

## Representation of Caversham Trustees Ltd

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Sir Philip Bailhache, Jurats Tibbo, Marett-Crosby
<b>Judgment Date:</b>	11 March 2010
<b>Neutral Citation:</b>	[2010] JRC 54
<b>Reported In:</b>	[2010] JRC 54
<b>Court:</b>	Royal Court
<b>Date:</b>	11 March 2010

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### Text

[2010] JRC 54

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, **Kt., Commissioner and** Jurats Tibbo **and** Marett-Crosby.

In the Matter of a Representation by Caversham Trustees Limited  
And in the Matter of Sterling Investment Trust  
And in the Matter of Articles 51 And 53 of the Trusts (Jersey) Law 1984, as Amended.

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

**Advocate D. M. Cadin for the Viscount.**

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**Authorities**

Trusts (Jersey) Law 1984.

**THE COMMISSIONER:**

- 1 This is a Representation by Caversham Trustees Limited ("Caversham") in its capacity as trustee of the Sterling Investment Trust. The Sterling Investment Trust was established by deed on 18<sup>th</sup> May, 1995. The only beneficiary is now an individual to whom we shall refer as Mr W who is a resident of the United States. Mr W has been convened to this application; he has not appeared but he has signified by letter that he supports Caversham's application.
- 2 The proper law of the trust is Guernsey Law but this Court has jurisdiction by virtue of Article 5 of the Trusts (Jersey) Law 1984 in that Caversham is a company incorporated in Jersey. The monies to which this application relates are held in Jersey and the administration of the Sterling Investment Trust is carried out in Jersey.
- 3 Mr James Andrew Ramsden, a director of Caversham, has sworn an affidavit from which the following history emerges. The original trustee of the settlement was Lavy Hancox Trustees Limited ("Lavy Hancox") which was controlled and owned by Mr Raymond Bellows ("Mr Bellows"). Mr Bellows and Lavy Hancox were declared en desastre on the 28<sup>th</sup> February, 1997. Investigations both by the Viscount and the police revealed that Mr Bellows had been engaged in various criminal activities through Lavy Hancox. On the 8<sup>th</sup> February, 1999, he was sentenced to 5 1/2 years' imprisonment for various offences of fraudulent conversion and obtaining money by false pretences.
- 4 On the 12<sup>th</sup> May, 1998, on the application of Caversham, Lavy Hancox was replaced as trustee by Caversham. The Act of Court noted the undertaking of Caversham not to transfer away the sum of US\$512,442.21 to which we shall refer as the "retained sum". The investigations by the police and by the Viscount had revealed that on 25<sup>th</sup> October, 1996, an amount of US\$500,000 had been withdrawn from an account held at the Midland Bank by SCAMP Investments Limited and transferred into an account held by Mr Bellows and his wife. SCAMP Investments Limited was a company beneficially owned by the trust. On the 22<sup>nd</sup> January, 1997, the retained sum, that is US\$500,000 plus accrued interest, had been paid into the account of SCAMP Investments Limited by Mr Bellows. The suggestion was made that the latter transfer represented monies fraudulently obtained from the Midland Bank, now HSBC Bank Plc, of which offence Mr Bellows was convicted on the 8<sup>th</sup> February, 1999. In the light of possible proprietary claims by HSBC or indeed others, the Attorney General sought an undertaking from Caversham that the retained sum would not be paid away without further order of this Court. That undertaking was given as we have said, by Caversham on the 12<sup>th</sup> May, 1998, and noted by this Court. The retained sum now amounts, with further interest accrued according to counsel for Caversham, to over

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US\$750,000.

- 5 Since 1998 sundry exchanges have taken place between lawyers acting for HSBC and Caversham. It is now clear, however, that HSBC is not pursuing a proprietary claim to the retained sum on the ground that it is not possible to prove that the sum paid into the SCAMP Investments Limited account originated from HSBC. The paper trail is not there. HSBC has been placed on notice of this application and has elected not to oppose it. Counsel for the Viscount has also confirmed that he has no further interest in the retained sum. Finally the Law Officers' Department has written to Caversham's lawyers confirming that the Attorney General does not wish to be heard on any application seeking a discharge of the undertaking.
- 6 There is an uncertainty as to whether the money paid back into the account of SCAMP Investments Limited was money belonging to Mr Bellows or to someone else but the fact is that there are no other claimants apart from the trustee. The Viscount has considered, we were told by counsel, whether the payment back into the SCAMP account amounted to a fraudulent preference but has determined that it is not in the interests of creditors or in the public interest that this issue should be pursued.
- 7 Having considered the matters placed before us by counsel we are content that the undertaking should be discharged and Caversham is accordingly discharged from its undertaking given to the Court.
- 8 Turning to the question of costs, I am satisfied that Caversham has conducted itself with propriety throughout in relation to this matter and I accordingly order that the costs of the trustee be paid on an indemnity basis from the trust fund. So far as the costs of the Viscount are concerned it seems to me that, in the light of the fact that he is not pursuing the issue of a possible fraudulent preference, the Viscount should also be entitled to his costs on an indemnity basis from the trust fund. I so order.