of Mr Robertson for the Trustee that the first two and half lines are superfluous and we accordingly delete the words beginning "without prejudice" down to "loss of the Trust Fund".
- 14 Paragraph 3.5 of the draft Act of Court will need to be amended in accordance with the Judgment that we have just delivered. We think that it should be possible for counsel to agree the appropriate form of words and to deliver that form of words to the Greffier for incorporation in the Act of the Court. Naturally we give liberty to apply if there is any difficulty in that respect.